

**Alert | Blockchain & Digital Assets/
Financial Regulatory & Compliance**



October 2023

NYDFS Updates Guidance on Virtual Coin-Listing/ Delisting Frameworks and the Greenlist

Go-To Guide:

- The NYDFS issued guidance regarding the general framework for virtual coins on the “Greenlist,” as well as new guidance revising the original coin-listing framework.
- Notably, the NYDFS will now require regulated virtual currency entities to maintain a coin-delisting policy regardless of whether the entity maintains a coin-listing policy.
- The NYDFS also reduced the number of coins on the Greenlist, so that the only coins currently on the Greenlist are Bitcoin, Ether, and six NYDFS-approved stablecoins.

On Sept. 18, 2023, the New York State Department of Financial Services (NYDFS) issued a [press release](#) announcing updates to its ongoing oversight of the digital asset space, including (1) industry guidance regarding a “[General Framework for Greenlisted Coins](#)” (Greenlist Guidance); (2) industry guidance regarding new “[Proposed Updates to Guidance Regarding Listing of Virtual Currencies](#)” (Proposed Updated Listing Guidance); and (3) an updated list of “Greenlisted Coins” (the Greenlist). The Greenlist Guidance, the Proposed Updated Listing Guidance, and the Greenlist are particularly relevant to entities that have received permission from NYDFS to engage in virtual currency business activity either through a “BitLicense” or a limited purpose trust charter (VC Entities).

General Framework for Greenlisted Coins

Per the Greenlist Guidance, which was effective as of Sept. 18, 2023, VC Entities do not require NYDFS approval to add a coin on the Greenlist, but VC Entities must provide advance notice to NYDFS prior to providing support for that coin and must have an NYDFS-approved coin-delisting policy. The Greenlist Guidance also clarifies that the Greenlist is entirely independent of the coin-listing policies and resulting self-certifications of any individual VC Entity.

Proposed Updates to Guidance Regarding Listing of Virtual Currencies

The Proposed Updated Listing Guidance requires VC Entities wishing to self-certify coins without prior NYDFS approval of specific coins to create a coin-listing policy, which NYDFS must approve prior to the VC Entity self-certifying coins. The coin-listing policy must, at a minimum, contain and be based upon the following attributes:

- Governance
 - Examples of governance concerns to address include ensuring that a board of directors/an equivalent governing authority of the VC Entity (Governing Authority) approves the coin-listing policy to ensure the robustness of the governance, monitoring, and oversight framework, reviews and determines whether to re-approve the coin-listing policy at least annually, and reviews and makes decisions regarding whether to approve or disapprove each new coin.
- Risk Assessment
 - The VC Entity must perform a comprehensive risk assessment designed to ensure that any coin, and the uses for which it is being considered, are consistent with the consumer protection and other standards embodied in 23 NYCRR Part 200, and with the safety and soundness of the VC Entity. Examples of risks to be addressed include technical design and technology risk, operational risk, IT/cybersecurity risk, market and liquidity risk, illicit finance risk, legal risk, reputational risk, and regulatory risk.
- Monitoring
 - VC Entities must maintain policies and procedures to ensure that continued listing of the coin is consistent with safety and soundness and consumer protection concerns. Such policies and procedures must include, among other items, periodic re-evaluation of the coin and a coin-delisting process.

The Proposed Updated Listing Guidance also requires VC Entities to maintain an NYDFS-approved coin-delisting policy, even if the VC Entity does not maintain a coin-listing policy. The coin-delisting policy should, at a minimum, contain and be based upon the following attributes:

- Governance
 - Examples of governance concerns to address include, among other items, ensuring that the Governing Authority approves the coin-delisting policy and ensuring that the Governing Authority is independent from those responsible for initially recommending whether to list or delist a coin.
- Process
 - A coin-delisting policy must detail a VC Entity's coin-delisting process for a delisting event. Examples of coin-delisting events include, but are not limited to, new findings that result from the periodic re-evaluation of a listed coin, as well as receiving a directive from NYDFS to delist a coin.

- Execution
 - After deciding to delist a coin, a VC Entity must notify its customers in advance prior to delisting the coin. A coin-delisting policy must address various elements concerning executing a delisting event, including not limited to advance notice, customer support, documentation, ongoing monitoring, and impact analysis.

The Proposed Updated Listing Guidance is open for public feedback until Oct. 20, 2023. Comments must be submitted to innovation@dfs.ny.gov.

Updated Greenlist

Along with the Greenlist Guidance and the Proposed Updated Listing Guidance, NYDFS also announced updates to the Greenlist itself. For reference, the Greenlist no longer includes dozens of previously included coins (notable examples of removed coins being Ripple (XRP), Bitcoin Cash (BCH), and Dogecoin (DOGE)). Instead, the Greenlist now only includes Bitcoin, Ethereum, and six stablecoins approved for issuance in New York by VC Entities.

Next Steps/Conclusion

VC Entities should begin drafting a coin-delisting policy and check that the assets they offer are on the Greenlist or have otherwise been self-certified. In addition, VC Entities must meet with NYDFS by Dec. 8, 2023, to discuss their draft coin-delisting policy, and a coin-delisting policy must be submitted to NYDFS for approval by Jan. 31, 2024.

Authors

This GT Alert was prepared by:

- **William B. Mack** | +1 212.801.2230 | mackw@gtlaw.com
- **Marina Olman-Pal** | +1 305.579.0779 | Marina.Olman@gtlaw.com
- **Steven T. Cummings** | +1 914.286.2931 | Steven.Cummings@gtlaw.com

Albany. Amsterdam. Atlanta. Austin. Berlin.⁷ Boston. Charlotte. Chicago. Dallas. Delaware. Denver. Fort Lauderdale. Houston. Kingdom of Saudi Arabia.⁸ Las Vegas. London.⁹ Long Island. Los Angeles. Mexico City.⁺ Miami. Milan.[»] Minneapolis. New Jersey. New York. Northern Virginia. Orange County. Orlando. Philadelphia. Phoenix. Portland. Sacramento. Salt Lake City. San Diego. San Francisco. Seoul.[∞] Shanghai. Silicon Valley. Singapore.⁷ Tallahassee. Tampa. Tel Aviv.[^] Tokyo.[»] United Arab Emirates.[<] Warsaw.⁷ Washington, D.C.. West Palm Beach. Westchester County.

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. ⁷Greenberg Traurig's Berlin office is operated by Greenberg Traurig Germany, an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. ⁸Khalid Al-Thebity Law Firm in affiliation with Greenberg Traurig, P.A. is applying to register a joint venture in Saudi Arabia. ⁹Operates 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. ⁷Greenberg Traurig's Singapore office is operated by Greenberg Traurig Singapore LLP which is licensed as a foreign law practice in Singapore. [^]Greenberg Traurig's Tel Aviv office is a branch of Greenberg Traurig, P.A., Florida, USA. [»]Greenberg Traurig's Tokyo Office is operated by GT Tokyo Horitsu Jimusho and Greenberg Traurig Gaikokuhojimubengoshi Jimusho, affiliates of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. [<]Greenberg Traurig's United Arab Emirates office is operated by Greenberg Traurig Limited. ⁷Greenberg Traurig's Warsaw office is operated by GREENBERG TRAUIG Nowakowska-Zimoch Wysokiński sp.k., an affiliate of Greenberg Traurig, P.A. and Greenberg Traurig, LLP. Certain partners in GREENBERG TRAUIG Nowakowska-Zimoch Wysokiński 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. ©2023 Greenberg Traurig, LLP. All rights reserved.