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March 25, 2015

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

Re: Notice of Proposed Rulemaking for the Regulation of the Conduct of Virtual Currency Businesses

Dear Mr. Syracuse:

The Electronic Transactions Association ("ETA") respectfully submits this further comment letter in response to the New York State Department of Financial Service ("NYDFS") Notice of Proposed Rulemaking related to virtual currency businesses.

ETA is an international trade association representing more than 500 companies that offer electronic transaction processing products and services. ETA's membership spans the breadth and scope of the payments industry and includes bank and nonbank providers, service providers that process transactions, and other technology companies that are developing new mobile and digital payment options. Our members support the proposed rule's goal of establishing effective consumer protections and promoting greater transparency and fairness in the marketplace, while strengthening an economic environment that rewards innovation and fosters economic growth.

We thank the Department for accepting many of the industry's proposed comments to its initial rule-making. That said, we remain concerned that portions of the proposed rule do not drive regulatory efficiency for businesses and in some cases create a haphazard and inconsistent regulatory framework that will likely hamper innovation and consumer choice.

Specifically, (1) we believe that the proposed rule remains ambiguous as to whether or not two licenses – a "traditional" money transmitter license and a bitlicense – may be required for the same business, (2) the anti-money laundering (AML) provisions called for by the proposed rule are already covered by federal authorities and promote an incongruous anti-money laundering (AML) regime that runs counter to intended design of the Bank Secrecy Act (BSA).

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A. The proposed rule unnecessarily duplicates New York's own money transmission regulations.

As written, the proposed rule would seem to require that virtual currency businesses engaging in money transmission in New York acquire both a money transmission license **and** a virtual currency business license ("BitLicense"). We believe requiring a dual licensing regime places enormous operational, administrative, and cost burdens on businesses. Further, it is unclear the value that is being brought to regulators or taxpayers by requiring such a design.

We note that there will be entities that engage in Virtual Currency Business Activity which do not engage in money transmission. This is because they either do not have a conventional U.S. dollar stored value product or exchange-like USD settlement facility; or because their business does not touch fiat money. Those entities could still be licensed under the BitLicense, and it would be the only license they are required to obtain. But if an entity has overlapping business activity, wherein they do have such a mix of fiat and virtual currency products, they would already be regulated as a money transmitter. In that case, the proposed rule should exempt such businesses.

We note that there is a precedent for such an exemption already present in the proposed rule. The BitLicense exempts persons chartered under the New York State Banking law who are otherwise authorized to engage in virtual currency business activity. As a matter of fairness and regulatory efficiency, licensed money transmitters should be granted the same treatment.

Further, we suggest that DFS eliminate this redundancy by modernizing its money transmission regulations to accommodate specifics of virtual currency activity, including permissible investments and reporting obligations. The result would be a more efficient regulatory structure that wouldn't place undue burdens on business, likely limiting their ability to innovate and build out this new technology in a productive manner. Further, it would provide more streamlined reporting to DFS, bringing greater transparency to the Department and greater value to the New York taxpayers, which the Department serves.

B. The proposed rule unnecessarily duplicates federal anti-money laundering (AML) obligations.

The current Federal rules require virtual currency exchanges (among others) to register as Money Service Businesses (MSBs) and establish risk-based Anti-Money Laundering (AML) policies in accordance with federal law. The proposed rule includes new, unprecedented state level AML reporting and recordkeeping requirements.

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The proposed rule requires licensees to: (i) collect the identity and physical address of any parties to a virtual currency transaction, (ii) file state-mandated activity reporting on a 24-hour deadline, and (iii) verify the identity of any customer who establishes an account, among many other requirements. While we thank the Department for including language noting that (i) and (iii) are subject to "practicality", we believe this language remains too vague.

If each state were to follow New York's approach, businesses would be forced to modify their AML programs to meet the whims of individual states, potentially resulting in the need to create different AML programs for 51 subsets of customers. This is not only untenable from an operational perspective, it will likely put businesses at odds with federal regulators – who have to date, been responsible regulators for AML compliance – if those requirements are inconsistent.

Perhaps most importantly, these recordkeeping and verification requirements are not supported by the underlying Bitcoin Protocol, which is designed to not accept identity. The draft rule would almost certainly force businesses to operate closed, proprietary virtual currency networks. This would eliminate an important feature of the Bitcoin protocol - and the larger Internet that underlies it- global open access.

In closing, we believe New York has an enormous opportunity to lead the nation when it comes to payments and financial services technology innovation. We thank DFS for engaging in this thoughtful rulemaking effort and for your consideration of these and other comments. We are optimistic that the final rule will create a framework that protects consumers, provides regulatory certainty and efficiency for businesses, and creates a nurturing environment for economic growth.

Sincerely,

Scott Talbott
Senior Vice President
Electronic Transactions Association