



Chamber of Digital Commerce
Washington, DC
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March 27, 2015

Mr. Benjamin M. Lawsky
Superintendent
New York State Department of Financial Services
One State Street
New York, NY 10004

Re: Notice of Proposed Rulemaking I.D. No. DFS-29-14-00015-RP

Dear Superintendent Lawsky:

The Chamber of Digital Commerce (the “Chamber”) appreciates the opportunity to comment on the Department of Financial Services’ revised proposed regulation on Virtual Currencies (the “Proposed Rule”), as published in the New York Register on February 25, 2015 (Notice of Proposed Rulemaking I.D. No. DFS-29-14-00015-RP).

As noted in our comments on the DFS’ original proposed rule, the Chamber is the trade association for the digital currencies community and related technologies. Our membership spans a broad range of both crypto and non-crypto digital currency related businesses and includes issuers, miners, currency exchanges, ATM providers, transaction processors, software and other technology companies, financial institutions, investors, service providers and other supporters in the community.

The Chamber commends the DFS for its efforts in soliciting, reviewing and responding to the many comments to the original proposal published on July 23, 2014. Many of the initial concerns of the Chamber were addressed in that process and reflected in the Revised Proposed Rule. In reviewing the Revised Proposed Rule we offer several observations and the following comments.

As a general matter, we note the technology underlying digital currencies, and crypto-currencies in particular, is evolving extraordinarily rapidly. Since the initial release of the Bitcoin protocol several years ago, it has been recognized that the use of crypto currencies as a medium of exchange or a store of value, two features commonly attributable to currencies of any type, were but the first use and that many other uses of crypto-currencies would emerge. In the last few months we have seen remarkable advances in the deployment of crypto-currencies in ways that do not involve functioning as a medium of exchange or store of value. The same may be expected of other, non-crypto-digital currencies.

In light of these considerations, we urge the DFS to include in the proposal a mechanism that would cause the final regulation to be reviewed at regular and frequent intervals to ensure that it appropriately reflects the state of the industry at that time of the review. To accomplish such we suggest that the rule include a sunset date that requires it to be reviewed no less frequently than yearly beginning one year after the effective date; if it is not reviewed in that time period, it should sunset within six months thereafter.

Second, the Chamber is concerned that the final regulation will cause many companies to spend countless hours both internally and with legal counsel determining whether and to what extent the new regulations apply. We recognize that DFS staff, through two public comment periods, has diligently worked to address the many concerns of the community. However, there will be many questions about the application of the final regulations upon implementation. Accordingly, we urge the DFS to provide further written guidance that will assist members of the community in interpreting how the final regulation will apply. The use of examples, commentary in the form of questions and answers and general interpretive guidance readily accessible to the entire community will be most helpful. Such interpretive guides should be available immediately upon issuance of the final rule and updated at regular intervals, at least monthly or quarterly for the first two years or for as long as the technological changes remain so dynamic. The community and ultimately consumers will benefit substantially from this initiative.

The Chamber also notes that the Consumer Financial Protection Bureau (“CFPB”) is uniquely positioned to understand the complexities of different types of financial products and services. The CFPB staff, which has been working hard to understand digital currencies, has noted publicly that the current rate of consumer adoption permits the CFPB with more time to study this complex and rapidly evolving issue. The Chamber encourages the DFS similarly to take advantage of this period to continue to review, understand and address the unique issues surrounding digital currencies. At the very least, the consumer protection provisions in the Revised Proposed Rule should be revisited within a year after the final rule become effective and on a regular basis to ensure that they are consistent with the CFPB rules when adopted.

We also urge the DFS to consider the creation a safe harbor for small organizations and certain other business entities subject to specified criteria consistent with the DFS’s overall goals in regulating digital currency related businesses. We recognize the important public policy objectives of the DFS’s regulatory initiative. To that end, we suggest the DFS work with the digital currency community as it creates a not-for-profit, incubator-like entity whose mission would be assisting companies eligible for the safe harbor in developing and maintaining a robust compliance infrastructure at the lowest possible cost in their earliest stages of development. The efforts of this entity would be focused on ensuring that a company has sufficient support to take the necessary steps to protect the interest of consumers and bolstering its defenses against criminal abuse while preserving flexibility to support ongoing innovation as well as the company’s needs (a) to evolve the business model to accommodate innovation and market opportunities and (b) to accept new capital to back this innovation. The entity would report regularly to the DFS on its efforts and those of the companies involved in the program. The Chamber is prepared to spearhead this initiative and work with the DFS in implementing the concept and developing appropriate metrics for reasonable regulatory compliance efforts.

Finally, we note that one of the key objectives of the Chamber is education – of policymakers, regulators, the industry and consumers. The Chamber is committed to providing the regulatory community with access to appropriate information about digital currency-related activities and business models.

As part of its efforts, the Chamber has been developing a full range of programming to provide educational opportunities with respect to the industry, the issues it faces and its compliance obligations. For example, we note the Chamber is hosting the AML Compliance Bootcamp for Digital Currency. It anticipates that at least 6 sessions of this 3- day course will be scheduled in 2015. It is honored to have the Bootcamp certified by the CSBS to permit state bank examiners to obtain examination credit for both AML compliance and Money Services Businesses. It is also qualified for CLE credit in NY and ACAMS credits.

Conclusion

The open-sourced nature of Bitcoin and other crypto-currencies has unleashed a massive wave of innovation within the financial services industry and with respect to other types of products and services that are not financial in nature. We anticipate that this innovation is likely to continue for the foreseeable future in part to support the need to build out an infrastructure to support digital currencies and in part as new functionalities are discovered for the technology. A dynamic period of experimentation on the part of businesses and consumers is inevitable as they become familiar with virtual/digital currencies, modify their payments habits and adjust to these innovative technologies.

As the adoption of virtual currencies accelerates over the next several years, consumers and businesses will experience the benefits of using digital currencies and have an opportunity to better understand the not only the costs but also the cost savings. We anticipate that overtime, the distinction between centralized and decentralized systems will blur especially as more features are added to different types of business models as we are already seeing, digital currency wallets are being added as a feature to exchange platforms, prepaid access is being added to digital currency wallets and the digital currency itself or a certain portion of it is being supported by assets like a fiat currency or gold.

The technology is evolving very rapidly. Some business models that emerged one year ago or even six months ago no longer exist or exist in a very different form. Without a doubt, there will continue to be significant and dramatic developments in the technology underlying both types of currencies in the coming months and years. These underlying technologies are being adopted for other purposes unrelated to digital currencies. In this environment, the DFS like other state and federal regulators will face a particular challenge in understanding what functional elements of the technology should and should not be regulated.

The Chamber's Government Affairs and Public Policy Committee has established working groups to address various issues including money transmission, consumer protection, and compliance. These groups are intended to be a resource for both the members and the community but also for regulators.

The Chamber again expresses its appreciation to the DFS for its leadership in developing a framework for regulating functions associated with digital currencies that are similar to functions it is charged with regulating under current laws and regulations. Many of the changes in the Revised Proposed Rule reflect the DFS' sensitivities to how digital currencies differ from more traditional payments technologies.

The Chamber looks forward to working with the DFS on an ongoing basis as it implements these regulations and regularly reviews their continued efficacy in light of the changing technologies. If you have any questions regarding our response, please do not hesitate to contact me at cvancleef@manatt.com or Perianne Boring, Chamber of Digital Commerce President, at president@digitalchamber.org.

Sincerely,

//Carol R. Van Cleef//

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Outside General Counsel
Chamber of Digital Commerce