STATE OF NEW YORK

8813

2025-2026 Regular Sessions

IN ASSEMBLY

June 9, 2025

Introduced by M. of A. BORES -- read once and referred to the Committee on Banks

AN ACT to amend the financial services law, in relation to regulation of business involving virtual currencies

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The financial services law is amended by adding a new article 10 to read as follows:

ARTICLE 10
VIRTUAL CURRENCIES

Section 1001. Definitions.
1002. License.
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1016. Business continuity and disaster recovery.
1017. Advertising and marketing.
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1019. Complaints.

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD09815-02-5

1020. Transitional period.
1021. Severability.

§ 1001. Definitions. For the purposes of this article, the following terms shall have the following meanings:

(a) "Affiliate" means any person that directly or indirectly controls, is controlled by, or is under common control with, another person.

(b) "Cyber security event" means any act or attempt, successful or unsuccessful, to gain unauthorized access to, disrupt, or misuse a licensee's electronic systems or information stored on such systems.

(c) "Exchange service" means the conversion or exchange of fiat currency or other value into virtual currency, the conversion or exchange of virtual currency into fiat currency or other value, or the conversion or exchange of one form of virtual currency into another form of virtual currency.

(d) "Fiat currency" means government-issued currency that is designated as legal tender in its country of issuance through government decree, regulation, or law.

(e) "Licensee" means any person duly licensed by the superintendent pursuant to this article.

(f) "New York state resident" means any person that resides, is located, has a place of business, or is conducting business in New York state.

(g) "Person" means an individual, partnership, corporation, association, joint stock association, trust, or other entity, however organized.

(h) "Prepaid card" means an electronic payment device that:

(1) is usable at a single merchant or an affiliated group of merchants that share the same name, mark, or logo, or is usable at multiple, unaffiliated merchants or service providers;

(2) is issued in and for a specified amount of fiat currency;

(3) can be reloaded in and for only fiat currency, if at all;

(4) is issued and/or reloaded on a prepaid basis for the future purchase or delivery of goods or services;

(5) is honored upon presentation; and

(6) can be redeemed in and for only fiat currency, if at all.

(i) "Principal officer" means an executive officer of an entity, including, but not limited to, the chief executive, financial, operating, and compliance officers, president, general counsel, managing partner, general partner, controlling partner, and trustee, as applicable.

(j) "Principal stockholder" means any person that directly or indirectly owns, controls, or holds with power to vote ten percent or more of any class of outstanding capital stock or other equity interest of an entity or possesses the power to direct or cause the direction of the management or policies of the entity.

(k) "Principal beneficiary" means any person entitled to ten percent or more of the benefits of a trust.

(l) "Qualified custodian" means a bank, trust company, national bank, savings bank, savings and loan association, federal savings association, credit union, or federal credit union, as such terms are defined or otherwise used by the banking law, in the state of New York, subject to the prior approval of the superintendent.

(m) "Transmission" means the transfer, by or through a third party, of virtual currency from a person to a person, including the transfer from the account or storage repository of a person to the account or storage repository of a person.

(n) "Virtual currency" (1) means any type of digital unit that is used as a medium of exchange or a form of digitally stored value, and shall be broadly construed to include digital units of exchange that: (A) have a centralized repository or administrator; (B) are decentralized and have no centralized repository or administrator; or (C) may be created or obtained by computing or manufacturing effort; and

(2) shall not be construed to include any of the following:

(A) digital units that:

(i) are used solely within online gaming platforms;

(ii) have no market or application outside of online gaming platforms;

(iii) cannot be converted into, or redeemed for, fiat currency or virtual currency; and

(iv) may or may not be redeemable for real-world goods, services, discounts, or purchases;

(B) digital units that can be redeemed for goods, services, discounts, or purchases as part of a customer affinity or rewards program 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; or

(C) digital units used as part of prepaid cards.

(o) "Virtual currency business activity" means the conduct of any one of the following types of activities involving New York state or a New York state resident, provided, however, that the development and dissemination of software in and of itself shall not constitute virtual currency business activity:

(1) receiving virtual currency for transmission or transmitting virtual currency, except where the transaction is undertaken for non-financial purposes and does not involve the transfer of more than a nominal amount of virtual currency;

(2) storing, holding, or maintaining custody or control of virtual currency on behalf of others;

(3) buying and selling virtual currency as a customer business;

(4) performing exchange services as a customer business; or

(5) controlling, administering, or issuing a virtual currency.

§ 1002. License. (a) No person shall, without a license obtained from the superintendent as provided in this article, engage in any virtual currency business activity. Licensees are not authorized to exercise fiduciary powers, as defined by section one hundred of the banking law.

(b) Each licensee is prohibited from conducting any virtual currency business activity through an agent or agency arrangement when such agent is not a licensee.

(c) The following persons are exempt from the licensing requirements otherwise applicable under this article:

(1) persons that are chartered under the banking law and are approved by the superintendent to engage in virtual currency business activity; and

(2) merchants and consumers that utilize virtual currency solely for the purchase or sale of goods or services or for investment purposes.

§ 1003. Application. (a) Application for a license required under this article shall be in writing, under oath, and in a form prescribed by the superintendent, and shall contain the following:

(1) the exact name of the applicant, including any doing business as name, the form of organization, the date of organization, and the jurisdiction where organized or incorporated;

(2) a list of all of the applicant's affiliates and an organization chart illustrating the relationship among the applicant and such affiliates;

(3) a list of, and detailed biographical information for, each individual applicant and each director, principal officer, principal stockholder, and principal beneficiary of the applicant, as applicable, including such individual's name, physical and mailing addresses, and information and documentation regarding such individual's personal history, experience, and qualification, which shall be accompanied by a form of authority, executed by such individual, to release information to the department;

(4) a background report prepared by an independent investigatory agency acceptable to the superintendent for each individual applicant, and each principal officer, principal stockholder, and principal beneficiary of the applicant, as applicable;

(5) for each individual applicant, for each principal officer, principal stockholder, and principal beneficiary of the applicant, as applicable, and for all individuals to be employed by the applicant who have access to any customer funds, whether denominated in fiat currency or virtual currency:

(A) a set of completed fingerprints, or a receipt indicating the vendor, where such vendor is deemed acceptable by the superintendent, at which, and the date when, such fingerprints were taken, for submission to the division of criminal justice services and the federal bureau of investigation;

(B) if applicable, such processing fees as prescribed by the superintendent; and

(C) two portrait-style photographs of the individual measuring not more than two inches by two inches;

(6) an organization chart of the applicant and its management structure, including its principal officers or senior management, indicating lines of authority and the allocation of duties among its principal officers or senior management;

(7) a current financial statement for the applicant and each principal officer, principal stockholder, and principal beneficiary of the applicant, as applicable, and a projected balance sheet and income statement for the following year of the applicant's operation;

(8) a description of the proposed, current, and historical business of the applicant, including detail on the products and services provided and to be provided, all associated website addresses, the jurisdictions in which the applicant is engaged in business, the principal place of business, the primary market of operation, the projected customer base, any specific marketing targets, and the physical address of any operation in New York state;

(9) details of all banking arrangements;

(10) all written policies and procedures required by, or related to, the requirements of this article;

(11) an affidavit describing any pending or threatened administrative, civil, or criminal action, litigation, or proceeding before any governmental agency, court, or arbitration tribunal against the applicant or any of its directors, principal officers, principal stockholders, and principal beneficiaries, as applicable, including the names of the parties, the nature of the proceeding, and the current status of the proceeding;

(12) verification from the department of taxation and finance that the applicant is compliant with all New York state tax obligations in a form acceptable to the superintendent;

(13) if applicable, a copy of any insurance policies maintained for the benefit of the applicant, its directors or officers, or its customers;

(14) an explanation of the methodology used to calculate the value of virtual currency in fiat currency; and

(15) such other additional information as the superintendent may require.

(b) As part of an application under subsection (a) of this section, the applicant shall demonstrate that it will be compliant with all of the requirements of this article upon licensing.

(c) (1) Notwithstanding subsection (b) of this section, the superintendent may in the superintendent's sole discretion and consistent with the purposes and intent of this article and any other provisions of this chapter, approve an application by granting a conditional license.

(2) A conditional license may be issued to an applicant that does not satisfy all regulatory requirements upon licensing.

(3) A licensee that holds a conditional license may be subject to heightened review, whether in regard to the scope and frequency of examination or otherwise.

(4) Unless the superintendent removes the conditional status of or renews a conditional license, such license shall expire two years after its date of issuance.

(A) The superintendent may in the superintendent's sole discretion and consistent with the purposes and intent of this article and any other provisions of this chapter:

(i) renew a conditional license for an additional length of time; or

(ii) remove the conditional status from a conditional license.

(5) A conditional license may be suspended or revoked pursuant to section one thousand five of this article.

(6) A conditional license may impose any reasonable condition or conditions, as determined by the superintendent in the superintendent's sole discretion.

(7) The superintendent may remove any condition or conditions from a conditional license that has been issued.

(8) In determining whether to issue a conditional license, renew or remove the conditional status of a conditional license, or impose or remove any specific conditions on a conditional license, the superintendent may consider any relevant factor or factors. Relevant factors may include but are not limited to:

(A) the nature and scope of the applicant's or licensee's business;

(B) the anticipated volume of business to be transacted by the applicant or licensee;

(C) the nature and scope of the risks that the applicant's or licensee's business presents to consumers, virtual currency markets, financial markets, and the general public;

(D) any measures which the applicant or licensee has taken to limit or mitigate the risks its business presents;

(E) whether the applicant or licensee is registered with the financial crimes enforcement network within the United States department of the treasury;

(F) whether the applicant or licensee is licensed, registered, or otherwise authorized by any governmental or self-regulatory authority to engage in financial services or other business activities;

(G) the applicant's or licensee's financial services or other business experience; and

(H) the licensee's history as a holder of a conditional license issued by the superintendent.

(d) The superintendent may authorize that any application for a license under this article, or any other submission required by this article, be made or executed by electronic means.

§ 1004. Application fees. As part of an application for licensing under this article, each applicant shall submit an initial application fee, in the amount of five thousand dollars, to cover the cost of processing the application, reviewing application materials, and investigating the financial condition and responsibility, financial and business experience, and character and general fitness of the applicant. If the application is denied or withdrawn, such fee shall not be refunded. Each licensee may be required to pay fees to the department to process additional applications related to the license.

§ 1005. Action by superintendent. (a) Upon the filing of an application for licensing under this article, payment of the required fee, and demonstration by the applicant of its ability to comply with the provisions of this article upon licensing, the superintendent shall investigate the financial condition and responsibility, financial and business experience, and character and general fitness of such applicant. If the superintendent finds such qualities warrant the belief that such applicant's business will be conducted honestly, fairly, equitably, carefully, and efficiently within the purposes and intent of this article, and in a manner commanding the confidence and trust of the community, the superintendent shall advise such applicant in writing of the superintendent's approval of such application, and shall issue to such applicant a license to conduct virtual currency business activity, subject to the provisions of this article and such other conditions as the superintendent shall deem appropriate; or the superintendent may deny the application.

(b) The superintendent shall approve or deny every application for a license under this article within ninety days from the filing of an application deemed by the superintendent to be complete. Such period of ninety days may be extended at the discretion of the superintendent for such additional reasonable period of time as may be required to enable compliance with this article. A license issued pursuant to this article shall remain in full force and effect until it is surrendered by the licensee, is revoked or suspended, or expires as provided in this article.

(c) The superintendent may suspend or revoke a license issued under this article on any ground on which the superintendent might refuse to issue an original license, for a violation of any provision of this article, for good cause shown, or for failure of the licensee to pay a judgment, recovered in any court, within or without this state, by a claimant or creditor in an action arising out of, or relating to, the licensee's virtual currency business activity, within thirty days after the judgment becomes final or within thirty days after expiration or termination of a stay of execution thereon; provided, however, that if execution on the judgment is stayed, by court order or operation of law or otherwise, then proceedings to suspend or revoke the license, for failure of the licensee to pay such judgment, shall not be commenced by the superintendent during the time of such stay, and for thirty days thereafter. For the purposes of this subsection, "good cause" shall exist when a licensee has defaulted or is likely to default in perform-

ing its obligations or financial engagements or engages in unlawful, dishonest, wrongful, or inequitable conduct or practices that may cause harm to the public.

(d) No license issued under this article shall be revoked or suspended except after a hearing thereon. The superintendent shall give a licensee no less than ten days' written notice of the time and place of such hearing by registered or certified mail addressed to the principal place of business of such licensee. Any order of the superintendent suspending or revoking such license shall state the grounds upon which it is based and be sent by registered or certified mail to the licensee at its principal place of business as shown in the records of the department.

(e) The superintendent may, when deemed by the superintendent to be in the public interest, seek a preliminary injunction to restrain a licensee from continuing to perform acts that violate any provision of this article or of this chapter, the banking law, or the insurance law.

(f) Nothing in this article shall be construed as limiting any power granted to the superintendent under any other provision of this chapter, the banking law, or the insurance law, including any power to investigate possible violations of law, rule, or regulation or to impose penalties or take any other action against any person for violation of such laws, rules, or regulations.

§ 1006. Compliance. (a) Each licensee is required to comply with all applicable federal and state laws, rules, and regulations.

(b) Each licensee shall designate a qualified individual or individuals responsible for coordinating and monitoring compliance with this article and all other applicable federal and state laws, rules, and regulations.

(c) Each licensee shall maintain and enforce written compliance policies, including policies with respect to anti-fraud, anti-money laundering, cyber security, privacy and information security, and any other policy required under this article, which shall be reviewed and approved by such licensee's board of directors or an equivalent governing body.

§ 1007. Capital requirements. (a) Each licensee shall maintain at all times such capital in an amount and form as the superintendent determines is sufficient to ensure the financial integrity of such licensee and its ongoing operations based on an assessment of the specific risks applicable to each licensee. In determining the minimum amount of capital that shall be maintained by a licensee, the superintendent may consider a variety of factors, including but not limited to:

(1) the composition of such licensee's total assets, including the position, size, liquidity, risk exposure, and price volatility of each type of asset;

(2) the composition of such licensee's total liabilities, including the size and repayment timing of each type of liability;

(3) the actual and expected volume of such licensee's virtual currency business activity;

(4) whether such licensee is already licensed or regulated by the superintendent under this chapter, the banking law, or the insurance law, or otherwise subject to such laws as a provider of a financial product or service, and whether such licensee is in good standing in such capacity;

(5) the amount of leverage employed by such licensee;

(6) the liquidity position of such licensee;

(7) the financial protection that such licensee provides for its customers through its trust account or bond;

(8) the types of entities to be serviced by such licensee; and

(9) the types of products or services to be offered by such licensee.

(b) Each licensee shall hold capital required to be maintained in accordance with this section in the form of cash, virtual currency, or high-quality, highly liquid, investment-grade assets, in such proportions as are acceptable to the superintendent.

§ 1008. Custody and protection of customer assets. (a) Each licensee shall maintain a surety bond or trust account in United States dollars for the benefit of its customers in such form and amount as is acceptable to the superintendent for the protection of such licensee's customers. To the extent a licensee maintains a trust account in accordance with this section, such trust account shall be maintained with a qualified custodian.

(b) To the extent a licensee stores, holds, or maintains custody or control of virtual currency on behalf of another person, such licensee shall hold virtual currency of the same type and amount as that which is owed or obligated to such other person.

(c) Each licensee is prohibited from selling, transferring, assigning, lending, hypothecating, pledging, or otherwise using or encumbering assets, including virtual currency, stored, held, or maintained by, or under the custody or control of, such licensee on behalf of another person except for the sale, transfer, or assignment of such assets at the direction of such other person.

§ 1009. Material change to business. (a) Each licensee shall obtain the superintendent's prior written approval for any plan or proposal to introduce or offer a materially new product, service, or activity, or to make a material change to an existing product, service, or activity, involving New York state or New York state residents.

(b) For the purposes of this section, a "materially new product, service, or activity" or a "material change" may occur where:

(1) the proposed new product, service, or activity, or the proposed change may raise a legal or regulatory issue about the permissibility of such product, service, or activity;

(2) the proposed new product, service, or activity, or the proposed change may raise safety and soundness or operational concerns; or

(3) a change is proposed to an existing product, service, or activity that may cause such product, service, or activity to be materially different from that previously listed on the application for licensing by the superintendent.

(c) The licensee shall submit a written plan describing the proposed materially new product, service, or activity, or the proposed material change, including a detailed description of the business operations, compliance policies, and the impact on the overall business of the licensee, as well as such other information as requested by the superintendent.

(d) If a licensee has any questions about the materiality of any proposed new product, service, or activity, or of any proposed change, such licensee may seek clarification from the department prior to introducing or offering such new product, service, or activity or making such change.

(e) The superintendent shall promptly review a request by a licensee to approve a materially new product, service, or activity provided by a licensee pursuant to subsection (a) of this section, and approve or disapprove such proposed product, service, or activity within one hundred eighty days of receiving such request. An application shall be promulgated by the department to facilitate such requests. Any denial of such request for approval by a proposed trust company shall be review-

able upon application before a judge in a court of competent jurisdiction. Any request to approve a materially new product, service, or activity made pursuant to this subdivision which is not approved or disapproved by the superintendent within one hundred eighty days of receipt of such request shall be deemed approved.

(f) Provided that a request by a limited purpose trust company for approval of a materially new product, service, or activity has been granted by the superintendent or deemed approved, no further approval shall be required to provide such product, service, or activity to additional customers, whether such customers reside in or outside of New York state.

§ 1010. Change of control; mergers and acquisitions. (a) No action shall be taken, except with the prior written approval of the superintendent, that may result in a change of control of a licensee.

(1) Prior to any change of control, the person seeking to acquire control of a licensee shall submit a written application to the superintendent in a form and substance acceptable to the superintendent, including but not limited to detailed information about the applicant and all directors, principal officers, principal stockholders, and principal beneficiaries of the applicant, as applicable.

(2) For purposes of this section, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a licensee whether through the ownership of stock of such licensee, the stock of any person that possesses such power, or otherwise. Control shall be presumed to exist if a person, directly or indirectly, owns, controls, or holds with power to vote ten percent or more of the voting stock of a licensee or of any person that owns, controls, or holds with power to vote ten percent or more of the voting stock of such licensee. No person shall be deemed to control another person solely by reason of such person's being an officer or director of such other person.

(3) The superintendent may determine upon application that any person does not or will not upon the taking of some proposed action control another person. Such determination shall be made within thirty days or such further period as the superintendent may prescribe. The filing of an application pursuant to this subsection in good faith by any person shall relieve the applicant from any obligation or liability imposed by this section with respect to the subject of such application until the superintendent has acted upon such application. The superintendent may revoke or modify the superintendent's determination, after notice and opportunity to be heard, whenever in the superintendent's judgment revocation or modification is consistent with this article. The superintendent may consider the following factors in making such a determination:

(A) whether such person's purchase of common stock is made solely for investment purposes and not to acquire control over the licensee;

(B) whether such person could direct, or cause the direction of, the management or policies of the licensee;

(C) whether such person could propose directors in opposition to nominees proposed by the management or board of directors of the licensee;

(D) whether such person could seek or accept representation on the board of directors of the licensee;

(E) whether such person could solicit or participate in soliciting proxy votes with respect to any matter presented to the shareholders of the licensee; or

(F) any other factor that indicates such person would or would not exercise control of the licensee.

(4) The superintendent shall approve or deny every application for a change of control of a licensee hereunder within one hundred twenty days from the filing of an application deemed by the superintendent to be complete. Such period of one hundred twenty days may be extended by the superintendent, for good cause shown, for such additional reasonable period of time as may be required to enable compliance with the requirements and conditions of this article.

(5) In determining whether to approve a proposed change of control, the superintendent shall, among other factors, take into consideration the public interest and the needs and convenience of the public.

(b) No action shall be taken, except with the prior written approval of the superintendent, that may result in a merger or acquisition of all or a substantial part of the assets of a licensee.

(1) Prior to any such merger or acquisition, an application containing a written plan of merger or acquisition shall be submitted to the superintendent by the entities that are to merge or by the acquiring entity, as applicable. Such plan shall be in form and substance satisfactory to the superintendent, and shall specify each entity to be merged, the surviving entity, or the entity acquiring all or substantially all of the assets of the licensee, as applicable, and shall describe the terms and conditions of the merger or acquisition and the mode of carrying it into effect.

(2) The superintendent shall approve or deny a proposed merger or a proposed acquisition of all or a substantial part of the assets of a licensee within one hundred twenty days after the filing of an application that contains a written plan of merger or acquisition and is deemed by the superintendent to be complete. Such period of one hundred twenty days may be extended by the superintendent, for good cause shown, for such additional reasonable period of time as may be required to enable compliance with the requirements and conditions of this article.

(3) In determining whether to so approve a proposed merger or acquisition, the superintendent shall, among other factors, take into consideration the public interest and the needs and convenience of the public.

§ 1011. Books and records. (a) Each licensee shall, in connection with its virtual currency business activity, make, keep, and preserve all of its books and records in their original form or native file format for a period of at least seven years from the date of their creation and in a condition that will allow the superintendent to determine whether such licensee is complying with all applicable laws, rules, and regulations. The books and records maintained by each licensee shall, without limitation, include:

(1) for each transaction, the amount, date, and precise time of the transaction, any payment instructions, the total amount of fees and charges received and paid to, by, or on behalf of the licensee, and the names, account numbers, and physical addresses of:

(A) the party or parties to the transaction that are customers or accountholders of the licensee; and

(B) to the extent practicable, any other parties to the transaction;

(2) a general ledger containing all asset, liability, ownership equity, income, and expense accounts;

(3) bank statements and bank reconciliation records;

(4) any statements or valuations sent or provided to customers and counterparties;

(5) records or minutes of meetings of the board of directors or an equivalent governing body;

(6) records demonstrating compliance with applicable state and federal anti-money laundering laws, rules, and regulations, including customer identification and verification documents, records linking customers to their respective accounts and balances, and a record of all compliance breaches;

(7) communications and documentation related to investigations of customer complaints and transaction error resolution or concerning facts giving rise to possible violations of laws, rules, or regulations;

(8) all other records required to be maintained in accordance with this article; and

(9) all other records as the superintendent may require.

(b) Each licensee shall provide the department, upon request, immediate access to all facilities, books, records, documents, or other information maintained by such licensee or its affiliates, wherever located.

(c) Records of non-completed, outstanding, or inactive virtual currency accounts or transactions shall be maintained for at least five years after the time when any such virtual currency has been deemed, under the abandoned property law, to be abandoned property.

§ 1012. Examinations. (a) Each licensee shall permit and assist the superintendent to examine such licensee whenever in the superintendent's judgment such examination is necessary or advisable, but not less than once every two calendar years, including, without limitation, to determine:

(1) the financial condition of the licensee;

(2) the safety and soundness of the conduct of its business;

(3) the policies of its management;

(4) whether the licensee has complied with the requirements of laws, rules, and regulations; and

(5) such other matters as the superintendent may determine, including, but not limited to, any activities of the licensee outside the state of New York if in the opinion of the superintendent such activities may affect the licensee's virtual currency business activity.

(b) Each licensee shall permit and assist the superintendent at any time to examine all of such licensee's books, records, accounts, documents, and other information.

(c) Each licensee shall permit and assist the superintendent to make such special investigations as the superintendent shall deem necessary to determine whether such licensee has violated any provision of the applicable laws, rules, or regulations and to the extent necessary shall permit and assist the superintendent to examine all relevant facilities, books, records, accounts, documents, and other information.

(d) For the purpose of determining the financial condition of the licensee, its safety and soundness practices, or whether it has complied with the requirements of laws, rules, and regulations, the licensee shall permit and assist the superintendent, when in the superintendent's judgment it is necessary or advisable, to examine an affiliate of the licensee.

§ 1013. Reports and financial disclosures. (a) Each licensee shall submit to the superintendent quarterly financial statements within forty-five days following the close of such licensee's fiscal quarter in the form, and containing such information, as the superintendent shall prescribe, including, without limitation, the following information:

(1) a statement of the financial condition of such licensee, including a balance sheet, income statement, statement of comprehensive income, statement of change in ownership equity, cash flow statement, and statement of net liquid assets;

(2) a statement demonstrating compliance with any financial requirements established under this article;

(3) financial projections and strategic business plans;

(4) a list of all off-balance sheet items;

(5) a chart of accounts, including a description of each account; and

(6) a report of permissible investments by such licensee as permitted under this article.

(b) Each licensee shall submit audited annual financial statements, together with an opinion and an attestation by an independent certified public accountant regarding the effectiveness of such licensee's internal control structure. All such annual financial statements shall include:

(1) a statement of management's responsibilities for preparing the licensee's annual financial statements, establishing and maintaining adequate internal controls and procedures for financial reporting, and complying with all applicable laws, rules, and regulations;

(2) an assessment by management of the licensee's compliance with such applicable laws, rules, and regulations during the fiscal year covered by the financial statements; and

(3) certification of the financial statements by an officer or director of the licensee attesting to the truth and correctness of such statements.

(c) Each licensee shall notify the superintendent in writing of any criminal action or insolvency proceeding against such licensee or any of its directors, principal stockholders, principal officers, and principal beneficiaries, as applicable, immediately after the commencement of any such action or proceeding.

(d) Each licensee shall notify the superintendent in writing of any proposed change to the methodology used to calculate the value of virtual currency in fiat currency that was submitted to the department in accordance with section one thousand three of this article.

(e) Each licensee shall submit a report to the superintendent immediately upon the discovery of any violation or breach of law, rule, or regulation related to the conduct of activity licensed under this article.

(f) Each licensee shall make additional special reports to the superintendent, at such times and in such form, as the superintendent may request.

§ 1014. Anti-money laundering program. (a) All values in United States dollars referenced in this section shall be calculated using the methodology to determine the value of virtual currency in fiat currency provided to the department under this article.

(b) Each licensee shall conduct an initial risk assessment that shall consider legal, compliance, financial, and reputational risks associated with such licensee's activities, services, customers, counterparties, and geographic location and shall establish, maintain, and enforce an anti-money laundering program based thereon. Such licensee shall conduct additional assessments on an annual basis, or more frequently as risks change, and shall modify its anti-money laundering program as appropriate to reflect any such changes.

(c) The anti-money laundering program established under this section shall, at a minimum:

(1) provide for a system of internal controls, policies, and procedures designed to ensure ongoing compliance with all applicable anti-money laundering laws, rules, and regulations;

(2) provide for independent testing for compliance with, and the effectiveness of, the anti-money laundering program established under this section to be conducted by qualified internal personnel of the licensee, who are not responsible for the design, installation, maintenance, or operation of the anti-money laundering program established under this section, or the policies and procedures that guide its operation, or a qualified external party, at least annually, the findings of which shall be summarized in a written report submitted to the superintendent;

(3) designate a qualified individual or individuals in compliance responsible for coordinating and monitoring day-to-day compliance with the anti-money laundering program established under this section; and

(4) provide ongoing training for appropriate personnel to ensure they have a fulsome understanding of anti-money laundering requirements and to enable them to identify transactions required to be reported and maintain records required to be kept in accordance with this article.

(d) The anti-money laundering program established under this section shall include a written anti-money laundering policy reviewed and approved by the licensee's board of directors or equivalent governing body.

(e) Each licensee, as part of its anti-money laundering program established under this section, shall maintain records and make reports in the manner set forth below.

(1) Each licensee shall maintain the following information for all virtual currency transactions involving the payment, receipt, exchange, conversion, purchase, sale, transfer, or transmission of virtual currency:

(A) the identity and physical addresses of the party or parties to the transaction that are customers or accountholders of the licensee and, to the extent practicable, any other parties to the transaction;

(B) the amount or value of the transaction, including in what denomination purchased, sold, or transferred;

(C) the method of payment;

(D) the date or dates on which the transaction was initiated and completed; and

(E) a description of the transaction.

(2) When a licensee is involved in a virtual currency to virtual currency transaction or series of virtual currency to virtual currency transactions that are not subject to currency transaction reporting requirements under federal law, including transactions for the payment, receipt, exchange, conversion, purchase, sale, transfer, or transmission of virtual currency, in an aggregate amount exceeding the United States dollar value of ten thousand dollars in one day, by one person, such licensee shall notify the department, in a manner prescribed by the superintendent, within twenty-four hours.

(3) Each licensee shall monitor for transactions that might signify money laundering, tax evasion, or other illegal or criminal activity.

(A) Each licensee shall file suspicious activity reports in accordance with applicable federal laws, rules, and regulations.

(B) Each licensee that is not subject to suspicious activity reporting requirements under federal law shall file with the superintendent, in a form prescribed by the superintendent, reports of transactions that indicate a possible violation of law or regulation within thirty days from the detection of the facts that constitute a need for filing. Continuing suspicious activity shall be reviewed on an ongoing basis and

a suspicious activity report shall be filed within one hundred twenty days of the last filing describing continuing activity.

(f) No licensee shall structure transactions, or assist in the structuring of transactions, to evade reporting requirements under this article.

(g) No licensee shall engage in, facilitate, or knowingly allow the transfer or transmission of virtual currency when such action will obfuscate or conceal the identity of an individual customer or counterparty. Nothing in this section, however, shall be construed to require a licensee to make available to the general public the fact or nature of the movement of virtual currency by individual customers or counterparties.

(h) Each licensee shall also maintain, as part of its anti-money laundering program established under this section, a customer identification program.

(1) When opening an account for, or establishing a service relationship with, a customer, each licensee shall, at a minimum, verify such customer's identity, to the extent reasonable and practicable, maintain records of the information used to verify such identity, including name, physical address, and other identifying information, and check customers against the specially designated nationals list maintained by the office of foreign assets control, a part of the United States department of the treasury. Enhanced due diligence may be required based on additional factors, such as for high-risk customers, high-volume accounts, or accounts on which a suspicious activity report has been filed.

(2) Licensees that maintain accounts for non-U.S. persons and non-U.S. licensees shall establish enhanced due diligence policies, procedures, and controls to detect money laundering, including assessing the risk presented by such accounts based on the nature of the foreign business, the type and purpose of the activity, and the anti-money laundering and supervisory regime of the foreign jurisdiction.

(3) Licensees are prohibited from maintaining relationships of any type in connection with their virtual currency business activity with entities that do not have a physical presence in any country.

(4) Each licensee shall require verification of the identity of any accountholder initiating a transaction with a value greater than three thousand dollars.

(i) Each licensee shall demonstrate that it has risk-based policies, procedures, and practices to ensure, to the maximum extent practicable, compliance with applicable regulations issued by the office of foreign assets control.

(j) Each licensee shall have in place appropriate policies and procedures to block or reject specific or impermissible transactions that violate federal or state laws, rules, or regulations.

(k) The individual or individuals designated by the licensee, pursuant to paragraph three of subsection (c) of this section, shall be responsible for day-to-day operations of the anti-money laundering program established under this section and shall, at a minimum:

(1) monitor changes in anti-money laundering laws, including updated office of foreign assets control and specially designated nationals lists, and update the program accordingly;

(2) maintain all records required to be maintained under this section;

(3) review all filings required under this section before submission;

(4) escalate matters to the board of directors, senior management, or appropriate governing body and seek outside counsel, as appropriate;

(5) provide periodic reporting, at least annually, to the board of directors, senior management, or appropriate governing body; and

(6) ensure compliance with relevant training requirements.

§ 1015. Cyber security program. (a) Each licensee shall establish and maintain an effective cyber security program to ensure the availability and functionality of such licensee's electronic systems and to protect such systems and any sensitive data stored on such systems from unauthorized access, use, or tampering. Such cyber security program shall be designed to perform the following five core cyber security functions:

(1) identify internal and external cyber risks by, at a minimum, identifying the information stored on the licensee's systems, the sensitivity of such information, and how and by whom such information may be accessed;

(2) protect the licensee's electronic systems, and the information stored on such systems, from unauthorized access, use, or other malicious acts through the use of defensive infrastructure and the implementation of policies and procedures;

(3) detect systems intrusions, data breaches, unauthorized access to systems or information, malware, and other cyber security events;

(4) respond to detected cyber security events to mitigate any negative effects; and

(5) recover from cyber security events and restore normal operations and services.

(b) Each licensee shall implement a written cyber security policy setting forth such licensee's policies and procedures for the protection of its electronic systems and customer and counterparty data stored on such systems, which shall be reviewed and approved by such licensee's board of directors or equivalent governing body at least annually. Such cyber security policy shall address the following areas:

(1) information security;

(2) data governance and classification;

(3) access controls;

(4) business continuity and disaster recovery planning and resources;

(5) capacity and performance planning;

(6) systems operations and availability concerns;

(7) systems and network security;

(8) systems and application development and quality assurance;

(9) physical security and environmental controls;

(10) customer data privacy;

(11) vendor and third-party service provider management;

(12) monitoring and implementing changes to core protocols not directly controlled by the licensee, as applicable; and

(13) incident response.

(c) Each licensee shall designate a qualified employee to serve as such licensee's chief information security officer responsible for overseeing and implementing such licensee's cyber security program and enforcing its cyber security policy.

(d) Each licensee shall submit to the department a report, prepared by the chief information security officer and presented to such licensee's board of directors or equivalent governing body, at least annually, assessing the availability, functionality, and integrity of such licensee's electronic systems, identifying relevant cyber risks to such licensee, assessing such licensee's cyber security program, and proposing steps for the redress of any inadequacies identified therein.

(e) Each licensee's cyber security program shall, at a minimum, include audit functions as set forth below.

(1) Each licensee shall conduct penetration testing of its electronic systems, at least annually, and vulnerability assessment of such systems, at least quarterly.

(2) Each licensee shall maintain audit trail systems that:

(A) track and maintain data that allows for the complete and accurate reconstruction of all financial transactions and accounting;

(B) protect the integrity of data stored and maintained as part of the audit trail from alteration or tampering;

(C) protect the integrity of hardware from alteration or tampering, including by limiting electronic and physical access permissions to hardware and maintaining logs of physical access to hardware that allows for event reconstruction;

(D) log system events including, at minimum, access and alterations made to the audit trail systems by the systems or by an authorized user, and all system administrator functions performed on the systems; and

(E) maintain records produced as part of the audit trail in accordance with the recordkeeping requirements set forth in this article.

(f) Each licensee's cyber security program shall, at minimum, include written procedures, guidelines, and standards reasonably designed to ensure the security of all applications utilized by such licensee. All such procedures, guidelines, and standards shall be reviewed, assessed, and updated by such licensee's chief information security officer at least annually.

(g) Each licensee shall:

(1) employ cyber security personnel adequate to manage such licensee's cyber security risks and to perform the core cyber security functions specified in subsection (a) of this section;

(2) provide and require cyber security personnel to attend regular cyber security update and training sessions; and

(3) require key cyber security personnel to take steps to stay abreast of changing cyber security threats and countermeasures.

§ 1016. Business continuity and disaster recovery. (a) Each licensee shall establish and maintain a written business continuity and disaster recovery plan reasonably designed to ensure the availability and functionality of such licensee's services in the event of an emergency or other disruption to such licensee's normal business activities. Such business continuity and disaster recovery plan, at minimum, shall:

(1) identify documents, data, facilities, infrastructure, personnel, and competencies essential to the continued operations of the licensee's business;

(2) identify the supervisory personnel responsible for implementing each aspect of such business continuity and disaster recovery plan;

(3) include a plan to communicate with essential persons in the event of an emergency or other disruption to the operations of the licensee, including employees, counterparties, regulatory authorities, data and communication providers, disaster recovery specialists, and any other persons essential to the recovery of documentation and data and the resumption of operations;

(4) include procedures for the maintenance of back-up facilities, systems, and infrastructure as well as alternative staffing and other resources to enable the timely recovery of data and documentation and to resume operations as soon as reasonably possible following a disruption to normal business activities;

(5) include procedures for the back-up or copying, with sufficient frequency, of documents and data essential to the operations of the licensee and storing of such information off site; and

(6) identify third parties that are necessary to the continued operations of the licensee's business.

(b) Each licensee shall distribute a copy of the business continuity and disaster recovery plan, and any revisions thereto, to all relevant employees and shall maintain copies of the business continuity and disaster recovery plan at one or more accessible off-site locations.

(c) Each licensee shall provide relevant training to all employees responsible for implementing the business continuity and disaster recovery plan regarding their roles and responsibilities.

(d) Each licensee shall promptly notify the superintendent of any emergency or other disruption to its operations that may affect its ability to fulfill regulatory obligations or that may have a significant adverse effect on such licensee, its counterparties, or the market.

(e) The business continuity and disaster recovery plan shall be tested at least annually by qualified, independent internal personnel or a qualified third party, and revised accordingly.

§ 1017. Advertising and marketing. (a) No licensee engaged in virtual currency business activity shall advertise its products, services, or activities in New York state or to New York state residents without including the name of such licensee and the legend that such licensee is "licensed to engage in virtual currency business activity by the New York State Department of Financial Services".

(b) Each licensee shall maintain, for examination by the superintendent, all advertising and marketing materials for a period of at least seven years from the date of their creation, including but not limited to print media, internet media, including websites, radio and television advertising, road show materials, presentations, and brochures. Each licensee shall maintain hard copy, website captures of material changes to internet advertising and marketing, and audio and video scripts of its advertising and marketing materials, as applicable.

(c) In all advertising and marketing materials, each licensee shall comply with all disclosure requirements under federal and state laws, rules, and regulations.

(d) In all advertising and marketing materials, no licensee, and no person or entity acting on its behalf, shall, directly or by implication, make any false, misleading, or deceptive representations or omissions.

§ 1018. Consumer protection. (a) As part of establishing a relationship with a customer, and prior to entering into an initial transaction for, on behalf of, or with such customer, each licensee shall disclose in clear, conspicuous, and legible writing in the English language and in any other predominant language spoken by the customers of such licensee, all material risks associated with its products, services, and activities and virtual currency generally, including, at a minimum, the following:

(1) virtual currency is not legal tender, is not backed by the government, and accounts and value balances are not subject to federal deposit insurance corporation or securities investor protection corporation protections;

(2) legislative and regulatory changes or actions at the state, federal, or international level may adversely affect the use, transfer, exchange, and value of virtual currency;

(3) transactions in virtual currency may be irreversible, and, accordingly, losses due to fraudulent or accidental transactions may not be recoverable;

(4) some virtual currency transactions shall be deemed to be made when recorded on a public ledger, which is not necessarily the date or time that the customer initiates the transaction;

(5) the value of virtual currency may be derived from the continued willingness of market participants to exchange fiat currency for virtual currency, which may result in the potential for permanent and total loss of value of a particular virtual currency should the market for such virtual currency disappear;

(6) there is no assurance that a person who accepts a virtual currency as payment on a certain date will continue to do so in the future;

(7) the volatility and unpredictability of the price of virtual currency relative to fiat currency may result in significant loss over a short period of time;

(8) the nature of virtual currency may lead to an increased risk of fraud or cyber attack;

(9) the nature of virtual currency means that any technological difficulties experienced by the licensee may prevent the access or use of a customer's virtual currency; and

(10) any bond or trust account maintained by the licensee for the benefit of its customers may not be sufficient to cover all losses incurred by customers.

(b) When opening an account for a new customer, and prior to entering into an initial transaction for, on behalf of, or with such customer, each licensee shall disclose in clear, conspicuous, and legible writing in the English language and in any other predominant language spoken by the customers of such licensee, all relevant terms and conditions associated with its products, services, and activities and virtual currency generally, including, at a minimum, the following, as applicable:

(1) the customer's liability for unauthorized virtual currency transactions;

(2) the customer's right to stop payment of a preauthorized virtual currency transfer and the procedure to initiate such a stop-payment order;

(3) under what circumstances the licensee will, absent a court or government order, disclose information concerning the customer's account to third parties;

(4) the customer's right to receive periodic account statements and valuations from the licensee;

(5) the customer's right to receive a receipt, trade ticket, or other evidence of a transaction;

(6) the customer's right to prior notice of a change in the licensee's rules or policies; and

(7) such other disclosures as are customarily given in connection with the opening of customer accounts.

(c) Prior to each transaction in virtual currency, for, on behalf of, or with a customer, each licensee shall furnish to each such customer a written disclosure in clear, conspicuous, and legible writing in the English language and in any other predominant language spoken by the customers of such licensee, containing the terms and conditions of the transaction, which shall include, at a minimum, to the extent applicable:

(1) the amount of the transaction;

(2) any fees, expenses, and charges borne by the customer, including applicable exchange rates;

(3) the type and nature of the virtual currency transaction;

(4) a warning that once executed the transaction may not be undone, if applicable; and

(5) such other disclosures as are customarily given in connection with a transaction of this nature.

(d) Each licensee shall ensure that all disclosures required in this section are acknowledged as received by customers.

(e) Upon completion of any transaction, each licensee shall provide to a customer a receipt containing the following information:

(1) the name and contact information of such licensee, including a telephone number established by such licensee to answer questions and register complaints;

(2) the type, value, date, and precise time of the transaction;

(3) the fee charged;

(4) the exchange rate, if applicable;

(5) a statement of the liability of the licensee for non-delivery or delayed delivery;

(6) a statement of the refund policy of the licensee; and

(7) any additional information the superintendent may require.

(f) Each licensee shall make available to the department, upon request, the form of the receipts it is required to provide to customers in accordance with subsection (e) of this section.

(g) Licensees are prohibited from engaging in fraudulent activity. Additionally, each licensee shall take reasonable steps to detect and prevent fraud, including by establishing and maintaining a written anti-fraud policy. Such anti-fraud policy shall, at a minimum, include:

(1) the identification and assessment of fraud-related risk areas;

(2) procedures and controls to protect against identified risks;

(3) allocation of responsibility for monitoring risks; and

(4) procedures for the periodic evaluation and revision of the anti-fraud procedures, controls, and monitoring mechanisms.

§ 1019. Complaints. (a) Each licensee shall establish and maintain written policies and procedures to fairly and timely resolve complaints.

(b) Each licensee shall provide, in a clear and conspicuous manner, on its website or websites, in all physical locations, and in any other location as the superintendent may prescribe, the following disclosures:

(1) such licensee's mailing address, email address, and telephone number for the receipt of complaints;

(2) a statement that the complainant may also bring such complainant's complaint to the attention of the department;

(3) the department's mailing address, website, and telephone number; and

(4) such other information as the superintendent may require.

(c) Each licensee shall report to the superintendent any change in such licensee's complaint policies or procedures within seven days.

§ 1020. Transitional period. A person who was engaging in virtual currency business activity prior to the effective date of this article shall apply for a license in accordance with this article within forty-five days of the effective date of this article. A person who was engaging in virtual currency business activity prior to the effective date of this article and applies for a license within such forty-five day time period shall be deemed in compliance with the licensure requirements of this article until such person has been notified by the superintendent that such person's application for a license has been denied. Upon notification of the denial of an application for a license, such person shall immediately cease operating in New York and doing business with New York state residents. Any person engaged in virtual currency busi-

ness activity that fails to submit an application for a license within forty-five days of the effective date of this article shall be deemed to be conducting unlicensed virtual currency business activity.

§ 1021. Severability. If any provision of this article or the application thereof to any person or circumstance is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this article or the application thereof to other persons or circumstances.

§ 2. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.