

February 16, 2015

Conference of State Bank Supervisors  
Attention: Emerging Payments Task Force  
1129 20<sup>th</sup> Street NW, 9<sup>th</sup> Floor  
Washington, D.C. 20036

Dear Conference of State Bank Supervisors:

BitPay, Inc. (BitPay) appreciates the opportunity to comment on the Conference of State Bank Supervisors' (CSBS) Draft Model Regulatory Framework for state virtual currency regulatory regimes (Draft Framework).

### **Background of BitPay**

BitPay offers a processing service to merchants (Merchants) in order to facilitate their acceptance of bitcoin as a method of payment from their customers in a similar manner as a traditional merchant processor, but only for bitcoin-based payments (Processing Service). The Processing Service allows merchants to receive their settlements in either bitcoin or their local bank currency. BitPay does not have any contracts or relationships with consumers. Consumers' only interaction with the Processing Service is through a Merchant's website or point-of-sale system that has integrated the Processing Service. As BitPay offers no consumer-facing services, consumers cannot engage BitPay to remit bitcoins to others, buy or sell bitcoins for themselves, or store their bitcoins.

Given the open source nature of Bitcoin (the protocol), nothing would preclude a Merchant from accepting bitcoins directly from their customers, as there is no centralized network or administrator that establishes eligibility requirements in the same manner as, for example, the card associations such as Visa or MasterCard. However, BitPay's advanced software platform, coupled with our customer service, allows Merchants to more easily accept bitcoin as a form of payment without having to interact with the underlying Bitcoin protocol. As a similar comparison, a small business could use the SMTP (simple mail transfer protocol) and setup its own email account, or use the services of Gmail for its emailing needs.

### **Comments to Draft Framework**

BitPay understands that the CSBS desires to promote consistent state regulation of virtual currency activities and recognize the public interest in allowing these technologies to develop in a purposeful manner, providing clarity and certainty for implementation, and ensuring the stability of the larger financial marketplace<sup>1</sup>. As many players within the bitcoin ecosystem will provide comments, BitPay wishes to focus our comments on those set forth below to help strengthen the Draft Framework by i) ensuring states establish a level playing field for the virtual currency ecosystem, ii) minimizing requirements duplicative of existing federal laws, and iii) emphasizing the need for risk-based principles when states enact local regulations.

#### **I. Ensuring a Level Playing Field for the Virtual Currency Ecosystem**

BitPay supports the CSBS' focus on "activities-based regulation" that is technology-neutral and centers on licensable activities. With that context, most states already have money transmission laws that define transmission and exchanging and could be supplemented by

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<sup>1</sup> CSBS Policy on State Virtual Currency Regulation, December 16, 2014

clarifications to incorporate virtual currencies, similar to Texas's Supervisory Memorandum #1037 dated April 3, 2014. More specific to BitPay's activity of merchant processing and question #17 for public comment, some states have enacted payee-agent exemptions to existing money transmission regulations for policy reasons or to otherwise be consistent with the purpose of the statutes<sup>2</sup>. States should consider applying any exemptions applicable for non-virtual activities to virtual currency activities to ensure a level playing field.

## **II. Minimizing Requirements Duplicative of Existing Federal Laws**

Draft Framework #6 (Compliance and Bank Secrecy Act/Anti-Money Laundering) should be clarified to seamlessly incorporate existing FinCEN regulations for financial institutions, including money service businesses. States should continue to coordinate the sharing of information with FinCEN to avoid duplicative requirements and promote consistency in filing of Suspicious Activity Reports.

## **III. Enabling Risk-Based Principles when States Enact Local Regulations**

The emergence and opportunities of virtual currencies are in their early years, similar to the internet in the early 1990's. BitPay anticipates significant innovation of Bitcoin (the protocol, decentralized network, and payment system) in serving traditional use cases, such as validating ownership in real estate, stocks, bonds and even other digital units such as gaming or reward points. Furthermore, we are also excited about the possibilities of bitcoin (the digital unit that can be used as a currency) in assisting payments without interchange fees or chargebacks resulting from card fraud including counterfeits or lost and stolen activity. With that context, states should continue to take a risk-based approach when adopting local regulations. Specifically, states should determine if virtual currencies are within the definition of money, and/or money transmission or currency exchange. Similar to examiners conducting a risk assessment prior to inspecting a bank or money service business, states should conduct an internal risk assessment to determine whether changes to the definition and scope are necessary (given the respective state's objectives such as consumer protection). Given the nascent and evolving nature of the virtual currency ecosystem, states should continue to be flexible in adapting regulation that is risk-based and possibly accommodate a "no action" rule to enable innovation to grow.

We look forward to the CSBS' progression in developing the Draft Framework as well as the broader industry's comments.

Sincerely,

*Tim Byun*

Chief Compliance Officer

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<sup>2</sup> California - SEC. 3. Section 2010 of the Financial Code: "This division does not apply to the following: ... (l) A transaction in which the recipient of the money or other monetary value is an agent of the payee pursuant to a preexisting written contract and delivery of the money or other monetary value to the agent satisfies the payor's obligation to the payee."

New York - Banking Law 641.1: "1. No person shall engage in the business of selling or issuing checks, or engage in the business of receiving money for transmission or transmitting the same, without a license therefor obtained from the superintendent as provided in this article, nor shall any person engage in such business as an agent, except as an agent of a licensee or as agent of a payee;"