



Virtual Currency – New York State Extends Comment Deadline on BitLicense Proposal

On August 21, 2014, the New York State Department of Financial Services (DFS) agreed to double the length of the open-comment period for its proposed virtual currency regulatory framework, extending the period another 45 days, to October, 21, 2014.

DFS's proposal is ground-breaking because it is the first state regulatory/licensing scheme to attempt to oversee the businesses that transfer, hold and exchange Bitcoin and other virtual currencies. The regulatory structure contemplated by DFS's proposal would follow recent published guidance from the Financial Crimes Enforcement Network of the U.S. Department of the Treasury (FinCEN) regarding to what extent participants in virtual currency trading must register with FinCEN as money services businesses.

Defining the Business

The New York proposal seeks to regulate those that operate in virtual currency markets as a business activity. Such business activity is defined to include receiving virtual currency for transmission to another party, holding or storing currency for another party, buying and selling virtual currency as a business, converting virtual currency to other forms of currency or administering a virtual currency. There is no express exemption for banks or for companies already licensed to engage in money transmission. Only end users, like merchants and customers that use virtual currency to pay for (or accept payment for) goods or services, are not required to submit to licensure.

Licensing

Under the New York proposal, virtual currency firms would be overseen in a matter similar to banks or securities broker-dealers. To begin operations, firms would be required to submit to a licensure process which would include background checks on principals, disclosure of any affiliates, and fingerprinting and photographing of principals. In addition, prospective licensees would have to provide DFS with an organizational structure, business plans, bank accounts, current or threatened litigation and an explanation of how they intend to convert currency from dollars to virtual currency. Firms would be required to create and comply with written supervisory policies for fraud, anti-money laundering, cyber security, privacy and information security. Successful applicants would receive licenses from DFS and could state that they are "Licensed to engage in Virtual Currency Business Activity by DFS" on any

advertising materials. DFS has indicated that it will respond to license applications within 90 days. With 500 to 1,000 expected applicants, DFS—which already bears the burden of regulating traditional banking and insurance providers—may have difficulty processing this volume of applications within this limited timeframe.

Capital Controls

Operating capital is to be set by DFS based on a firm's assets, liabilities, trading volume, leverage and liquidity. The proposal does not allow the common banking practice of fractional reserves; those running virtual-currency businesses are required to keep the full amount of their customers' deposits as cash on hand. In addition, for the first time, virtual currency businesses' proprietary investments must be disclosed—a measure many firms are likely to resist. In addition to disclosure, the proposal mandates that any retained earnings or profits can only be invested by the licensee in bank-issued CDs, money market funds or government-issued securities.

Reports and Disclosures

Under the New York proposal, a firm's books and records remain open to DFS examination and inspection at all times. DFS would conduct examinations at least every two years. In the interim, each licensee is required to submit a quarterly financial statement and annual audited financials to DFS with a compliance certificate signed by a firm principal. Licensees must report any transactions that suggest or facilitate criminal activity by submitting suspicious activity reports to regulators. Transactions in any account that exceed \$10,000 in a day must be reported to DFS.

Transaction Records

Perhaps the most meaningful part of the proposal is that it would, for the very first time, create records of virtual currency transactions. Licensees must report names, addresses and other identifying information of all parties involved in a transaction, and must detail the value and a description of all transactions. All customers would be subject to customer identification procedures, OFAC screening and enhanced due diligence for non-resident aliens. To further enhance accountability, doing business with non-U.S. shell entities—those with no physical place of business—would be strictly prohibited.

Industry Response

The New York proposal has drawn comments from a range of financial institutions, academics and trade associations in New York and as far afield as Australia and China. The proposal represents a fundamental shift in the industry that will affect the business model of every participant. It is possible that the increased disclosure and compliance obligations could force some industry participants to exit the business, and others to exit New York State in favor of unregulated jurisdictions. Commenters do agree on one thing: DFS's proposal is likely to serve as a model for other regulators worldwide. Though several parties oppose regulation, few would debate that it is inevitable. All interested parties should review DFS's proposal and submit comments.

This *GT Alert* was prepared by **William B. Mack, Carl A. Fornaris, Michael A. Berlin and Jamey L. Tesler**. Questions can be directed to:

- > [William B. Mack](mailto:mackw@gtlaw.com) | +1 212.801.9200 | mackw@gtlaw.com
- > [Carl A. Fornaris](mailto:fornarisc@gtlaw.com) | +1 305.579.0626 | fornarisc@gtlaw.com

- > [Michael A. Berlin](#) | +1 212-801-6424 | berlinm@gtlaw.com
- > [Jamey L. Tesler](#) | +1 617.310.6026 | teslerj@gtlaw.com
- > Or your [Greenberg Traurig](#) attorney

Albany +1 518.689.1400	Denver +1 303.572.6500	New York +1 212.801.9200	Shanghai +86 (21) 6391.6633
Amsterdam +31 (0) 20 301 7300	Fort Lauderdale +1 954.765.0500	Northern Virginia +1 703.749.1300	Silicon Valley +1 650.328.8500
Atlanta +1 678.553.2100	Houston +1 713.374.3500	Orange County +1 949.732.6500	Tallahassee +1 850.222.6891
Austin +1 512.320.7200	Las Vegas +1 702.792.3773	Orlando +1 407.420.1000	Tampa +1 813.318.5700
Boca Raton +1 561.955.7600	London* +44 (0) 203 349 8700	Philadelphia +1 215.988.7800	Tel Aviv^ +972 (0) 3 636 6000
Boston +1 617.310.6000	Los Angeles +1 310.586.7700	Phoenix +1 602.445.8000	Warsaw~ +48 22 690 6100
Chicago +1 312.456.8400	Mexico City+ +52 (1) 55 5029 0000	Sacramento +1 916.442.1111	Washington, D.C. +1 202.331.3100
Dallas +1 214.665.3600	Miami +1 305.579.0500	San Francisco +1 415.655.1300	Westchester County +1 914.286.2900 West
Delaware +1 302.661.7000	New Jersey +1 973.360.7900	Seoul∞ +82 (0) 2 369 1000	Palm Beach +1 561.650.7900

*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. *Operates as Greenberg Traurig Maher LLP. **Greenberg Traurig is not responsible for any legal or other services rendered by attorneys employed by the strategic alliance firms. +Greenberg Traurig's Mexico City office is operated by Greenberg Traurig, S.C., 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'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. ©2014 Greenberg Traurig, LLP. All rights reserved.*