

Department of Financial Services

Reports and Publications

IDENT ADRIENNE

A. HARRIS ANNOUNCES NEW PROPOSED VIRTUAL CURRENCY ASSESSMENT REGULATION

The Proposed Regulation Sets Forth Process for Department to Assess Operating Costs for Virtual Currency Businesses, On Par with Regulated Banking and Insurance Entities

Superintendent of Financial Services Adrienne A. Harris announced today that the New York State Department of Financial Services (DFS) has published for public comment a proposed regulation establishing how licensed virtual currency businesses would be assessed for costs of their supervision and examination.

The proposed regulation effectuates a provision in the New York State FY23 Budget giving DFS new authority to collect supervisory costs from licensed virtual currency businesses, similar to

other licensed financial institutions in the state. These regulations will allow the Department to continue adding top talent to its virtual currency regulatory team.

Today, DFS is the only entity in the world that has a robust, prudential regulatory framework specifically for virtual currency companies. DFS's regulation and subsequent guidance provides transparent and timely rules to ensure the safety and soundness of the entities we regulate, protect consumers, and root out financial crimes like money laundering and terrorist financing – from rigorous capitalization requirements, to strict reserving and redemption standards, the tailored cybersecurity and AML standards similar to those that apply to banks, and a prohibition on lending of customer assets for institutional profit. As the virtual currency industry evolves, DFS is leading by doing, and will remain committed to keeping New York the model for robust, forward-looking regulation. Today's actions help advance this important work.

“New York State has been regulating virtual currency companies since 2015 with a robust prudential framework. Through licensing, supervision and enforcement, we hold companies to the highest standards in the world. This assessment authority will allow the Department to continue building the team that is leading the nation with a suite of regulatory tools,” **said Superintendent Harris**. “The ability to collect supervisory costs will help the Department continue protecting consumers and ensuring the safety and soundness of this industry.”

Over the past few months, the Department has conducted in-depth research and met extensively with key stakeholders to inform the new proposed virtual currency assessment regulation, which only applies to entities licensed pursuant to 23 NYCRR Part 200. At the time that DFS's first-in-the-nation virtual currency regulation was adopted in 2015, the Financial Services Law did not include a provision for the assessment of operating costs, similar to Banking and Insurance Law. Entities licensed as a limited purpose trust company or a banking organization will continue to be assessed under 23 NYCRR Part 101.

The proposed regulation is subject to a 10-day preproposal comment period beginning today, followed by a 60-day comment period upon publication in the State Register. DFS looks forward to and appreciates receiving feedback to the proposed regulation during the comment period. The Department of Financial Services will then review all received comments and issue a revised proposal or a notice of adoption of the final regulation.

A copy of the proposed regulation can be found on the [DFS website](#).

**NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
23 NYCRR PART 102**

VIRTUAL CURRENCY LICENSEE ASSESSMENTS

I, Adrienne A. Harris, Superintendent of Financial Services, pursuant to the authority granted by Sections 102, 201, 202, 206, 301, and 302 of the Financial Services Law, do hereby promulgate Part 102 of Title 23 of the Official Compilation of Codes, Rules and Regulations of the State of New York, to take effect upon publication of the Notice of Adoption in the State Register, to read as follows:

(ALL OF THE FOLLOWING MATERIAL IS NEW)

§ 102.1 Background

§ 102.2 Definitions

§ 102.3 Billing and Assessment Process

§ 102.4 Computation of Assessment

§ 102.5 Penalties/Enforcement Actions

§ 102.6 Special Assessments

§ 102.1 Background.

In 2015, the Department of Financial Services (“Department”) adopted 23 NYCRR Part 200, which required persons engaged in virtual currency business activity, as defined in 23 NYCRR 200.2(q), to obtain a license, subject to certain exemptions, before engaging in such activity in New York. This licensing regime was created under the authority granted to the Department by the Financial Services Law (“FSL”).

Generally, the Department’s costs and expenses are charged to and paid by persons regulated by the Department. At the time that Part 200 was adopted, FSL section 206 provided that the costs and expenses of the Department would be respectively charged to and paid by the persons regulated by the Department pursuant to the Banking Law or the Insurance Law, with no provision made for the assessment of costs for persons regulated pursuant to the FSL. In 2022, the Laws of New York, Chapter 58, Part III, amended FSL Section 206 (a), as of June 30, 2022, to require the Department to assess the costs and expenses of regulating persons licensed pursuant to 23 NYCRR Part 200 (“Licensees”). FSL section 206 (a) now states: “[p]ersons regulated under [the FSL] that engage in ‘virtual currency business activity,’ as that term is defined by the department, shall be assessed by the superintendent for the operating expenses of the department that are solely attributable to regulating such persons....”

To effectuate the authority granted by the recent amendment of the FSL, this regulation sets forth the basis for allocating the Department’s costs and expenses among Licensees, and the process for making such assessments. This regulation only applies to Licensees, and the assessment only covers the costs and expenses associated with the Department’s oversight of each person’s virtual currency business activities. Accordingly, to the extent that a person is licensed to engage in virtual currency business activities under the FSL, and concurrently as a money transmitter pursuant to Article XIII-B of the Banking Law, such person will be billed separately for each license. To the extent that a person holds multiple licenses to

engage in virtual currency business activities pursuant to 23 NYCRR Part 200, such person will be billed separately for each license. Persons who engage in virtual currency business activities as a limited purpose trust company or a banking organization will continue to be assessed under 23 NYCRR Part 101. To such an extent that a person holds both a limited purpose trust charter under the Banking Law and a license pursuant to 23 NYCRR Part 200, such person will be billed separately for each charter and license.

§ 102.2 Definitions.

The following definitions apply in this Part:

(a) *Hourly Rate* means the average hourly salary and fringe benefit cost of the examiners and staff assigned to the supervision of Licensees plus a multiplier, as determined by the superintendent, representing a portion of the other operating overhead expenses of the Department.

(b) *Liability Basis* means the measurement tool used to assess 50% of the Supervisory Hours, as defined below, among Licensees. The Liability Basis is based on the total United States Dollar value of each Licensee's outstanding virtual currency liability averaged over the prior four quarter-end balances reported. Depending on the total virtual currency liability average, the Liability Basis for each Licensee will be categorized by size as small, medium, or large, resulting in an allocation, respectively, of 5%, 15%, and 30% of the Supervisory Hours.

(c) *Liability Basis Assessment* for an individual Licensee means the product of the Liability Basis Hours and the Hourly Rate.

(d) *Liability Basis Hours* means the Liability Basis share of either 5%, 15%, or 30% of the total Supervisory Hours, divided by the total number of Licensees that have the same Liability Basis share.

(e) *Licensee* means any person who is licensed pursuant to 23 NYCRR Part 200. The term Licensee shall only apply to the virtual currency business activities, as that term is defined in 23 NYCRR 200.2(q), of persons licensed pursuant to 23 NYCRR Part 200.

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

(g) *Regulatory Component* represents the cost of examining licensees. For an individual Licensee means the Total Operating Cost, as defined below, less the Supervisory Component divided by the total number of Licensees.

(h) *Supervisory Component* for an individual Licensee means the sum of its Transmission Volume Basis Assessment, as defined below, and its Liability Basis Assessment.

(i) *Supervisory Hours* means the total number of hours worked by staff attributable to the ongoing supervision of Licensees, including the monitoring of Licensees, the processing of license or material business changes, and responding to inquiries.

(j) *Total Operating Cost* means:

- (1) the sum of the total operating expenses of the Department that are solely attributable to its oversight of Licensees; and
- (2) the proportion deemed just and reasonable by the superintendent of the other operating overhead expenses of the Department which may be assessed against Licensees under FSL section 206(a).

(k) *Transmission Basis Hours* means the Transmission Volume Basis, as defined below, share of either 5%, 15%, or 30% of the total Supervisory Hours, divided by the total number of Licensees that have the same Transmission Volume Basis share.

(l) *Transmission Volume Basis* means the measurement tool used to allocate 50% of the Supervisory Hours among Licensees. The Transmission Volume Basis is based on the total number of virtual currency transmissions by each Licensee in New York for the prior calendar year. Depending on the total number of virtual currency transmissions, the Transmission Volume Basis for each Licensee will be categorized by size as small, medium, or large, resulting in an allocation, respectively, of 5%, 15%, and 30% of the Supervisory Hours.

(m) *Transmission Volume Basis Assessment* for an individual Licensee means the product of the Transmission Basis Hours and the Hourly Rate.

§ 102.3 Billing and Assessment Process.

The New York State fiscal year begins April 1 and ends March 31 of the following calendar year. Each Licensee subject to assessment pursuant to this Part is billed five times for a fiscal year: four quarterly assessments (each approximately 25 percent of the anticipated annual amount) based on the estimated budget to cover the Total Operating Cost at the time of the billing, and a final assessment (or true-up), based on the actual Total Operating Cost for the fiscal year. Any Licensee that is licensed for any part of a quarter shall be assessed for the full quarter. Such amounts shall be paid within 30 days of the date of such billing.

§ 102.4 Computation of Assessment.

The total annual assessment for a Licensee shall be the sum of its Supervisory Component and its Regulatory Component.

§ 102.5 Penalties/Enforcement Actions.

All Licensees shall be subject to all applicable penalties, including late fees and interest, provided for by the FSL, the State Finance Law or other applicable laws. Enforcement actions for nonpayment could include suspension, revocation, expiration or termination of a person's license or such other actions as the superintendent may deem appropriate

§ 102.6 Special Assessments.

When the superintendent shall determine that the expenses associated with a specific examination, investigation or review are best allocated solely to the individual Licensee or Licensees subject to such examination or investigation, rather than to all Licensees generally or any subgroup thereof, such expenses shall be billed separately as provided for in this subdivision. The time of each person associated with such examination or investigation shall be multiplied by the average costs of the examiners and specialists at their respective grade levels assigned to such examination or investigation, plus expenses for travel outside of New York, and the resulting amount shall be assessed separately to each such Licensee subject to such examination or investigation in such amounts as the superintendent shall deem appropriate. Alternatively, if another entity or person is selected to perform an examination, investigation or review of an individual Licensee or Licensees, the expenses associated with such examination, investigation and review shall be the amount of the contract for such services and such portion of the department's administrative expenses associated with such contract as the superintendent shall deem appropriate. The resulting amount shall be assessed separately to each such Licensee subject to such examination, investigation or investigation in such amounts as the superintendent shall deem appropriate. Such special assessments shall be billed within 180 days after the calendar quarter within which such expenses were incurred. Such amounts shall be paid within 30 days of the date of such billing. In making a determination to make a special assessment and to allocate such assessment between one or more Licensees, the superintendent shall include such factors as she or he shall deem appropriate, including, but not limited to: the significance of the examination to the conduct of business by a given Licensee or group of Licensees; the potential seriousness of any violations of law or regulation identified by, or under review in, such examination or investigation; and the extent to which a Licensee attempted to cover up or failed to disclose the existence of such violations.

DRAFT