Final BitLicense Rules for New York State Released Today by NYDFS Superintendent Ben Lawsky

by Susan Willms

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New York State Department of Financial Services (NYDFS) Superintendent Benjamin Lawsky today released the final version of the BitLicense regulations, saying that his "gut feeling" was that digital currencies are here to stay.

The BitLicense program to require digital currencies businesses in New York state to operate with a license and report to government has long been in the making and included two revisions with comment periods to allow for public criticism and input.

Many felt that Lawsky had to find a reasonable balance between protecting consumers and allowing digital finance innovators to develop without unnecessary red tape and restrictions.

Lawsky Defends the Need to Regulate

Saying it often "seems like technologists are from Venus and regulators are from Mars," Lawsky defended the need to "protect consumers" and "root out illicit activities."

Answering the criticism that anti-money-laundering and fraud regulations already existed, he maintained that digital financial systems are very different from the traditional "disco era" banking system and don't fit the new reality of fintech.

Changes to Final Version of BitLicense Framework

Lawsky said there were five minor changes to the BitLicense program between the second and third versions:

1. Companies do not need to report on minor changes in the way they do business, but do need to report on a “material change” such as changing from making wallets to running an exchange.

2. Companies working on fintech software do not need to report, only companies that are holding other people’s money in trust.

3. Companies do not have to “cross satisfy” under different programs. If you have a trust charter, you don’t need a BitLicense and vice versa.

4. Companies reporting suspicious activities to federal authorities do not have to also report to NYDFS.

5. “Passive investors” joining companies do not have to report or get approval. Only a “control person” will need to report to the regulators.

Lawsky noted that his office received 4,000 comments after the first draft was released but only 35 comments after the second draft was released, so they figured they must be closer to “getting it right.”

Who is covered under the BitLicense program

Businesses covered include those “controlling, administering or issuing a virtual currency” with the following exemptions:

- Blockchain technology for noncurrency purposes
- Software developers that aren’t engaged directly in money transmission or exchange
- Miners
- Individual investors
- Merchants who accept bitcoin
- Licensed banks

Criticisms from the Digital Currencies Community

Many businesses and organizations in the Bitcoin space submitted comments to Lawsky’s office noting that the regulations would create a “bitcoin backwater” as digital currency businesses simply move elsewhere to friendlier jurisdictions.

Organizations such as Coin Center and companies such as Coinbase noted that the BitLicense rules simply added another layer of regulations to laws that already exist at the federal level to cover money laundering and fraud.

In addition, many commented that Lawsky’s rules put too high a financial burden on new startups, requiring them to buy a license and pay for reporting to government.

The Revolving Door

As was reported earlier, the Cato Institute and others have criticized Lawsky for taking advantage of his role in developing the BitLicense rules and then moving to the private sector to offer consultation and advice on these same regulations.