

Client Alert

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New York DFS Proffers "Transitional" Licensing Solution

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On November 2, 2014, Superintendent Benjamin Lawsky of the New York Department of Financial Services ("NYDFS") delivered remarks on regulation of virtual currency and Bitcoin at the Money 20/20 conference. As we previously reported, the NYDFS has proposed a new regulatory scheme to provide for the licensing of businesses engaged in "Virtual Currency Business Activities" under a "BitLicense" framework.

In his remarks, Superintendent Lawsky reiterated that the NYDFS plans to issue an updated proposed regulation for public comment before finalizing the BitLicense rule. Superintendent Lawsky also commented on the NYDFS's continued focus on anti-money laundering, capital standards and consumer protection.

Most notably, Superintendent Lawsky stated that the final rule would likely incorporate the concept of a "Transitional BitLicense," which would be available to "new or fledgling virtual currency enterprises," with the purpose of reducing the costs of compliance for small businesses and startups. According to Superintendent Lawsky, the NYDFS may also develop a small group of examiners that would specialize in the licensing and examination of Transitional BitLicense holders.

Superintendent Lawsky noted that the NYDFS would consider the following four factors in its decision to grant a business a Transitional BitLicense:

- The type of consumer risks associated with the applicant's business;
- The volume of business and transactions the entity anticipates it will conduct;
- Whether the entity is registered as a money services business with the Financial Crimes Enforcement Network; and
- Whether the entity has mitigating risk controls, such as a bond or other insurance, in place.

The Transitional BitLicense concept has been promoted by industry representatives. Although any benefit will ultimately depend on how the Transitional BitLicense concept is implemented, it is a positive sign that the NYDFS has acknowledged the need to balance regulation with innovation.

Superintendent Lawsky did not specify a time frame for issuance of the updated proposed regulation, but concluded his remarks by saying that the NYDFS "expect[s] to have more to say about this Transitional BitLicense in the near future as we work to put forward our updated virtual currency regulatory framework for a new round of public comments."

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