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NYDFS Becomes First US Financial Regulator to Issue Stablecoin Expectations to Virtual Currency Industry

On June 8, 2022, the New York State Department of Financial Services (DFS) issued a new Regulatory Guidance, setting foundational criterial for USD-backed stablecoins used by DFS-regulated entities. This represents the first U.S. state agency to regulate issuers of stablecoins. Generally, issuers that currently issue U.S.-dollar-backed stablecoins under DFS supervision are expected to come into compliance with the Regulatory Guidance within three months. This GT Alert summarizes the Regulatory Guidance.

Regulatory Guidance Criteria for Virtual-Currency Companies Looking to Issue USD-Backed Stablecoins in New York

- *Backing and Redeemability*: The stablecoin must be fully backed by a Reserve of assets, meaning that the market value of the Reserve is at least equal to the nominal value of all outstanding units of the stablecoin as of the end of each business day. The issuer of the stablecoin (the "Issuer") must adopt clear, conspicuous redemption policies, approved in advance by DFS in writing, that confer on any lawful holder of the stablecoin a right to redeem units of the stablecoin from the Issuer in a timely fashion at par for the U.S. dollar.
- *Reserve Requirements*: The assets in the Reserve must be segregated from the proprietary assets of the issuing entity and must be held in custody with U.S. state or federally chartered depository institutions and/or asset custodians.

   - The Reserve must consist of the following assets: U.S. Treasury Bills the Issuer acquires three months or less from their respective maturities, reverse repurchase agreements fully collateralized by U.S. Treasury bills, U.S. Treasury notes, and/or U.S. Treasury bonds on an overnight basis, subject to DFS-approved requirements concerning overcollateralization, and deposit accounts at U.S. state or federally chartered depository institutions, subject to DFS-approved restrictions.

- *Independent Audits*: The Reserve must be subject to an examination of management's assertions at least once per month by an independent Certified Public Accountant (CPA) licensed in the United States and applying the attestation standards of the American Institute of Certified Public Accountants.

Other DFS Requirements and Risks Considered

- Cybersecurity and information technology; network design and maintenance and related technology and operational considerations; Bank Secrecy Act/anti-money-laundering and sanctions compliance; consumer protection; safety and soundness of the issuing entity; and the stability/integrity of the payment system, as applicable.
- DFS may impose requirements on a stablecoin arrangement to address any of these risks, or any other risks, consistent with DFS's statutory mandate and the laws and regulations relevant to the circumstances.

Application of the Regulatory Guidance

- The Regulatory Guidance generally applies to stablecoins backed by the U.S. dollar issued under DFS oversight. But, DFS may impose different requirements on any particular USD-backed stablecoin arrangement and will require clear and conspicuous disclosure of any such different requirements.
- The Regulatory Guidance does not apply to USD-backed stablecoins listed, but not issued, by DFS-regulated entities. DFS does expect regulated entities that list USD-backed stablecoins to consider this guidance when submitting a request for coin issuance or seeking approval for a coin self-certification policy.

The DFS may continue assessing ways in which it can regulate the digital asset market, particularly with current adverse market pressures that have affected cryptocurrencies in recent weeks. Further guidance is anticipated in 2022 on U.S. banking organizations' activities with digital assets.

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