

CLIENT ALERT

NYDFS and OCC Announce Major Overhauls Important for Virtual Currency Businesses

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The Office of the Comptroller of the Currency (OCC) and the New York Department of Financial Services (NYDFS) each recently took significant steps to address the key impediments for virtual currency (VC) companies in the U.S. First, on June 24, NYDFS announced significant updates to its approach on Bitlicenses, New York's business license for VC activities, which has traditionally been considered difficult to obtain.

Second, on June 25, 2020, Brian Brooks, the former Chief Legal Officer of Coinbase, Inc., and current Chief Operating Officer and First Deputy Comptroller at the OCC, announced that the OCC is planning to unveil a "payments charter" later this year which is intended to serve as a "national version of a state money transmission license."

NYDFS Announcement

On June 24, 2020, NYDFS announced the following initiatives:

- Proposed Conditional Licensing Framework: While NYDFS already has the authority to issue conditional Bitlicenses, it has yet to use this authority. With this proposed framework, VC businesses may apply for a conditional license when partnering with an existing Bitlicense holder. The existing Bitlicense holder would provide the conditional licensee with the operational, staffing, and other support the conditional licensee may need, including ensuring the conditional licensee meets anti-money laundering requirements. NYDFS requests public comment on this proposed framework by August 10th.
- NYDFS and the State University of New York (SUNY) Memorandum of Understanding with the "SUNY Block": The memorandum provides for a new program through which eligible start-ups and emerging companies may collaborate with a SUNY-related entity will be established and authorized by NYDFS to conduct VC business activity (the "SUNY VC Entity"). By offering this program at all 64 SUNY campuses, NYDFS seeks to expand virtual currency activity throughout the state; not just in New York City. The individual SUNY campuses will provide entities from local communities, including entities started or run by students or alumni, guidance and encouragement in applying for and receiving conditional BitLicenses from NYDFS based on their collaboration with the SUNY VC Entity.
- Finalized Guidance on Self-Certification for New VC Listings: In addition to the conditional licensing framework, NYDFS also announced final guidance related to VC companies self-certifying the use of new VCs. NYDFS-regulated VC companies will be able to self-certify the use of new VCs without prior NYDFS approval, provided they have in place a coin-listing policy that has been previously approved by NYDFS. In addition, NYDFS will continuously provide updates to a list (the "Greenlist") of VCs that all Bitlicense holders can list without prior approval of NYDFS.
- Additional Resources for the VC Market on NYDFS Launch and Operational Requirements: Consistent with the tone of partnership and transparency of the other three updates, NYDFS also issued a notice of NYDFS Bitlicense review practices and new VC FAQs which NYDFS commits to updating regularly

NYDFS' June 24th updates are partly the result of feedback the agency has received from VC businesses on their experiences with the Bitlicense and with NYDFS. Early on in her relatively new role, NYDFS' Superintendent Linda Lacewell identified improving that experience and encouraging innovation, while ensuring regulatory compliance, as a "year one" priority.

OCC Announcement

The proposed "payments charter" unveiled by Brian Brooks would not only create a national money transmitter license, it would also offer nonbank payment providers, including VC businesses, a "national platform with preemption." The charter would be rolled out in two versions; version 1.0 would not provide VCs access to the Federal Reserve's ("Fed's") payment system. Version two, which is expected approximately 18 months after version 1.0, would include direct access to the Fed's payment system.

This may be valuable for many VC businesses, because one of the greatest impediments has been the fact that nearly all U.S. states, plus the District of Columbia, have their own money transmitter laws, requiring businesses that want to operate across the U.S. to individually consider the laws of every state they operate in. Preemption through a national "payments charter" would enhance efficiency and promote growth of VC businesses.

Practical Considerations

VC businesses interested in operating in New York may wish to provide comments (by August 10, 2020) and to help shape the NYDFS' approach to conditional licenses.

Likewise, exploring the OCC's new national money transmitter license offering with experienced counsel might help to understand whether this provides a better solution than the current "50 state" approach for money transmitter registration.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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