

## NEW YORK ANNOUNCES FINAL BITLICENSE REGULATIONS FOR VIRTUAL CURRENCY BUSINESSES

On June 3, 2015, Superintendent Benjamin M. Lawsky of the New York Department of Financial Services (“DFS”) announced the final “BitLicense regulatory framework” (the “Final BitLicense Framework”) for certain virtual currency businesses in New York.<sup>1</sup> The Final BitLicense Framework represents the first comprehensive state regulatory proposal to address Virtual Currency businesses. The development of an appropriate regulatory framework is a crucial step forward for the maturation of the Bitcoin blockchain protocol and other Virtual Currency businesses. The Final BitLicense Framework includes significant changes from the original July 2014 proposal, but is essentially unchanged from the February 4, 2015 revised proposal.

The adoption of the Final BitLicense Framework is the second major announcement by Superintendent Lawsky on virtual currencies within the past month. On May 6, 2015, Superintendent Lawsky and DFS granted a trust company charter under the New York Banking Law to itBit Trust Company, LLC (“itBit”)—the first such charter DFS has granted to a virtual currency business.<sup>2</sup> As a result, itBit became the first chartered and prudentially regulated virtual currency exchange in the United States. On May 7, 2015, itBit opened for business in New York City and began accepting U.S. customers.

Cleary Gottlieb served as counsel to itBit throughout the application process and continues to serve as counsel on continuing developments.

DFS originally proposed the BitLicense regulatory framework in July 2014 (the “Original BitLicense Framework”)<sup>3</sup> and received over 3,700 public comments in response, reflecting the widespread interest in New York’s effort to establish the first comprehensive regulatory framework for virtual currency in the United States.<sup>4</sup> Many commenters expressed concern about certain aspects of the Original BitLicense Framework while supporting the DFS initiative.

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<sup>1</sup> See Revised BitLicense Regulatory Framework for Virtual Currency Firms, available [here](#).

<sup>2</sup> Press Release, NYDFS Grants First Charter to a New York Virtual Currency Company (May 7, 2015), available [here](#) (“NYDFS May 2015 Press Release”).

<sup>3</sup> For additional background, see our Alert Memorandum on the Original BitLicense Framework, available [here](#). We refer to the Original and Revised BitLicense Frameworks collectively as the “BitLicense Framework.” Capitalized terms used but not defined herein have the meanings assigned to them in the BitLicense Framework.

<sup>4</sup> See Comments Regarding the Proposed Virtual Currency Regulatory Framework, available [here](#).

The February 4 revised version of the BitLicense Framework (“Revised BitLicense Framework”) accommodated many of the key concerns raised by commenters about the Original BitLicense Framework, as had been promised by Superintendent Lawsky in a December 2014 speech.<sup>5</sup>

Today’s Final BitLicense Framework incorporates the major changes that the Revised BitLicense Framework made to the Original BitLicense Framework.

First, the basic scope of “Virtual Currency” and “Virtual Currency Business Activity” remain largely similar to the Original BitLicense Framework. Generally, Virtual Currency includes any type of digital unit that is used as a medium of exchange or a form of digitally stored value, while Virtual Currency Business Activity broadly includes transmitting, storing or holding for others, buying or selling as a customer business, performing retail conversion services, or controlling, administering, or issuing a Virtual Currency.<sup>6</sup> However, the Final BitLicense Framework helpfully excludes from the new regulatory requirements gift cards and non-financial uses of virtual currency and merchant and technology activities. For example, the final rules exempt use by merchants, for investment purposes, and for software development.

Second, the Final BitLicense Framework exempted from the BitLicense licensing requirement any entity chartered under the New York Banking Law and approved to engage in Virtual Currency Business Activity, such as itBit. Of course, those chartered entities are subject to bank-like regulation, capital, liquidity and prudential requirements.

Third, the Final BitLicense Framework retained the broad application of the BitLicense requirements to any Virtual Currency Business Activity “involving New York or a New York Resident.” This provides a broad scope for potential regulation for any person or entity whose virtual currency activities involve a place of business or the conduct of business in New York.

Fourth, the new rules did reduce certain of the recordkeeping requirements in several ways compared to the Original BitLicense Framework. For example, like the Revised BitLicense Framework, the final rules eliminated the original requirement to collect information about all parties to a transaction, though broad record-keeping is still required for customers and company records.

Finally, the final rules did also address some of the comments about the difficulties that could be posed for start-up businesses. The Final BitLicense Framework allows a conditional approval of entities who cannot initially meet all of the BitLicense requirements.

In addition, the Final BitLicense Framework made limited modifications to the provisions regarding pre-approval by DFS for changes to existing products and the introduction of new products. These modifications clarified that prior written approval from DFS will be required

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<sup>5</sup> See Superintendent Lawsky Remarks on Revised BitLicense Framework for Virtual Currency Regulation and Trends in Payments Technology (Dec. 18, 2014) (“December 2014 Lawsky Speech”), available [here](#).

<sup>6</sup> Revised BitLicense Framework, §§ 200.2(p), (q).

where (i) the proposed change to an existing product, service or activity may cause it to be “materially different” from the existing product, service or activity or (ii) the new product, service or activity or the proposed change may raise a legal or regulatory issue about its permissibility, raise safety and soundness concerns or raise operational concerns. However, the changes provide only limited guidance and leave much discretion to DFS.

However, in the Final BitLicense Framework, DFS largely held its original position in several other significant areas, including anti-money laundering (“AML”) requirements and customer disclosures. DFS has also tightened regulations on certain issues, for instance, by requiring that customer trust accounts be held with custodians in New York. Nonetheless, the Final BitLicense Framework addressed many important issues raised by commenters, and certainly represents a significant step forward in establishing a standard for regulation of virtual currencies.

## Conclusion

In summary, the Final BitLicense Framework reflects DFS’s willingness to address many key concerns raised by the virtual currency industry and other affected market participants, notably with regard to exclusions from Virtual Currency Business Activity, conditional licenses, capital requirements, and recordkeeping. However, it also introduced or left unchanged a number of provisions, including, but not limited to, extraterritorial scope, the application fee, AML requirements, and customer disclosures.

We anticipate issuing a more thorough analysis of the Final BitLicense Framework in the near future.

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