New York's Proposed BitLicense Regime: Summary of Published Comments and Expected Changes

November 7, 2014

This document summarizes 35 public comment letters published in response to New York's "BitLicense" proposal. We have aggregated these letters at bitcoin-reg.com. The New York Department of Financial Services (NYDFS) proposed the BitLicense regime in July 2014 to comprehensively regulate certain Bitcoin and other virtual currency business activities in response to the use of virtual currencies for money laundering or other illicit activities (e.g., Liberty Reserve and Silk Road) and harm to consumers (e.g., Mt. Gox's failure and loss of hundreds of millions of dollars' worth of customer Bitcoins), as we summarized in our visual memo on the proposal. This document also summarizes recent speeches by NYDFS Superintendent Benjamin Lawsky that outline expected changes to the proposal (e.g., clarifications that mere software developers will not be covered) and timing (reproposal expected early December, final rules expected early 2015 with an effective date shortly thereafter).

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1. Summary of Expected Changes to the BitLicense Proposal and Timing

Benjamin Lawsky, the Superintendent of the NYDFS, outlined changes that his office expects to make to the BitLicense framework and the timing of rules in similar speeches on October 14, 2014 at the Benjamin N. Cardozo School of Law and at the Money 20/20 conference in Las Vegas on November 3, 2014. Lawsky indicated that although the BitLicense reproposal will address some industry comments, many provisions of the original proposal will remain in place.

I. Expected Timing of BitLicense Regime

- Proposal released July 17, 2014; comment period extended on August 21, 2014
- Extended comment period ended October 21, 2014
- Reproposal to be published in early December 2014, with another comment period
- Final rules to be published in early 2015, with effective date shortly thereafter

II. Expected Changes to BitLicense Proposal

On-ramp	The reproposal will have an on-ramp for start-ups and new businesses in the form of a transitional license with more tailored requirements and examinations. Factors that may be taken into account when determining whether to grant a transitional license include: • Nature and scope of the applicants' businesses and associated consumer risks; • Anticipated business / transaction volume; • Whether applicant is registered with the Financial Crimes Enforcement Network (FinCEN) as a money services business (MSB); • Mitigating risk controls already in place (e.g., bond or other insurance).
Scope of Virtual Currency Business Activities	NYDFS intends to regulate **financial intermediaries**. • Software developers[1] and end users will not be covered by BitLicense. • Miners and mining pools will not need to register unless they engage in other activities, like hosting wallets. • There are no planned changes yet to "involving" New York language. • NYDFS does not intend to regulate non-financial uses of virtual currency technologies, but is struggling with this issue because most uses require a *de minimis* use of digital currency as money (e.g., a penny's worth of Bitcoin).
Overlap with Money Transmitter Licenses	Businesses that may need multiple licenses (e.g., money transmitter and BitLicense) should be able to use a streamlined application that cross-satisfies requirements (implicitly indicates that businesses will need multiple licenses).
Application to Banks	Banks and other regulated entities will not be able to engage in virtual currency business activities without following the same requirements as those that must apply for BitLicenses. Lawsky said he wants to apply this requirement to all banks to the extent that they do business with New York customers.[2]

[1] For example, programmers who do not host wallets for third parties but create wallet software for end users to run on the end users' own computers.

[2] Superintendent Lawsky indicated, in response to a question at Money 20/20, that this would include national banks that are regulated by the Office of the Comptroller of the Currency (OCC), but that he would check with his counsel on preemption issues.

2. Overview of 35 Public Comment Letters

We have collected 35 comment letters made public by their authors, linked to them on our website, bitcoin-reg.com, and have summarized them in this document. These 35 letters are not necessarily representative of the hundreds of letters that have been submitted. Most of the public comments were from Bitcoin industry insiders and their representatives, such as BitPay, Coinbase and the Bitcoin Foundation. Some notable exceptions include the Electronic Frontier Foundation, Hub Culture Group, The Clearing House Association, and the New York State Society of Certified Public Accountants. The comments are discussed further below.

Categories of Published Comment Letter Authors

Exchanges, Wallet Providers or Other Financial Services

- BitGo
- BTC China / Huobi / OKCoin
- Circle
- Coinbase
- Lazzerbee
- itBit
- Novauri
- Paybits
- Xapo[3]
- SecondMarket

Digital Currency Creator

- Hub Culture Group

Payment / Payroll Processor

- BitPay
- Bitwage

Compliance / Law Firm

- Strategic Counsel Corp / Bryan Cave LLP
- Strevus, Inc.

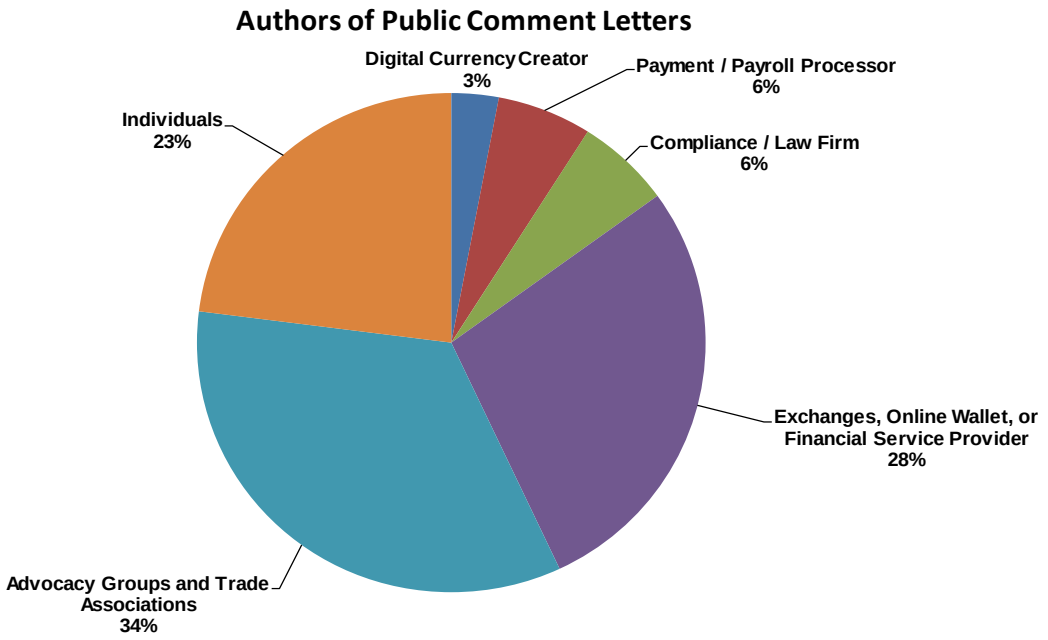
Individuals

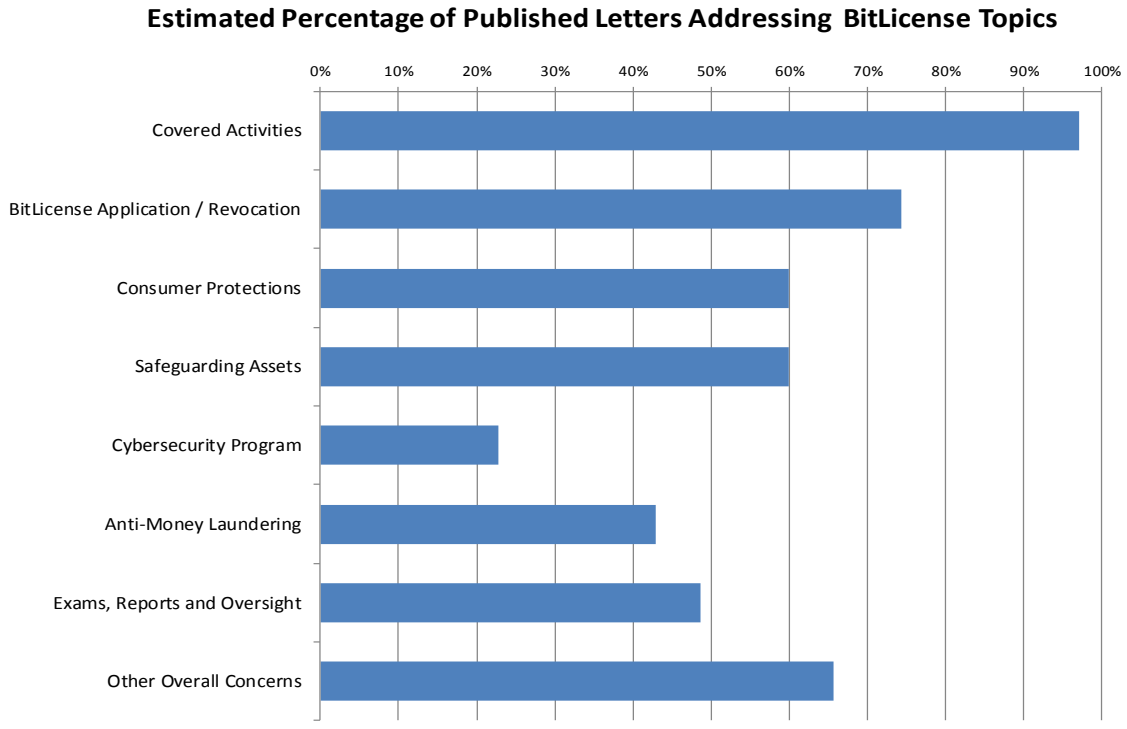
- Eric Dixon
- Matthew A. Gertler
- Jonathan Harms
- Sean King
- Marc Safman
- Ryan Selkis
- Peter Šurda
- zeusa1mighty (pseudonym)

Advocacy Groups and Trade Associations

- Bitcoin Foundation
- Boost VC
- Chamber of Digital Commerce
- The Clearing House Association / Independent Community Bankers of America
- Coin Center / Center for Democracy and Technology / TechFreedom
- Dogecoin Foundation
- Electronic Frontier Foundation / Digital Archive / Reddit
- Electronic Transactions Association
- The Information Technology & Innovation Foundation
- Mercatus Center (of George Mason University)
- New York State Society of Certified Public Accountants
- UK Digital Currency Association

[3] The Xapo comment letter is apparently no longer available.





Most commenters criticized the breadth and scope of the provisions, writing that the NYDFS is attempting to regulate too many types of activities with too many requirements, too early in the nascent life of virtual currencies. These commenters believe that the BitLicense Proposal would bury companies, including start-ups, with heavy compliance burdens and privacy-eroding restrictions that may be unnecessary to prevent money laundering and other illicit activities and consumer harm, which would impede innovation. There were also some commenters, such as

Marc Safman and The Clearing House Association, who thought that the BitLicense Proposal did not go far enough in regulating virtual currency business activities.

Several of the comments were voiced by organizations outside of the virtual currency industry. The Electronic Frontier Foundation raised concerns about how the regulations could chill the associational and expressive activities of digital currency protocols, which can be considered speech. The Clearing House Association was concerned about the effect of overregulation on traditional banking entities, as most of their activities are already heavily regulated by other federal agencies. The New York State Society of Certified Public Accounts (NYSSCPA) raised similar concerns as most other commenters, but focused more on the financial statement disclosure requirements of the BitLicense Proposal.

The following table summarizes comments made in the published comment letters by the various substantive areas of the BitLicense Proposal. (The requirements of the BitLicense Proposal in these areas are summarized on page 3 of our visual memo.)

Summary of Representative Comments	
Covered Activities **(page 7)**	• "Virtual Currency Business Activities" is defined too broadly (narrowly): o should not reach businesses that have a tenuous connection to New York; o should not regulate non-financial uses of Bitcoin and other virtual currency technologies; o should not apply to businesses that provide software for end users or provide certain services but do not have control over virtual currency; o should not (should) cover mining companies; o should not cover creation and development of new digital currencies; o should not apply to traditional banking entities. • Similar activities (financial services) should (should not) be regulated similarly, and a BitLicense regime specifically for virtual currency activities violates this premise. • The exclusions from the definition of "virtual currency" should be expanded to exclude units of exchange that pose limited consumer and prudential risks.
BitLicense Application / Revocation **(page 11)**	• Virtual currency businesses should be subject to only one licensing regime. • BitLicense regime should have an on-ramp or de minimis exemption to promote innovation and remove barriers to entry. • The BitLicense regime should not be more burdensome than New York Money Transmitter Regulations. • The BitLicense regime should not require businesses to submit material changes to regulators for pre-approval.

Summary of Representative Comments	
Consumer Protections **(page 15)**	• The BitLicense regime should not eradicate the consumer privacy benefits of Bitcoin and should not prohibit all transaction obfuscation. • The BitLicense regime should clarify or reduce requirements for consumer protection. • Investing in virtual currencies itself poses risks to regular consumers, so more protection is necessary.
Safeguarding Assets **(page 18)**	• The capital requirements should be proportional to the risk and scope of the company. • The restrictions imposed with respect to the reinvestment of the licensee's retained earnings and profits are too broad. • The books and records requirement is too cumbersome and costly to comply with.
Cybersecurity Program **(page 20)**	• While cybersecurity protections are appropriate, the regulations leave too much room for interpretation and implementation. • Because pseudonymity is ingrained in virtual currency technology, the use of Bitcoin itself creates cybersecurity risks and so its use should be restricted.
Anti-Money Laundering **(page 21)**	• The BitLicense regime should conform to existing federal regulatory frameworks governing AML, counterterrorist financing, sanctions (i.e., Office of Foreign Assets Control, or OFAC), and the use, disclosure and safeguarding of customer information.
Exams, Reports and Oversight **(page 22)**	• The BitLicense regime should not grant so much discretion to the Superintendent's office. • The requirement that licensees identify and gather the physical addresses of all parties to a transaction is impractical and counterproductive.
Other Overall Concerns **(page 23)**	• The BitLicense regime should not chill the expressive and associational uses of the Bitcoin platform by requiring prior approval before people can engage in these activities. • NYDFS is not the correct regulatory body to regulate virtual currency. • The BitLicense regime should take into account rapid technological advancements that have been made and will continue to be made, rather than ossify the current state of technology. • Regulation this early in Bitcoin development will stymie innovation and is not necessary to protect consumers and prevent illicit acts. • The scope of regulated activities and the breadth of requirements are appropriate given the risks posed by virtual currency businesses.

3. Detailed Excerpts from 35 Public Comment Letters

I. Covered Activities

A. "Virtual Currency Business Activities" is defined too broadly (narrowly)

(1) The BitLicense regime should not reach businesses that have a tenuous connection to New York

"[T]he Companies believe it is not the NYDFS's intention to regulate international businesses that have only inconsequential contacts with New York . . . . [T]he Companies hereby respectfully request the NYDFS to revise the definition of 'virtual currency business activity' to clarify that BitLicenses are only required from virtual currency businesses that have availed themselves of the privilege of conducting activities within New York . . . . The Companies note that this approach is consistent with the NYDFS's position on the applicability of New York's money transmitter licensing requirement: all key cases relied upon by the NYDFS in the Industry Letter analyze businesses' degree of activities in a state in determining whether the state's exercise of regulatory power is proper."
BTC China / Huobi / OKCoin[4]

"[A]s a practical matter, this regulation will reach many businesses that have only a tenuous connection to the state. Digital currencies rely on global internet infrastructure, and so the vast majority of businesses in the digital currency ecosystem will be likely to engage in commerce involving New York or New York residents at some point in time. Even companies based wholly outside the United States will be responsible for complying with this regulation if they only conduct occasional business with New York residents."
Electronic Frontier Foundation

See also: Circle; Chamber of Digital Commerce; **Xapo**[5]; UK Digital Currency Association; Information Technology & Innovation Foundation

(2) BitLicense should not regulate non-financial uses of Bitcoin and other virtual currency technologies

"The scope of Virtual Currency Business Activity should exclude non-financial activity involving Virtual Currency so as to avoid imposing unnecessary regulation upon those companies and inventors wishing to utilize the unique elements of the virtual currencies protocols – namely, the distributed ledgers – for non-financial purposes . . . [T]he distributed ledgers that reside at the core of many virtual currencies can be utilized by a wide range of emerging technologies which are unrelated to financial services. Although these technologies may rely upon the receipt and transmission of Virtual Currency as a means of transmitting information to a distributed ledger, the Department should, given its focus on financial products and services, exclude such activity from the definition of "Virtual Currency Business Activity," and thus avoid unnecessarily requiring thousands of small companies or inventors to obtain a license in order to contribute to these nonfinancial uses of distributed record systems."
Coinbase

[4] According to their comment letter, BTC China, Huobi and OKCoin are the three main Chinese Bitcoin exchanges.
[5] The Xapo comment letter is apparently no longer available.

"[B]ecause blockchains are essentially distributed ledgers, blockchain technologies can be put to myriad uses that are not simply fund transfers . . . For example, Virtual Currency tokens may be used to securely control access to websites and computer systems, much as passwords are used today. In the not too distant future, they may be used as the equivalent of a key that allows access to a hotel room or a rental car. And digital tokens may also be used to represent discrete digital assets such as a copyrighted song that one can play or transfer, or even a stock certificate or other bearer instrument. In each of these cases it is possible that consumers and merchants are neither "purchasing" nor "selling" goods or services but instead using the Virtual Currency tokens to facilitate new types of digital transactions."
Mercatus Center

See also: Circle; Electronic Frontier Foundation; Eric Dixon; Jonathan Harms

(3) The BitLicense regime should not apply to businesses that provide software for end users or provide certain services but do not have control over virtual currency

"Software wallet providers do not have access to virtual currency keys, but it is unclear whether they are nevertheless implicated by section 200.2(n)(2) because they are necessarily involved in providing security features for the software the consumer uses to manage virtual currency balances. Since "securing . . . Virtual Currency on behalf of others" is a Virtual Currency Business Activity, must software wallet providers be required to apply for a BitLicense? We say no . . . An even more complicated case is raised by multisignature wallets. A Bitcoin address can be set up to require any two out of a possible three signatures to conduct a transaction. This ability has many applications, especially for securing funds . . . This case is interesting because the firm never has custody of the funds but nevertheless is involved in the custody of the funds in a way that improves end-user security. To address the concerns raised in this section, we suggest editing section 200.2(n)(2) to read: (2) ~~securing, storing, holding, or~~ maintaining **full** custody or control of Virtual Currency on behalf of others; This change would clearly exempt software wallet authors from regulation under this part, as well as firms that offer to facilitate end-user custody of virtual currency without firms having direct access to it."
Mercatus Center

"[M]ulti-signature technology, which provides users with heightened virtual currency controls, involves associating a single public key with multiple private keys and requires the use of a certain subset of the associated private keys (e.g., 3 of 5) in order to initiate a transfer from the public key. Where such technology is used, although the provider might hold one or more of the associated private keys, it would not be capable of initiating a transfer from the public key without the requisite private keys, and thus would not possess control of the associated virtual currency. Hence, in order to provide clarity and ensure that this element of "Virtual Currency Business Activity" is appropriately tailored to exclude the simple provision of such beneficial technology, the Department should revise it to only cover instances where one controls (i.e., has the ability to transfer) Virtual Currency on behalf of others."
Coinbase

See also: Ryan Selkis; Coin Center; Circle; NYSSCPA; Paybits; Lazzerbee

(4) The BitLicense regime (should) should not cover mining companies

"[W]e recommend that the definition of Virtual Currency Business Activity be clarified to indicate that mining Virtual Currency solely for personal, family, or household use does not require licensing, but that engaging in mining as a business activity (whether or not the miner sells Virtual Currency to consumers) does give rise to a licensing obligation."
Clearing House Association

"The DFS press release accompanying the Proposed Regulations suggests that the definition of a Virtual Currency Business Activity would not include Virtual Currency mining or buying and selling Virtual Currency for personal use, but these exclusions are not expressly stated in the Proposed Regulations. To avoid confusion and for clarification, we suggest that the final regulatory definition for Virtual Currency Business Activity expressly exclude the activities of Virtual Currency mining or buying and selling Virtual Currency for personal use."
NYSSCPA

(5) The BitLicense regime should not cover creation and development of new digital currencies

"Under the BitLicense proposals, any party "controlling, administering or issuing a virtual currency" will require licensing. This provision would have outlawed the very invention of bitcoin, and it seems to ban any new alternative currencies and tokens that might be created in the future. The detrimental effect this would have on innovation in New York and across the US cannot be overstated. New currency innovators would be extremely unlikely to launch in the US, and would very likely follow the lead of Ethereum, Counterparty and other organizations in moving their legal operations overseas."
Ryan Selkis

"We would respectfully submit that unless the Department is prepared to regulate all issuers of value in the economy (i.e. anyone who makes anything), it cannot make sense to include the creator or issuer of a virtual or digital currency or asset as entities subjected to the BitLicense Rule solely on the basis of being an asset creator/issuer . . . . For this reason, we strongly suggest that it is more practical and expedient to focus regulatory activity and licensing around specific entry/exit points in the realm of digital assets: where and when they interact with fiat currency, or when fiat currency is held in reserves as a custodial activity for clients."
Hub Culture Group

"Section 200.2(n)(5) of the proposed framework can only possibly apply to centralized virtual currencies that are issued and administered by a central authority. The alternative—that merely writing and publishing code would be subject to licensing—would not stand First Amendment scrutiny, and it cannot be what the department intended. The confusion can be clarified by adding the word '*centralized*' to the definition . . . ."
Mercatus Center

See also: Electronic Frontier Foundation; Information Technology & Innovation Foundation

(6) The BitLicense regime should not apply to traditional banking entities

""Traditional banking entities (as further defined below, "Regulated Banking Entities") already are subject to extensive prudential requirements and to oversight that is more stringent than what

would apply under the proposed BitLicense Regulations and that encompasses virtually all aspects of an institution's safety and soundness . . . Regulated Banking Entities also are required by federal law to engage in initial due diligence and ongoing monitoring of customers and transactions to help avoid banking access for prohibited persons and to detect and prevent money laundering and other illicit activity . . . . All Regulated Banking Entities also are subject to consumer protection requirements administered by the CFPB, including the CFPB's proscription of unfair, deceptive, or abusive acts or practices. Further . . . federal prudential regulators generally consider Regulated Banking Entities' handling of consumer protection matters to be within the regulators' examination and oversight authority. Because any Regulated Banking Entity that engages in Virtual Currency Business Activity (as defined in the BitLicense Regulations) will be subject to compliance with the requirements of both the CFPB and that institution's prudential regulator . . . requiring Regulated Banking Entities to comply with the BitLicense Regulations will unnecessarily burden Regulated Banking Entities without improving protection for consumers that engage in virtual currency transactions with such entities."
Clearing House Association

See also: Mercatus Center

B. Similar activities (financial services) should (should not) be regulated similarly, and a BitLicense regime specifically for virtual currency activities violates this premise

"Chief among our concerns about the "BitLicense" proposal, though, is its technology-specific character. Under the "BitLicense" regime, financial services that are the same from the consumer's perspective and in terms of risk would be regulated differently simply because they use a different financial technology. Technology-specific regulation of Bitcoin would undercut competition between conventional financial firms and Bitcoin-based financial firms, depriving New York consumers of the quality improvements and price reductions that competition forces on both. If a "BitLicense" is required, a firm that offers consumers the option of Bitcoin- or dollar-based financial services may have to have two compliance regimes, one for each technology, even though the financial service they provide is the same. It is possible that separate regulation for each financial technology provides net benefits. It is more likely that uniform regulation of financial services—irrespective of the technology they use—will provide better, more cost-effective coverage of risks to New York consumers and markets and will better support economic growth and job creation in New York."
Bitcoin Foundation

"Many within the industry may dispute that virtual currencies require any special regulation at all. While I share some similar concerns, I also believe the BitLicense proposals represent an important step towards the widespread adoption of virtual currencies. The standardization they promote and safeguards they require should lead to greater levels of trust from consumers and the broader business community. That trust, in turn, will help the industry's exchanges, wallet services and payment processors attract customers and partners who had previously eyed virtual currencies with skepticism."
Ryan Selkis

See also: Coinbase; Matthew Gertler

C. The exclusions from the definition of "virtual currency" should be expanded to exclude units of exchange that pose limited consumer and prudential risks

"We recommend that this exclusion be broadened to clarify that all limited-use stored value products that meet certain requirements be excluded from the definition of Virtual Currency set forth in Section 200.2(m). Specifically, we propose that the following be excluded: 1. Units of value (such as rewards currencies or points) that are issued solely in the context of a customer affinity or rewards program[;] 2. Units of digitally stored value that can be used only for purchases of goods or services at a specific merchant or defined group of affiliated merchants (such as electronic gift cards or digitally stored merchant credit offered to a consumer after a return), whether denominated in fiat currency or an alternative currency. . . . In addition, the Associations recommend that Section 200.2(m) be revised to clarify that fiat currency does not constitute Virtual Currency, even if digitally stored or represented."
Clearing House Association

"[T]he Department should widen its exception for online gaming currencies. The proposed BitLicense includes an exception—at § 200.2(m)—for online video game currency, but only if the currency has no market outside of the gaming platform. Yet currencies for most major online games are often sold in online marketplaces for fiat money. . . . To avoid requiring the gaming companies to record the identities and transactions of users of their currencies, we recommend that the BitLicense encompass only those online gaming currencies with company-authorized marketplaces outside of the game."
Coin Center

II. BitLicense Application / Revocation

A. Virtual currency businesses should be subject to only one licensing regime

"To eliminate inefficiency, excess expense for the Department and licensees, the redundancy associated with two application processes, complying with two similar but distinct licensing regimes, establishing and staffing two different divisions within the Department, and the need to subject licensees to potentially two different examinations covering very similar regulatory obligations, Coinbase is of the view that Virtual Currency Business Activity would be better regulated under New York's existing Money Transmission statute than under a separate BitLicense regime."
Coinbase

"[M]any digital currency firms have other product offerings that may trigger existing money transmitter licensing requirements. Given that the Proposed Rule includes most of the traditional money transmitter requirements, the NYDFS should clarify that firms with a BitLicense do not need to have a separate money transmission license."
Circle

"[D]ue to the proposed BitLicense, Bitwage and other Payroll Providers interested in offering payouts in Virtual Currencies would be subject to licensing, background and bonding requirements that would limit the feasibility of Virtual Currency payroll services being provided in New York. Bitwage urges the department to consider how these regulations, developed

specifically for consumer protections with businesses conducting money transmitter like services with virtual currency, may adversely affect startups involved in Virtual Currency Business that do not conduct business similar to that of money transmitters. Regarding payroll in particular, payroll transactions are already highly regulated. Dates, amounts, and parties involved in payroll transactions are already reported to both state and federal governments for tax purposes. Requiring a payroll company to record and report the same information to a different government agency is both duplicative and a waste of resources."
BitWage

See also: Mercatus Center; Electronic Transaction Association

Other comments:

- The Clearing House Association encourages the NYDFS to revise the regulations to exempt a broader range of traditional banking entities from licensing and to remove the requirement that such institutions obtain departmental permission to engage in Virtual Currency Business Activity, especially as these entities are already exempted from money transmitter licensing obligations. *See also*: Mercatus Center

B. BitLicense regime should have an on-ramp or *de minimis* exemption to promote innovation and remove barriers to entry

"We believe that the NYDFS should consider some safeguards for smaller start up organizations or make some distinction as to the applicability of the regulations for these firms that may pose less risk to consumers. For this technology to develop, it is important for entrepreneurs to be encouraged to enter into the marketplace. As currently constructed, the Proposed Rule provides a barrier to entry for smaller firms due to the onerous requirements around capital, AML, etc."
Circle

"[T]he Department should consider allowing a transitional "on-ramp" approach that allows startup entities to operate in New York State in partnership with a registered BitLicensee, registered broker dealer, or registered money transmitter, similar to FINRA's allowance of an unregistered entity to "piggy back" off of a registered broker dealer's license while completing its own registration process. We also believe that the Department should implement a minimum threshold of activity that would trigger registration. Without these types of accommodations, innovative startups will look less favorably on New York State as a place to set up business, contrary to Superintendent Lawsky's goal 'to make certain that New York remains a hub for innovation and a magnet for new technology firms.'"
SecondMarket

"[T]he BitLicense framework includes myriad financial, recordkeeping, compliance, and reporting requirements that will heavily discourage digital currency innovators from doing business that might be subject to these regulations. . . . NY DFS's proposal would impose additional technology-specific demands that would make it nearly impossible for entrepreneurs and developers to be part of the digital currency ecosystem until they are established and have adequate resources to comply with New York's demands. Many will simply avoid doing business in New York or with New York residents because complying with the state's regulations will be such a daunting endeavor."
Electronic Frontier Foundation

"Some comments have suggested the creation of a "safe harbor" provision to provide an onramp for startups until they reach a scale where they can afford to comply. While this is a reasonable compromise, even a safe harbor is not sufficient. . . . In addition to startup costs, the conditions . . . on change of control will have a chilling effect on new company creation."
BitGo

"The proposed regulation doesn't differentiate between businesses that exchange fiat for bitcoin while taking control of deposits, those that exchange fiat for bitcoin and do not take control of deposits, or even businesses that exchange no currency at all and have no responsibility as a fiduciary. This will effectively kill all small businesses and startups in the State of New York, and if these rules are used as a model in other States, will drive the industry offshore entirely."
Novauri

See also: Chamber of Digital Commerce; Mercatus Center; Circle; Eric Dixon; Ryan Selkis; Paybits; Dogecoin

C. The BitLicense regime should not be more burdensome than New York Money Transmitter Regulations

"[T]he purpose of a BitLicense should be to take the place of a money transmission license for virtual currency businesses. . . . Therefore, to the extent that the goal behind the new BitLicense is to protect consumers while fostering innovation, the obligations faced by BitLicensees should not be any more burdensome than those faced by traditional money transmitters. Otherwise, the new regulatory framework will have the opposite effect of the one intended. If it is more costly and difficult to acquire a BitLicense than a money transmission license, we should expect less innovation."
Mercatus Center

"We . . . believe the definition of 'control' should be consistent with the New York money transmitter statute. Under the Proposed Rule, 'control' would be presumed if a Person directly or indirectly controls or holds the power to vote ten percent of a company's voting stock. This contrasts with the New York money transmitter statute, which states that control exists for 25% holders. There are significant negative implications for venture capital firms and investors as well as the ability to effectuate potential business transactions if control was defined at the lower threshold. As a result, we believe the Proposed Rule should be revised to be consistent with the levels for other money transmitters."
Circle

"The definition of "control" should mirror that set forth under the money transmitter statute, and therefore the threshold utilized with respect to the presumption of control should be 25% instead of 10%."
Coinbase

"Overall, we agree that requiring the applicant and each principal officer, stockholder and beneficiary of the applicant to provide financial information is a sound practice to be followed, but we believe the applicant (business entity) should be required to provide the same financial information that is required of applicants submitting a money transmitter license application to the DFS. We expect that a license application for Virtual Currency Licensees will be very similar to the current application used to obtain a money transmission license."
NYSSCPA

Other comments:

- The Proposal also prohibits licensed virtual currency businesses from conducting any business activity through unlicensed agents, which is different from the rules that apply to licensed money transmitters. Circle suggests that these rules should be changed to be consistent with the rules for traditional money transmitters.
- The Proposal also requires fingerprinting and photographs of all employees, which is unlike money transmitter rules. Circle further recommends that the application process for digital currency firms be changed to mirror that which apply to other money transmitters.
- Each Licensee would also be required to maintain a bond or trust account in USD for the benefit of its customers. Circle believes that there should be more clarification on minimum and maximum requirements. Bonding requirements should be similar, if not identical, to those which apply to other money transmitters.
- Requirements for prior written approval for any merger and acquisition are also more onerous than requirements for money transmitters (Circle).

D. The BitLicense regime should not require businesses to submit material changes to regulators for pre-approval

"Section 200.10 requires licensees to obtain permission from the superintendent before making a material change to their business. This section should be modified to accommodate the dynamics of the software industry, in which running a successful firm may require frequent and sudden pivots to new business models . . . "
Mercatus Center

"The obligation for a licensee to obtain the Department's prior written approval of any material change would, given the level of consideration and analysis that will likely be required in order for the Department to issue such approval, significantly impair the licensee's ability to respond to changes in the competitive landscape and otherwise have a stifling effect on innovation. . . . [In addition] . . . it is far more appropriate, and consistent with the requirements and practices employed in connection with licensed money transmitters, to limit what constitutes a reportable "material change" to that which causes a product, service or activity to be materially different from that previously disclosed in the licensee's application or any subsequent additions or revisions thereto."
Coinbase

"To the extent that the Department is concerned about the activities of existing BitLicensees, these concerns could be addressed . . . : Requiring after-the-fact notices from licensees of material new activities when those activities across a threshold (which may be similar to any threshold or thresholds created as part of a BitLicense on-ramp for unlicensed businesses engaging in Virtual Currency Business Activities), after which the Department could object if it does not approve."
SecondMarket

"Under the proposed formulation, any business even tangentially related to a virtual currency would have difficulty in determining whether it needs to seek to obtain a BitLicense to operate within New York (or arguably even outside of New York). Accordingly, the definitions would grant

the NYDFS discretion to selectively apply the BitLicense Proposal. . . . Section 200.4 also contains a number of vague deliverables, which create uncertainty for the applicant as to how to comply and would afford the NYDFS substantial latitude to reject a company's application for a license."
Xapo[6]

See also: itBit, Circle; Mercatus Center; Hub Culture Group; Information Technology & Innovation Foundation

III. Consumer Protections

A. The BitLicense regime (should) should not eradicate the consumer privacy benefits of Bitcoin and should not prohibit all transaction obfuscation

"One of the most promising features of digital currency is its potential as a privacy enhancing technology, since all transactions are linked to pseudonymous public keys rather than real world identities. Unfortunately, the BitLicense framework would eviscerate this feature by compromising the privacy of average consumers, developers, and entrepreneurs. First, the proposal provides that 'No Licensee shall engage in, facilitate, or knowingly allow the transfer or transmission of Virtual Currency when such action will obfuscate the identity of an individual customer or counterparty.' This requirement has profound implications for Bitcoin-like systems that have pseudonymity built into them by design."
Electronic Frontier Foundation

"Micropayments, however, could create an extremely detailed picture of a user's activities throughout the day. . . . Given the depth of this account, it is important that Virtual Currency users be permitted to obfuscate transactions so that they are not—as would be the Virtual Currency default—publicly associated with the same user address with each transaction. . . . Section 200.15(f) . . . should include a second savings clause to ensure that Virtual Currency businesses remain free to take steps to prevent the full records of their customer's transactions from being publically visible."
Coin Center

"The department's rationale behind creating a BitLicense specific to Virtual Currencies is to take into account the 'unique characteristics of virtual currencies' that make them such a potentially innovative technology. Sections 200.12(a)(1) and 200.15(d)(1) of the proposed framework, however, ignore the central feature that makes cryptocurrencies unique—their open architecture. A requirement that all parties to a transaction be identified would essentially make operating on an open network like Bitcoin impossible. This would in turn act as an effective mandate for BitLicensees to either operate closed proprietary systems or create closed networks on top of Bitcoin. Not only would this undercut the low-cost global reach of open cryptocurrency networks, which is one of their main advantages, but it would also remove the possibility that these networks will see the same flourishing permissionless innovation that has made the Internet a success."
Mercatus Center

[6] The Xapo comment letter is apparently no longer available.

"Perhaps the most dangerous aspects of the proposed regulations are the identity verification processes. We've already seen the disasters that the data retention provisions in the Bank Secrecy Act have caused in terms of the ongoing identity theft epidemic. Every week another bank is hacked, and more and more personal information goes up for sale on the darknet. We feel that these issues are an unintended consequence of the data retention requirements in the BSA, as well as the decision by certain companies to monetize 'big data'. Novauri feels that these are misguided regulations and business decisions, and is vehemently opposed to corporations storing and selling personal information. The economic costs of identity theft greatly outweigh any advertising revenue made by these companies, and the cost to taxpayers in reimbursing billions and billions of dollars in stolen tax refunds each year, to say nothing of the stress these unintended consequences cause normal people when they discover their identities have been stolen. This issue will be far worse with bitcoin, which features a public ledger. As soon as personal information is leaked, it can be associated with the blockchain and the entire financial history of individuals will be viewable by anyone. As written, Novauri feels the proposed KYC provisions in the BitLicense proposal constitute a potential threat to our National security."
Novauri

"The BitLicense Regulations constitute a significant step toward protecting consumers against fraud and theft. The Associations believe the disclosures required to be made to consumers are vital to ensuring that consumers fully understand the risks of virtual currency transactions and their rights in the event that something goes wrong. In addition, we believe that the requirement that licensees maintain a trust account, bond, or insurance policy in favor of customers is an important measure to ensure that customers are made whole when fraud occurs."
Clearing House Association

See also: Ryan Selkis; Coinbase; Circle; Hub Culture Group; zeusa1mighty (pseudonym)

Other comments:

- Coinbase mentioned that these extensive reporting requirements also are adequately addressed through a licensee's separate federal obligations to implement an anti-money laundering / counterterrorist financing program.

- But, Safman argues: "Bitcoin's most attractive attribute is its purported anonymity. Already, government agencies have been forced to spend time and scarce resources investigating Bitcoin related fraud. There have been prosecutions which demonstrate beyond a shadow of a reasonable doubt Bitcoin's anonymity feature has made it the preferred tool for individuals wanting to engage in illegal trade and activities."

B. The BitLicense regime should clarify or reduce requirements for consumer protection

"We feel that many of these obligations under the Proposed Rule are too broad, vague, duplicative and unnecessary. . . . As currently constructed, these disclosures would result in unnecessary costs for compliance and could negatively impact the efficiency of digital currency payment transactions. It is not clear that the consumer protection risks bear the need for these costs and burdens."
Circle

"The BitLicense Regulations constitute a significant step toward protecting consumers against fraud and theft. The Associations believe the disclosures required to be made to consumers are vital to ensuring that consumers fully understand the risks of virtual currency transactions and their rights in the event that something goes wrong. . . . the Associations recommend that Section 200.19(g) be revised to clarify that consumers that are victims of fraud are entitled to claim compensation from a licensee's trust account, bond, or insurance company whether or not the licensee was responsible for or involved in the fraud. . . . [W]e do not believe that consumers should be afforded fewer protections (or should be without protection) in virtual currency transactions."
Clearing House Association

"As 'financial institutions' under the federal Gramm-Leach-Bliley Act and its implementing regulations (collectively, 'GLB'), licensees will be subject to a well-established set of disclosure and other requirements related to the use, disclosure and safeguarding of customer information, as well as any additional requirements under any applicable state privacy laws and regulations. Therefore, in lieu of imposing any similar privacy-related requirements, the Department should simply require licensees to comply with all applicable federal and state privacy laws and regulations, including, without limitation, the privacy policy disclosure requirements applicable under GLB."
Coinbase

"As a social network maintaining the ledger and community surrounding Hub Culture and the Ven, the requirements outlined in the Advertising and Marketing section present insurmountable difficulties around communications of services and products related to digital currency, and requires more clarification and/or a lighter approach. . . . We can understand the assertion that the licensing requirements statements appear within the context of some central communication points, such as websites or brochures, but this provision is too vague to be of practical use and endangers the concept of free speech in digital conversation environments, opening a can of worms about the nature of what advertising is and is not. A more practical solution might be to simply publish your own list of approved companies and license holders, which can simply be linked to by the entities on centralized or core materials."
Hub Culture Group

"[I]tBit supports the . . . requirement that Licensees provide their customers with a disclosure of material risks. . . However, as currently phrased, this requirement would appear to require substantial elaboration on the 'minimum' ten factors enumerated in Section 200.19(a). This . . ., which is not required of fiat money transmitters in New York, would likely result in Licensees providing lengthy and complicated disclosures that may be difficult for the average retail customer to interpret. . . . Section 200.19(d) requires that customers acknowledge receipt of all disclosures required in the section. This would impose a significant compliance burden if required for all transactions that would fall especially hard on small Licensees that do not have large compliance staffs to monitor and follow-up on whether the disclosures for each transaction are received."
itBit

"We support properly handling consumer complaints in a fair and timely manner. However, the Proposed Rule requires Licensees to provide the NYDFS with changes to its complaint policies within seven days. This seems overly burdensome and ill defined. We feel that only 'material' changes in these policies should be reported to the NYDFS and that the NYDFS should provide more clarity on the types of changes that should be reported. The NYDFS should also provide

more clarity on requirements to make certain information on complaint reporting available on a firm's website. This section also gives the Superintendent's office wide discretion over requirements for complaints, which could lead to additional uncertainty on criteria or uneven application of the Proposed Rule."
Circle

See also: Coinbase

C. Investing in Virtual Currencies itself poses risks to regular consumers, so more protection is necessary

"In 2014, Consumers may not need additional payment or investment options. We can already choose to pay in cash, swipe Debit/Credit cards and make electronic payments, including wire transfers or ACH transfers. Consumers have several options to transfer funds or make payments through services like PayPal, Venmo and Dwolla. Financial institutions also provide similar services. It is not clear how consumers and businesses would benefit from having to pay to convert dollars into Bitcoin and then back into dollars to complete purchases. Americans already enjoy a plethora of financial products which they may utilize to achieve their financial goals. Bitcoin's advocates acknowledge how risky it is as an investment. Since the value of Bitcoin is nothing but pure speculation, the proposed BitLicense should be restricted to sophisticated accredited investors."
Safman

IV. Safeguarding Assets

A. The capital requirements should be proportional to the risk and scope of the company

"With respect to capital requirements, itBit would urge DFS to incorporate a risk-based approach where capital requirements may vary based on the particular activities that the regulated entity undertakes. On one end of the spectrum, virtual currency businesses that conduct predominantly transmission services clearly need to have high liquidity and be fully capitalized. However, this 'one size fits all' approach may be overly broad as applied to certain other virtual currency businesses, such as those involving investment management or lending, where lower capital and liquidity standards could allow for greater investment and growth without creating any material increase in risk to New York."
itBit

"Hub Culture agrees that companies operating in the digital asset space should be subjected to capital requirements, but we assert that such capital requirements should be proportional to the risk and scope of the company, not industry metrics. . . . Companies should not be penalized or shut out of the market because they are building sustainable business models that involve linear growth, rather than being forced into capital-intensive strategies that would be required by the proposed onerous capital requirements."
Hub Culture Group

"The Proposed Rule grants considerable discretion to the Superintendent's office with respect to licensing, bonding and capital requirements. . . . In some areas, such as capital requirements, outlining minimum and maximum requirements would be helpful to prevent regulatory

arbitrage. . . . Also, it would be helpful to have some criteria to be able to appeal decisions and to be able to seek a review after a certain time period to avoid undue restrictions. . . . The NYDFS should further clarify the methodology on how capital requirements are established."
Circle

See also: BitWage

B. The restrictions imposed with respect to the reinvestment of the licensee's retained earnings and profits are too broad

"While the Department's definition of 'permissible investments' under Section 200.8(b) appears well-intentioned, restricting BitLicensees from investing profits and retained earnings in digital currencies would have several unintended negative consequences. For example, under the current BitLicense Proposal, digital currency custodians who self-insure their deposits or otherwise hedge their digital currency positions would find themselves unable to offer compelling deposit insurance coverage and unable to offer some products which 'hedge out' digital currencies' price volatility. As both of these outcomes would be bad for consumers and investors, the Department should consider broadening or amending the definition of 'permissible investments.' Such restrictions on digital currency balance sheet investments may be more properly imposed by a given company's investors and board directors, on a case by case basis and according to the best interests of the particular company and its customers."
SecondMarket

"BitLicensees would also be permitted to invest their retained profits in only certain approved investments denominated in United States dollars. Not only would this prevent licensees from investing in the very virtual currencies on which their businesses are based, but it also forecloses any number of other safe investment vehicles. For example, a European company that acquires a BitLicense would not be permitted to invest in Euro-denominated German government bonds. Transmitter of money licensees face no such restrictions, putting BitLicensees at a relative disadvantage."
Mercatus Center

"Licensees already would be required, under proposed Sections 200.9(b) and (c), to maintain full, unencumbered reserves for all Virtual Currency liabilities (in the specific type of Virtual Currency owed), so additional restrictions on a Licensee's retained earnings and profits may not be necessary in the ordinary course. This is especially true when considering that many bitcoin companies hold such amounts in a combination of fiat currency and virtual currency and desire to invest such assets to grow their businesses. Removing these additional restrictions, moreover, would be generally consistent with the approach taken in the NYTMA with respect to fiat money transmitters."
itBit

"[W]e believe that digital currency firms should be allowed to hold Bitcoin as a permissible investment. Second, we feel that firms should be allowed to decide how to invest their own profits."
Circle

See also: itBit; Coinbase; **Xapo**[7]; Ryan Selkis; Paybits

[7] The Xapo comment letter is apparently no longer available.

C. The books and records requirement is too cumbersome and costly to comply with

"The Proposed Rule's records retention period of 10 years, which broadly applies to all of a licensee's books and records, is unnecessarily long and burdensome, and should be replaced by a more flexible standard that requires licensees to apply different retention period which are consistent with the irrelevant obligations under various laws (e.g., the federal Bank Secrecy Act) or as otherwise dictated by generally accepted accounting principles. . . . In lieu of requiring licensees to maintain the names, account numbers, and physical addresses of all parties to each transaction, licensees should be required to comply with the federal Bank Secrecy Act and its implementing regulation . . . "
Coinbase

"Even if there were no cybercrime threats hanging as a Sword of Damocles above the heads of the cryptocurrency industry, the simple act of collecting and storing the data required under the Proposed Regulations is extraordinary and daunting. Section 200.12(a)(1) of the Proposed Regulations would require licensees to collect and maintain for ten (10) years books and records that include, 'for each transaction, the amount, date, and precise time of the transaction, any payment instructions, the total amount of fees and charges received and paid to, by, or on behalf of the Licensee, and the names, account numbers, and physical addresses of the parties to the transaction[.]' Other respondents have commented on the difficulty and practical impossibility of this requirement. The Bitcoin protocol and other virtual currency protocols simply do not have the ability to store and transmit such information any more than the protocol used by VISA can include a 3D life-like avatar of each credit card holder."
Strategic Counsel & Bryan Cave

See also: Circle

V. Cybersecurity Program

A. While cybersecurity protections are appropriate, the regulations leave too much room for interpretation and implementation

"We believe cyber security protections are appropriate given that many digital currency firms are custodians of customer assets and that these assets could be subject to theft or other losses. . . . These rules should be risk-based and ensure that larger firms have more comprehensive programs while smaller firms have enough controls to protect against risks as their business grows."
Circle

"Overall, we agree with [Section 100.16] of the Proposed Regulations, however we believe that in its current generalized state it leaves wide latitude in interpretation and implementation. We recommend that this section incorporate by reference an appropriate and comprehensive cyber security standard that is accepted in the financial services industry (e.g., National Institute of Standards and Technology SP 800 Series) in the implementation of the cyber security program for Licensees."
NYSSCPA

"[T]he source code review requirement does not specify the purpose of the review, what steps are to be performed by the third party conducting the review, what standards or requirements the third party is to review the source code against, or any other parameters or requirements applicable to the review. However, even if such parameters and requirements were established, each of the other cyber security requirements are sufficient to ensure that proper measures are being employed by the licensee, such that the review requirement is unnecessary and would simply subject the licensee to additional security risks by virtue of allowing a third party to access its source code. In addition, given the emerging nature of virtual currencies as well as the varied nature of each licensee's systems, it is uncertain whether or to what extent any independent, qualified third parties might be available to conduct such reviews. For each of these reasons, the source code review requirement should be removed."
Coinbase

B. Because pseudonymity is ingrained in virtual currency technology, the use of Bitcoin itself creates cybersecurity risks and so its use should be restricted

"Bitcoin's most attractive attribute is its purported anonymity. Already, government agencies have been forced to spend time and scarce resources investigating Bitcoin related fraud. There have been prosecutions which demonstrate beyond a shadow of a reasonable doubt Bitcoin's anonymity feature has made it the preferred tool for individuals wanting to engage in illegal trade and activities. . . . It is not clear the cyber security infrastructure of American companies and financial institutions would be able to handle the additional demands an internet based financial product such as Bitcoin would place on their networks. The country's leading retailers and financial institutions are all struggling to ensure client data is protected from common criminals."
Safman

VI. Anti-Money Laundering

A. The BitLicense regime should conform to existing federal regulatory frameworks governing AML, counterterrorist financing, sanctions (i.e., OFAC), and the use, disclosure and safeguarding of customer information

"The BitLicense Proposal imposes several new obligations on digital currency businesses that are more onerous than the corresponding federal guidelines. Some examples of heightened obligations under the BitLicense Proposal include: no minimum dollar threshold for suspicious activity report ('SAR') filing obligations, additional SAR filing obligations for BitLicensees not already required to file under federal law, and the omission of confidentiality and safe harbor protections with regards to SAR reporting. An asymmetrical compliance regime favoring traditional financial entities will stymie rather than spur innovation in the digital currency industry. To the extent that the Department finds it necessary to extend SAR reporting obligations on BitLicensees beyond those that are required under Federal law, such requirements should at a minimum be consistent with the flexibility provided by the Federal requirements."
SecondMarket. *See also*: Coinbase

See also: Strevus, Inc.; Mercatus Center; Novauri; Circle; zeusa1mighty (pseudonym); Electronic Transactions Association

Other comments:

- BTC China / Huobi / OKCoin suggests that the necessity of performing enhanced due diligence on a customer should turn on whether the customer and the applicable licensee are from the same jurisdiction, and not on whether the customer is a U.S. person.

VII. Exams, Reports and Oversight

A. The BitLicense regime should not grant so much discretion to the Superintendent's office

"The current rules provide NYSDFS with immediate access—upon request—to all facilities, books, documents, records, and other information maintained by the licensee or its affiliates, wherever located. Under this proposed language, NYSDFS can ask to see the business records of any business that owns or invests in a licensee. This could make investment companies weary of investing in virtual currency subsidiaries that operate in New York if it opens them up to government search. Imagine an angel investment company in Texas buys a stake in a New York-based Bitcoin trust. As an affiliate, this investment company's total business records should not be accessed by NYSDFS if the majority of their business investments are unrelated to the business practices of the Bitcoin trust."
Information Technology & Innovation Foundation

"Section 200.12(b) explicitly extends DFS's right to access the facilities, books, and internal records of the Licensee to the Licensee's affiliates on an 'immediate' basis. If left as written, the Licensee's entire corporate family is potentially subject to extensive and immediate review by DFS, regardless whether the separate members are not processing transactions related to a Virtual Currency Business Activity or assisting the Licensee with such activities. . . . There is a catchall provision in Section 200.13(a)(5) that gives DFS the power to review the Licensee's activities outside of New York if the Superintendent determines that these activities 'may affect the Licensee's business involving New York or New York Residents.' It may be helpful to clarify that this authority extends only to those business matters involving Virtual Currency Business Activity."
itBit

Other comments:

- NYDFS also has the authority to examine affiliated companies for the purpose of determining the financial condition of the licensee, as well as further financial reporting requirements. Circle believes that this goes beyond the regulations for other money transmitters and therefore, this is overly burdensome. *See also*: Section 3.II.C (The BitLicense regime should not be more burdensome than New York Money Transmitter Regulations).

- *See also*: Xapo's comments on BitLicense Application in Section 3.II.D (The BitLicense regime should not require businesses to submit material changes to regulators for pre-approval).

B. The requirement that licensees identify and gather the physical addresses of all parties to a transaction is impractical and counterproductive

"A requirement that licensees identify and gather the physical address of all parties to a transaction, not just that of their customers, would nullify some of the central advantages of cryptocurrencies like Bitcoin."
Mercatus Center

"[B]ecause of its unique open network feature, Bitcoin does not need to have, and generally does not have, a relationship with all parties for the transaction to occur. Accordingly, the requirement in Section 200.12 to collect the 'names, account numbers, and physical addresses of the parties to the transaction' is, for all practical purposes, impossible in the context of decentralized virtual currency. Virtual currency businesses based on an open network would be forced to either not participate and forego a BitLicense, or operate on a closed network where they maintain a business relationship with everyone capable of participating in the transaction."
itBit

VIII. Other Overall Concerns

A. The BitLicense regime should not chill the expressive and associational uses of the Bitcoin platform by requiring prior approval before people can engage in these activities

"Bitcoin is not just a unit of value or a way to transact payments; the protocol is a platform for other uses with expressive and associational value. . . . The BitLicense proposal could chill these expressive activities because it would require prior approval from NYDFS before people can engage in a wide variety of activities using digital currency protocols—including activities that have nothing to do with payments. As drafted, the BitLicense proposal appears to impose a prior restraint on protected expression without adequate procedural safeguards, which makes it vulnerable to legal attack."
Electronic Frontier Foundation

"Bitcoin facilitates free speech in previously unavailable ways. Since the current bitlicense regulation makes no distinction between using a bitcoin to engage in a commercial or financial transaction and using one to make a public political or personal statement, or to send an email that is provably not spam, and imposes the same burdens on each, it very likely represents an overly broad infringement upon free speech."
Sean King

"The Dogecoin Foundation has seen many charitable grassroots efforts such as the Doge4Water campaign which have resulted in significant social good and would not have been possible with traditional payment networks (such as MasterCard, VISA or PayPal) due to higher transaction costs. The regulations, if implemented, would unduly endanger such projects. Specifically, they would establish requirements for compliance which go far beyond those generally found in the space of cash-based fundraising or electronic money regulation for non-profits and business alike, without recognizing that the immutable transaction record of the blockchain, while pseudonymous, already provides strong traceability of transferred funds, thereby creating a record that can, in cases of fraud, be analysed. It is unreasonable to demand that organisers of

fundraisers and donation drives apply for a license to collect small amounts of money from individuals or businesses through the solicitation of donations, especially in cases where many of the donations amount to as little as fractions of one cent and are sent from all over the world."
Dogecoin

B. NYDFS is not the correct regulatory body to regulate virtual currency

"Article I, Section 8, of the United States Constitution, provides that only the U.S. Congress has the ability to coin money, regulate the value thereof, and of foreign coin, and fix the standard of weights and measures. Section 16 of the Federal Reserve Act of 1913 only authorizes the use of the Federal Reserve Note, i.e., the US dollar, as currency in America. New York State does not have the authority to determine the definition of currency nor regulate currency."
Safman

C. The BitLicense regime should allow rapid technological advancements to be made and should take into account technological advancements that have been made, rather than ossify the current state of technology

"In most cases, digital currency businesses should be allowed to experiment and develop new tools and services for their customers without the potentially lengthy delays and high costs associated with the need to obtain prior approval of the Department. Given the speed at which the Bitcoin technology is evolving, the current BitLicense Proposal requirement to submit all new product features and changes for review is onerous and may make it more difficult for entrepreneurs and enterprises alike to create innovative new products. We also note that given the exponential growth of the digital currency industry, and the frequency with which early-stage technology companies offer and alter their product suites, it might be difficult for the Department to carefully study all of these requests and provide timely responses. These delays, coupled with the cost and time involved in preparing a request for prior approval would likely have the effect of ossifying the state of the art at a time when there is still so much potential; as the Department Superintendent Benjamin Lawsky indicated in his October 14, 2014 speech on the BitLicense Proposal, the most successful uses probably haven't been imagined yet."
SecondMarket

"[A]ny rules enacted should be risk-based and not adversely impact the consumer benefits associated with digital currency technology. In considering new regulations, the NYDFS should focus on principles-based regulations that address the relevant risks instead of prescriptive rules, which may quickly become outdated given the fast-changing technology."
Circle

"Furthermore, the regulation prescribes cybersecurity measures specifically. This is ineffective, as technologies are continuously evolving. Novauri recommends that the NYDFS require businesses that act as fiduciaries for customer deposits to hold deposit insurance for 100% of the value of all fiat and virtual currency deposits. If the business has faulty security, the insurance company can make that determination and increase their premiums. In the event that the business's security is unsafe, the insurance companies will not issue insurance at all. This is a 'future proof' way to ensure cybersecurity without politicizing the topic or risking that rules and regulations become ineffective and anachronistic with time, as they almost certainly will as written."
Novauri

"To reap these benefits, it is important that the department approach the regulation of cryptocurrency firms with due sensitivity to the dynamics of software firms. Because the software industry is so different from the financial industry, these differences must be explicitly taken into account in the BitLicense framework. . . . [C]ryptocurrencies are not simply better versions of traditional payment systems . . . This fact has important implications for approaching the regulation of virtual currencies. Overly burdensome regulation will simply cause users to transact in cryptocurrency in cash-like mode, which deprives users of the benefits in terms of security, reliability, and convenience that come from using an intermediary and deprives regulators of visibility into mediated transactions."
Mercatus Center

D. Regulation this early in Bitcoin development will stymie innovation and is not necessary to protect consumers and prevent illicit acts

"Fundamentally, the proposal treats the virtual currency industry as a mature space where the 'usual' and the 'long-settled' roam, while the opposite is true. As entrepreneurs race to unlock the potential of virtual currency and the underlying blockchain technology, no one can be sure about the landscape of the industry years into the future and future attendant risks. Forcing a fine-grain framework at this time would amount to a self-deceiving gesture flung in the face of a fledgling vulnerable industry."
Chamber of Digital Commerce

"The 'BitLicense' proposal may be culturally suitable and familiar to large, staid financial services firms, but it is inconsistent with the experimental, iterative, and innovative approach taken in software development."
Bitcoin Foundation

"As written, sections 200.12(a)(1) and 200.15(d)(1) of the proposed framework would deal a heavy blow to innovation while doing little to protect consumers or improve anti-money laundering efforts."
Mercatus Center

"NYDFS also does not appear to have given much merit to alternative methods to achieve the desired goals. The most obvious method is in my opinion the education of consumers (it is expected that the BitLicensees do this). NYDFS could also perform certification services of public keys or provide APIs for authenticating consumer identities, which would help BitLicensees to identify New York residents without having to store their identities themselves."
Peter Šurda

"We are also very concerned about the unintended impact that we believe the Proposed regulations will have on the nascent New York cryptocurrency industry. The difficulty, risks, costs, and uncertainty of compliance are already leading some cryptocurrency companies to look elsewhere for a U.S. base. For example, venture capitalists have invested over $250,0000 in cryptocurrency companies in 2014. We find it significant that none of the significant investments made after publication of the proposed regulations were in New York. . . . While the Proposed Regulations seek the laudable goals of consumer protection and preventing money laundering, the proposed regulatory burdens will severely diminish the number of companies that could otherwise serve New York's unbanked and underbanked populations."
Strategic Counsel & Bryan Cave

See also: Boost VC; **Xapo**[8]

Other comments:

- BitGo: "There are emerging standards and technologies that will ensure the security, privacy, and reliability of commercial Bitcoin use. It is critical that the Proposed Rule be future-proofed for these standards." BitGo mentions the following as examples of new technologies:
  - Multisignature transactions, and
  - Hierarchical deterministic wallets.

E. The scope of regulated activities and the breadth of requirements are appropriate given the risks posed by virtual currency businesses

"[T]he Associations believe that it is appropriate, as the Department has proposed in the BitLicense Regulations, to impose strong capital requirements, define permissible investments, require the maintenance of books and records, and ensure that entities engaged in Virtual Currency Business Activities have appropriate cybersecurity and business-continuity policies and procedures in place. We also support the Department's proposal to require entities engaged in Virtual Currency Business Activities to implement and maintain strong anti-money laundering, OFAC screening, and customer-identification programs and to report suspicious transactions and activities. The Associations agree that oversight and regular examinations of licensees is necessary and appropriate to ensure compliance with these obligations and the safety and soundness of virtual currency businesses. . . . the failure of a small company or its noncompliance with critical safety and soundness obligations can still have very significant consumer and prudential impacts."
Clearing House Association

[8] The Xapo comment letter is apparently no longer available.

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