Banking and Finance Law Daily Wrap Up, STATE BANKING LAWS—New York regulator contemplating “Transitional Bitlicense” for virtual currency businesses, (Nov. 5, 2014)

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By Charles A. Menke, J.D.

In response to concerns about the cost of complying with regulations governing new virtual currency businesses, the New York Department of Financial Services (DFS) is considering creating a “Transitional Bitlicense” and designating a small group of specialized examiners at the DFS to deal with startups and their license applications. DFS Superintendent Benjamin M. Lawsky made the announcement in recent remarks at the Money 20/20 conference emphasizing that “[t]here has to be a way for start ups to start up and play by the rules without getting crushed by huge compliance costs.”

License requirements. The Transitional Bitlicense would permit certain small businesses and startups to operate within a more flexible regulatory framework for a specific period of time, during which tailored examinations would be conducted. In considering whether or not to grant a Transitional BitLicense, Lawsky said the DFS would consider a number of factors, including:

- the nature and scope of an applicant’s business and the associated consumer risks;
- anticipated transactional and business volume;
- whether the applicant is registered as a Money Services Business with the Financial Crimes Enforcement Network; and
- the existence of mitigating risk controls, such as a bond or other insurance.

Consumer protections. Lawsky stressed that businesses must “meet strong standards for consumer protection, anti-money laundering compliance, and capital standards” with “significant penalties” being imposed for misconduct. However, the DFS would permit the potential use of outside vendors rather than separate, internal compliance officers for certain functions.

Striking a balance. Drawing a comparison to the DFS’ regulation of community banks, Lawsky stated that the DFS “will continue to strive to strike an appropriate balance in virtual currency regulation that helps prevent conduct that is harmful to consumers and public safety—while still permitting beneficial innovation to proceed.” Lawsky believes that striking the proper balance will result in more innovative businesses operating in the state.

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