

Alert | Blockchain/Financial Regulatory & Compliance



December 2019

New York State Department of Financial Services Proposes Guidance on Adoption or Listing of Virtual Currencies by Exchanges

In the summer of 2015, the New York State Department of Financial Services (DFS) finalized its regulatory framework for virtual currency firms seeking to conduct certain virtual currency (VC) business activities in the state. Since then, it has issued two dozen licenses and charters involving virtual currency transmission (VC licenses). To promote efficiency and reflect the growing marketplace, DFS has now issued two proposals. The *first* proposal would list all current virtual currencies (coins)¹ permitted for business activities of the VC licensees, without prior approval by DFS. The list would be updated if the coins listed have not been subject to modifications, divisions, or change after their listing on the DFS webpage. The *second* proposal involves a coin-listing framework that would be tailored to the specific VC licensee's business model and risk profile to create a firm-specific coin listing or adoption policy. The VC licensee's policy would need DFS approval prior to use. However, the proposal enables the licensee to self-certify a listing or adoption of new coins, in addition to those that may be listed on the DFS webpage, without DFS approval.²

¹ Coins currently contemplated for the list include Bitcoin, Bitcoin Cash, Ether, Ether Classic, Litecoin, Ripple, Paxos, Paxos Standard, and Gemini Dollar.

² The licensee will be able to self-certify to DFS that its proposed adoption or listing of new coins comply with the requirements of its DFS-approved company coin-listing policy and provide written notice of its intent to offer and use such new coins. VC licensees

DFS' proposal for VC licensee coin-listing policies requires a VC licensee to provide written notice to the DFS, including the creation of procedures that comprehensively address all steps in the review and approval of all virtual currencies regarding the business activities of the licensee. Noteworthy is that with this proposal, if approved, only prior written notice to the DFS would be required, and not prior DFS approval. At a minimum, a VC licensee must have a framework for coin approval which includes:

1. Governance

- a board of directors or internal committee which approves the coin listing policy and reviews each new coin
- conflicts of interests must be considered and addressed
- minutes and records must be kept for each new coin application

2. Risk assessment

- address creation, issuance, usage, and design of any new coin
- consider operational, market, legal, and regulatory risk

3. Monitoring

- periodically reevaluate each coin
- employ control measures and process for de-listing coins

Under the two proposals, DFS retains the right to object to the adoption or listing of any self-certified coin before and after the listing goes into effect and may require the coin be delisted.

Comments are due by **Jan. 27, 2020**. Please contact Greenberg Traurig if you are interested in providing comment to DFS on the above two proposals.

Authors

This GT Alert was prepared by **William B. Mack, Barbara A. Jones, Michele A. Kulerman, and India L. Sneed**. Questions about this information can be directed to:

- **William B. Mack** | +1 212.801.2230 | mackw@gtlaw.com
- **Barbara A. Jones** | +1 310.586.7773 | jonesb@gtlaw.com
- **Michele A. Kulerman** | +1 212.801.6710 | kulermanm@gtlaw.com
- **India L. Sneed** | +1 212.801.9378 | sneedi@gtlaw.com
- Or your **Greenberg Traurig attorney**.

Albany. Amsterdam. Atlanta. Austin. Boca Raton. Boston. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Germany. [~] Houston. Las Vegas. London. ^{*} Los Angeles. Mexico City. ⁺ Miami. Milan. [»] Minneapolis. Nashville. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Sacramento. San Francisco. Seoul. [∞] Shanghai. Silicon Valley. Tallahassee. Tampa. Tel Aviv. [^] Tokyo. [»] Warsaw. ⁻ Washington, D.C.. West Palm Beach. Westchester County.

without DFS-approved company coin-listing policies must seek DFS prior approval with respect to any coin other than the DFS-approved list.

*This Greenberg Traurig Alert is issued for informational purposes only and is not intended to be construed or used as general legal advice nor as a solicitation of any type. Please contact the author(s) or your Greenberg Traurig contact if you have questions regarding the currency of this information. The hiring of a lawyer is an important decision. Before you decide, ask for written information about the lawyer's legal qualifications and experience. Greenberg Traurig is a service mark and trade name of Greenberg Traurig, LLP and Greenberg Traurig, P.A. ~Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. *Operates as a separate UK registered legal entity. +Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. »Greenberg Traurig's Milan office is operated by Greenberg Traurig Santa Maria, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ∞Operates as Greenberg Traurig LLP Foreign Legal Consultant Office. ^Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. ¢Greenberg Traurig Tokyo Law Offices are operated by GT Tokyo Horitsu Jimusho, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ~Greenberg Traurig's Warsaw office is operated by Greenberg Traurig Grzesiak sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in Greenberg Traurig Grzesiak sp.k. are also shareholders in Greenberg Traurig, P.A. Images in this advertisement do not depict Greenberg Traurig attorneys, clients, staff or facilities. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. ©2019 Greenberg Traurig, LLP. All rights reserved.*