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October 21, 2014

Dana Syracuse, Esq.
Office of General Counsel
New York State Department of Financial Services
One State Street
New York, NY 10004

Dear Mr. Syracuse:

The Chamber of Digital Commerce (the “Chamber”) is submitting this letter to the New York Department of Financial Services (“NYDFS” or “DFS”) in response to its request for comments on its proposed Regulation of the Conduct of Virtual Currency Businesses, announced at 236 N.Y. Reg. 14 (July 23, 2014)(the “Proposed Rule”).

The Chamber is a trade association representing the rapidly emerging digital currency and digital asset industries. Founded in July 2014 by industry leaders, the Chamber’s mission is to promote the acceptance and use of digital assets not only in financial transactions conducted via the internet, mobile devices and in person but also in the transfer of information in socially and economically meaningful ways.

The Chamber has worked with a number of these companies to facilitate the filing of individual comments in response to the DFS’ Proposed Rule. Based on months of conversations, meetings and other interaction with our members and other industry participants in this informal coalition, we offer the comments below.

These comments are only the first step in the Chamber’s efforts to work with officials to create a reasonable and effective regulatory structure that protects national interests and the interests of consumers, while permitting companies in this space sufficient room to experiment and build out technological innovations that have the potential to transform the economic and social well being of people in New York, the US, and around the world.

Two immediate initiatives for the Chamber include (1) coordinating the development of a uniform code for the regulation of digital currencies and digital currency systems based on integrity and transparency and (2) the development of robust training opportunities for both the industry and the regulators.

The development of a uniform regulatory code requires appropriate balancing of the public policy concerns -- well expressed by the DFS and other federal and state agencies - - with the need to provide adequate opportunity for responsible innovation, including the refinement of technologies underlying the build out of an infrastructure that will facilitate wider adoption of these currencies and systems operating in a safe and sound manner.

The Chamber recognizes the importance of digital asset-related companies appropriately understanding their obligations under existing anti-money laundering, sanctions, consumer protection and other laws. In point of fact, the Chamber has undertaken a significant effort to work with companies in the sector to ensure scrupulous compliance with applicable laws. Based on our experience, these companies are very willing to comply once they have an appropriate understanding of what the regulatory expectations are and how to achieve such compliance.

The Chamber has invested significant resources in recent months to help many companies in this regard as they work towards setting up strict protocols for compliance. The Chamber realizes the importance of understanding the steps that should be undertaken to prevent criminal abuse of business models and ensure compliance with consumer protection and other applicable laws. The Chamber recognizes the critical public policy issues of consumer protection, preventing abuse of the entity and the financial system by criminals, and protection of an organization's safety and soundness. The Chamber embraces its responsibility to assist the industry in its efforts to better understand these issues. To this end, the Chamber will continue its efforts to provide robust education with respect to digital assets. In addition to our current outreach efforts, we are sponsoring intensive training sessions, with the first scheduled for early December, focusing on anti-money laundering and sanctions compliance not only for those companies already registered as money service businesses (MSBs), but also other digital asset-related companies with business models that may not be subject to these regulations but are subject to the federal criminal statutes.

General Comments

We understand the magnitude of the effort undertaken by the DFS. We also appreciate the recent statements of Superintendent Lawsky regarding the next steps the DFS will take in this effort, including the issuance of a revised version of the proposed regulation. It is our hope that a revised proposal may address the most fundamental issues of concern to the Chamber. We also encourage the DFS to conduct a further hearing to gain more input before finalizing its regulation. The Chamber is very much supportive of a high quality regulatory process that seeks to protect national security and consumers and nurture important emerging technology and the financial services the technology supports.

The first concern that is fundamental to formulating high quality regulation is the need to reflect in the Proposed Rule the distinction between the word "Bitcoin" spelled with an upper case "B" and the word "bitcoin" spelled with a lower case "b". The first is a reference to Bitcoin -- the protocol (the "Protocol") and the second is a reference to bitcoin -- the digital asset, which also can be used to settle commercial transactions. This distinction is important because it draws a line between those applications of cryptocurrencies that appear to have been the focus of the regulation and those that are not. We propose clarification of this point to ensure that the Proposed Rule does not inadvertently impose onerous and socially unproductive burdens on those that work with the Protocol,

the open source software, in developing and deploying applications far beyond its use as a currency and a means to transfer value.

Also, as reflected in a number of comments below, we urge the DFS to revise the regulation to conform it to the regulatory regime that applies to New York money transmitters, and regulate intermediaries that have control of the value either within their own accounts or within escrow accounts. Many states have already recognized digital currency systems, financial intermediaries serving crypto-currency customers, and certain other entities as money transmitters. The distinction from a regulatory perspective is the role the person/company is playing with respect to customer's transactions and whether the intermediaries are solely coding and maintaining the software used for financial transactions.

The Chamber also is concerned that the Proposed Rule does not provide early stage companies -- -- those that otherwise comply with applicable laws -- sufficient flexibility to evolve their technology. We know that a number of companies have offered suggestions on how to address these types of companies, which are testing the viability of new and still developing technology. We urge the DFS to explore further how innovation can continue to be encouraged while achieving the important public policy goals the DFS is charged to uphold.

Specific Recommendations

- Distinguish between companies that are truly engaged in financial intermediary activities that have been traditionally regulated by the DFS and companies that use a form of digital asset to facilitate the transfer of other types of information or use the protocol for other non-financial purposes.
- Clarify the scope of the prohibition on the use of unlicensed agents in Section 200.3(b). Agents of appropriately licensed money transmitters or virtual currency businesses should not be required to be licensed separately as either a money transmitter or a virtual currency business if certain reasonable and specified requirements are satisfied.
- Harmonize the provisions governing license applications and change in control/merger and acquisition requirements for virtual currency companies with those that apply to money transmitters.
- Provide clear, specific, and reasonable protocols as to how the DFS will use its authority to impose bonding, capital and other requirements, including the criteria that will be used for (i) ensuring competitive equality for similarly sized money transmitting business, (ii) determining how these requirements will appropriately apply to companies in each stage of development and (iii) appropriately recognizing the need of early stage companies for sufficient flexibility to evolve into larger, more robust organizations.
- Consider broadly the alternative types of permissible investments appropriate for

digital asset related companies based on the nature of the digital asset and the business model, whether the asset is backed by a commodity or other type of tangible asset and whether the class of eligible assets for permissible investments should be expanded to include the digital asset on which a regulated company itself is focused.

- Provide clarity on what constitutes a “material change” and establish firm deadlines as appropriate for acting on various notices required by the proposed regulations, including notices of material changes. Such deadlines will provide companies with timely responses on proposals to changes in one or more members of the board of directors or senior management, to raise additional capital, or to introduce new or alter existing products or services, in a highly competitive marketplace.
- Conform books and records retention requirements to applicable federal laws governing the same to avoid imposing additional and costly administrative burdens that many small companies are not able to absorb.
- Define and delineate the circumstances under which the DFS may examine, as well as review the books and records of, entities affiliated with licensees to ensure that such authority is used only in exigent and demonstrable circumstance to protect the safety and soundness of the licensee and prevent criminal abuse.
- Conform financial reporting and disclosure requirements to those required of money transmitters to ensure a competitive playing field and avoid imposing costly administrative burdens beyond those to which money transmitters are subjected.
- Align the proposed AML-related recordkeeping and reporting obligations to the laws and regulations administered by federal Financial Crimes Enforcement Network in order to avoid (i) duplicative and overly burdensome compliance efforts, (ii) potential litigation exposure they would create for licensees that would not be eligible for any safe harbor that may be available under the federal Bank Secrecy Act and (iii) the risk of identity theft that customers may be subjected to with the transfer of substantial new data to the DFS. This alignment includes limiting the amount of detailed customer information that is required to be collected to transactions of \$3000 or more, as required of money transmitters under the Funds Transfer Rule.
- Establish parity between money transmitters and digital asset companies of the same size, requiring them to develop and implement substantially similar cybersecurity programs. Require advertising and marketing materials, without regard to the type of media, to conform to rules and regulation of the Federal Trade Commission and those of other federal regulators.

As noted above, the Chamber is encouraged by the comments of Superintendent Lawsky on October 14, 2014 and hopes that when the DFS releases a revised version of the proposed regulation it will exclude certain types of functions from the scope of the

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regulation. The Chamber urges the DFS to think expansively in this regard, recognizing that many, novel, non-financial uses of the digital asset algorithms will continue to evolve. Again, we know that the DFS is receiving many comments on this point and urge the DFS to review and carefully consider the implications of finalizing regulatory provisions that could inhibit further constructive development of these algorithms.

The Chamber appreciates this opportunity to provide our comments on the Proposed Rule. We furthermore would appreciate an opportunity to meet with staff of the DFS to answer in depth any questions that this or other comments may raise. In our role as an industry representative, we can assemble representatives of the industry to meet with you individually or in a group. We look forward to reviewing the next iteration of the Proposed Rule as we stand committed to ensuring the protection of consumers and our national security and working with the digital asset community to assure such goals are achieved.

Sincerely,

Perianne M. Boring
President and Founder