

CLS Group

Exchange Tower
One Harbour Exchange Square
London E14 9GE

Tel: +44 (0)20 7971 5700
Fax: +44 (0)20 7971 5729

Office of General Counsel – Dana V. Syracuse
New York State Department of Financial Services
One State Street
New York, NY 10004
Via email: VCRegComments@dfs.ny.gov

26 March 2015

Re: Comments on Proposed Regulations of Superintendent of Financial Services Regarding Virtual Currencies; 23 NYCRR Chapter I, Part 200

Ms. Syracuse:

CLS Bank International (“CLS”) welcomes the opportunity to share its views on the New York State Department of Financial Services’ (“NYSDFS”) revised proposal to regulate Virtual Currencies. As we commented on the initial proposal, we again write to you requesting clarification of the proposed regulations, which we believe are not intended to regulate payment systems such as CLS that facilitate the exchange of Fiat Currencies. CLS is not opining on the propriety of the regulation of Virtual Currencies or Virtual Currency Business Activity.

CLS is an Edge Act Corporation, organized under the federal laws of the United States, as a payment versus payment system to mitigate settlement risk (loss of principal) associated with the settlement of payments related to foreign exchange transactions. CLS is regulated by the Board of Governors of the Federal Reserve System and has been designated as a systemically important financial market utility by the Financial Stability Oversight Council. In addition, 22 central banks representing the 17 Fiat Currencies that are settled in the CLS system have established a Protocol for the Cooperative Oversight Arrangement of CLS, organized and administered by the Federal Reserve, as a mechanism for the fulfillment of their responsibilities to promote safety, efficiency, and stability in the local markets and payment systems in which CLS participates.

CLS is not a retail payments services provider. It offers no mechanism for individuals to enter or exchange retail payments.

CLS’s settlement service begins with the submission by CLS members of electronic payment instructions to the CLS system. These instructions direct CLS to settle on its books certain payment entitlements and obligations relating to underlying foreign exchange and derivative transactions of CLS’s member financial institutions. Settlement is undertaken having regard to members’ account

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CLS Group · Exchange Tower · One Harbour Exchange Square · London E14 9GE

t + 44 (0)20 7971 5700 · f + 44 (0)20 7971 5729 · e info@cls-group.com · www.cls-group.com

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balances, representing amounts paid to CLS's central bank accounts in the real-time gross settlement systems of the 17 Fiat Currencies.

The intention of the proposed regulations is to regulate Virtual Currencies, rather than Fiat Currencies. However, most transactions in and records of Fiat Currencies are executed and/or recorded electronically, including payment instructions and records of account in payment systems. Given the broad definition of a Virtual Currency, in particular the reference to "any type of digital unit that is used as a medium of exchange or a form of digitally stored value" and noting the absence of a definition of "digital unit," CLS considers it a risk that the terms Virtual Currency (and consequently, Virtual Currency Business Activity) could be construed so as to refer to such electronic instructions and records in relation to Fiat Currencies, thereby applying the regulations to a broad array of electronic financial transactions that are effected in regulated payment systems. While the definition of "Virtual Currency" no longer includes digital units that are merely "incorporated into payment system technology," CLS believes that the definition of Virtual Currency should be further amended, either by rephrasing the definition or by including further exceptions in addition to those relating to online gaming, rewards programs, and gift cards, to ensure that the exchange of Fiat Currencies through electronic means is not captured in the final regulations.

CLS does not believe that the proposed regulations were drafted with the intent of including the electronic payment instructions CLS receives from its members or the records of their account balances within the definition of a Virtual Currency, nor does CLS believe that the CLS system was intended to be included within the definition of Virtual Currency Business Activity. Accordingly, should the NYSDFS elect to clarify the potential ambiguity through specific exceptions, CLS proposes that an exception be provided within the proposed regulations to clarify that CLS's payment instructions and records are not a Virtual Currency, thus removing the CLS system from regulation under the NYSDFS proposal. The suggested changes are provided as Appendix A to this letter.

Please do not hesitate to contact CLS if you have any questions regarding this submission. We would be happy to speak with the New York Department of Financial Services regarding the revised rules or to clarify any issues raised in this submission.

Sincerely,



Alan Marquard
Group General Counsel
CLS Group

Cc: Dino Kos, Executive Vice President, Head of Global Regulatory Affairs
Craig Rubin, Director, CLS Legal
Irene Fishman, Associate Director, CLS Regulatory Affairs

Appendix A: Proposed Changes to NYSDFS Regulations on Virtual Currencies
Title 23, Chapter I, Part 200

(Changes highlighted in red.)

Virtual Currency means any type of digital unit that is used as a medium of exchange or a form of digitally stored value. Virtual Currency shall be broadly construed to include digital units of exchange that (i) have a centralized repository or administrator; (ii) are decentralized and have no centralized repository or administrator; or (iii) may be created or obtained by computing or manufacturing effort. Virtual Currency shall not be construed to include any of the following:

- 1) digital units that are used solely within online gaming platforms with no market or application outside of those gaming platforms, or can be redeemed for real-world goods, services, discounts or purchases, but cannot be converted into, or redeemed for, Fiat Currency or Virtual Currency as defined herein;
- 2) digital units that can be redeemed for goods, services, discounts, or purchases with the issuer and/or other designated merchants or can be redeemed for digital units in another customer affinity or rewards program, but cannot be converted into, or redeemed for, Fiat Currency or Virtual Currency as defined herein; ~~or~~
- 3) digital units used as part of Gift Cards; or
- 4) payment instructions that are submitted electronically to, or the electronic records of accounts in, a payment system that solely facilitates the settlement of Fiat Currencies.