

New York State Department of Financial Services Eases Backlog and Approves More BitLicense Applications

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On June 14, 2018, the New York State Department of Financial Services (the “DFS”) [announced](#) that the agency granted a virtual currency license (or “BitLicense”) to bitcoin wallet and vault provider Xapo, Inc., and authorized the blockchain financial services company Paxos Trust Company LLC to expand their business to offer exchange and custodial services to cryptoassets beyond bitcoin. Days later, the DFS [announced](#) that it had approved the BitLicense application of financial services and mobile payment provider Square, Inc. (which already possessed a state money transmitter license and whose Cash App offers a method to trade bitcoin). These developments followed last month’s approval of Gemini Trust Company to [provide additional virtual currency products and services](#) (including custodial services and trading of Zcash, Litecoin and Bitcoin Cash). With the latest approval of Square, the DFS has granted a total of nine virtual currency charters or licenses.

The BitLicense regulation has received a fair amount of criticism over the last several years. Commentators have cited bottlenecks in the BitLicense application process and industry players have criticized the onerous [31-page BitLicense application](#) that has reportedly compelled some New York blockchain businesses to relocate (the so-called Bit-Exodus). Moreover, the DFS approvals arrive in the wake of a relatively active year in [blockchain-related legislation](#), as multiple states, such as Nevada and Wyoming, vie to establish themselves as business- and development-friendly blockchain and fintech jurisdictions. Given New York’s regulatory stance toward cryptoasset-based businesses is arguably stricter than those other states nudging their way into the blockchain/fintech space, these recent BitLicense approvals should be a welcome sight for market participants seeking to conduct business in New York or with New York residents.

In 2015, the DFS released its final [“BitLicense” rules](#), becoming the first state to promulgate a [comprehensive framework for regulating virtual currency-related businesses](#). The keystones of the regulations are consumer protection, anti-money laundering compliance and cybersecurity rules that are intended to place appropriate “guardrails” around the industry without “stifling beneficial innovation.” The BitLicense program requires those (a) engaging in virtual currency transmission, (b) storing, holding or maintaining custody or control of virtual currency on behalf of others, (c) buying and selling virtual currency as a customer business, (d) performing exchange services as a customer business, or (e) controlling, administering, or issuing a virtual currency, to pay an application fee and obtain a BitLicense.

The DFS has cited the regulation as fostering the maturation of the industry and engendering trust in those entities that have been granted the license, but the rules have multiple detractors, including some New York state legislators who are seeking to create a more crypto-friendly environment. For example, in the last legislative session, [a New York Assemblyman introduced proposals for four laws](#) which, if passed, would transform how the state interacts with and views virtual currencies and blockchain technology. Specifically, one bill, [NY A08783](#), would create a task force to analyze the impact of virtual currencies on the state’s financial markets, including a review of the BitLicense program. Later in the legislative session, the same Assemblyman introduced a bill, [NY A9899A](#), which would, among other things, would replace the BitLicense regulation with a less burdensome audit regime and [digital seal of approval](#), and also create a regulatory sandbox to test fintech products and services without a license. Both bills have been referred to committee.

With an “arms race” of sorts occurring among states angling to be the center of blockchain and fintech, we will likely see more state laws in the future spurring development of such technologies, and perhaps additional BitLicense approvals as New York attempts to balance consumer protection with business development.

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