THOMPSON HINE

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Final New York BitLicense Regulations Released

The New York State Department of Financial Services (NYDFS) has released the final version of its long-awaited "BitLicense" regulatory scheme, the culmination of a year-long process of proposal, public comment and revision. The purpose of the BitLicense is to provide an independent regulatory framework for the emerging field of digital currencies, such as Bitcoin, and the industry of financial services that this technology is fostering. The BitLicense establishes rules for the formation and regulation of digital currency business enterprises that operate in New York. Given New York's central role in the financial sector, the BitLicense could also become a model regulatory framework.

The NYDFS released the final version of the BitLicense on June 3, 2015 with only minor modifications to the prior version of the regulation released in February 2015. In a speech to the BITS Emerging Payments Forum, delivered contemporaneously with the release of the final regulation, NYDFS Superintendent Benjamin Lawsky explained the five principal revisions in the final rules:

1. Companies do not need to report minor business changes, such as releasing a software application update, but do need to report any "material change" that fundamentally alters the nature of the business service.
2. The BitLicense is intended to regulate digital currency businesses that hold customer funds, not companies that are engaged solely in software development.
3. The BitLicense satisfies requirements for a Money Transmitter License, so digital currency businesses do not need to duplicate efforts and acquire both licenses in New York.
4. Continuing with the theme of avoiding duplication where possible, digital currency businesses that already submit Suspicious Activity Reports to federal regulators are not required to submit the same reports to state regulators.
5. Passive investors are not required to report their involvement or obtain approval from the NYDFS; only "control persons" are required to report to regulators.

Despite these industry-friendly revisions, concerns remain that the BitLicense framework unnecessarily duplicates existing regulatory obligations at the state and federal levels and places undue financial and compliance burdens on startup companies, which are driving innovation in this space but are often cash-strapped. However, the announcement and publication of the final rule at least provides some regulatory clarity, a sign of progress in the digital currency sector. Whether other jurisdictions choose to create similar independent regulatory frameworks or simply seek to revise existing regulations to accommodate digital currency innovation, it is likely that New York's BitLicense will serve as an important cornerstone in this evolving regulatory environment.

FOR MORE INFORMATION

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