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NEW YORK REVISES PROPOSED STATE LICENSING REQUIREMENTS FOR VIRTUAL CURRENCY COMPANIES

The New York Department of Financial Services (NY-DFS) issued a revised version of its proposed regulatory framework for virtual currencies on February 4, 2015. The proposed regulations require virtual currency companies to obtain licenses named "BitLicenses." This Alert is the second in a series on virtual currency regulation. See our ALERT dated August 20, 2014.

The revised regulations address a number of issues raised by commenters to the original proposed rules, including the following:

- **Cost of applying for licensure:** Per the new proposed regulations, the cost of applying for virtual currency licensure is \$5,000. The proposed regulations state that this fee is to cover the cost of processing the application, reviewing application materials and investigating the financial condition and responsibility, financial and business experience and character and general fitness of the applicant. Notably, if the application is denied or withdrawn, the fee will not be refunded.
- **Shortened record-keeping requirements:** The proposed record-keeping requirements for licensees has been shortened from ten to seven years.
- **Limited requirements for transaction data:** The NY-DFS eliminated the original proposed requirement that licensees obtain the address and transaction data for all parties to a transaction. Now, licensees must obtain that information only for their own customers or account holders, and only to the extent possible, counterparties to the transaction.
- **Relaxed capital requirements:** Under the new proposed rules, a broader range of financial assets, including virtual currency, will count toward the licensee's capital requirements.
- **Limited licensure:** While the original proposed rules required licensure from almost all parties working in virtual currency, now, merely "securing" digital currency on users' behalf does not subject a company to licensure. The new proposed rules specifically exclude companies engaging in software "development and dissemination" from licensure.

Many commenters and interested parties were concerned with the effect of the proposed regulations on virtual currency start-ups. The revised regulations offer a number of changes aimed at aiding those start-ups, including the following:

- **Two-year transitional BitLicense:** The revised rules offer a two-year transitional BitLicense tailored to start-ups and small businesses. The transitional BitLicense may be issued to firms unable to satisfy all of the requirements of a full license. NY-DFS Superintendent Benjamin Lawsky described the transitional BitLicense as an "on-ramp" for start-ups as they build up their operations. Lawsky stated that start-up firms will still be required to meet robust standards for consumer-protection and anti-money laundering requirements.
- **Certain parties exempt from "control party" requirements:** Licensees may apply to the NY-DFS for a determination that certain specific parties should not be deemed control parties (if they are not involved in the day-to-day or major management decisions of the company). When an individual is deemed a "control person" rigorous requirements are triggered. This should encourage angel investment in virtual currencies.

The proposed regulatory framework is currently published on the NY-DFS website. A 30-day public comment period will begin when the revised proposed regulations are formally published in the New York State Register. □

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