



Financial Services & Products ADVISORY ■

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New York State Department of Financial Services Outlines Prior Approval Process for Virtual Currency-Related Activity

On December 15, 2022, the New York State Department of Financial Services (NYDFS) issued an [Industry Letter](#) detailing the prior approval process for all New York banking organizations to engage in new or significantly different “virtual currency-related activity.” The Industry Letter relies upon an existing affirmative obligation that these banking organizations have under the NYDFS [Virtual Currency Business License](#) (Part 200) rules to obtain the approval of the NYDFS prior to engaging in such activities in order to be exempt from obtaining the virtual currency or “BitLicense.” The Industry Letter guidance is final and effective immediately.

The NYDFS requirements follow similar guidance issued between April and August of 2022 by the [Office of the Comptroller of the Currency](#), the [Federal Deposit Insurance Corporation](#), and the [Federal Reserve](#) related to banking organizations’ engagement in crypto-related activities. However, in our view, the NYDFS version provides the clearest roadmap to date for banking organizations, whether or not they are New York chartered or licensed.

Further, each regulator has a somewhat distinct definition of what constitutes an activity requiring prior approval or review, and the NYDFS articulates a broad scope. The NYDFS includes all “virtual currency business activity,” as that term is defined in Part 200, as well as “the direct or indirect offering or performance of any other product, service, or activity involving virtual currency that may raise safety and soundness concerns ... or that may expose New York customers ... or other users of the product or service to risk of harm.” The NYDFS provides a list of examples, including:

- Offering digital wallet services to customers, whether provided directly or by a third party.
- Lending activities collateralized by virtual currency assets.
- Facilitating customer participation in virtual currency exchange or trading, including by carrying fiat currency on behalf of customers (e.g., in an omnibus account).
- Services related to stablecoins, including providing stablecoin reserve services for stablecoin issuers.

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- Engaging in traditional banking activities involving virtual currency through the use of new technology such as underwriting a loan, debt product, or equity offering effected partially or entirely on a public blockchain.

The Industry Letter provides an extensive checklist outlining the information the NYDFS expects to evaluate in conjunction with the prior approval process. In summary, the NYDFS requires banking organizations to submit: (1) a comprehensive business plan, including third-party service provider information; (2) risk management materials (including anti-money laundering, privacy, cybersecurity, third-party oversight, business continuity, anti-fraud, and virtual key and wallet management risk policies and procedures); (3) corporate governance materials; (4) a consumer protection analysis, including policies, procedures, and sample agreements; (5) pro forma financial statements and projected cash flows accompanied by an explanation of costs, funding sources, and customer fees; and (6) legal and regulatory analyses.

As part of the initial approval process, a banking organization must inform the NYDFS of its intention to engage in new or significantly different virtual currency-related activity at least 90 days before it intends to commence the activity. The NYDFS explicitly points out that prior approval for a banking organization to engage in specific virtual currency-related activities does not constitute general consent for that institution to engage in other forms of virtual currency activity, nor does approval authorize other banking organizations to engage in that same activity without separately obtaining prior approval.

Consistent with the Industry Letter, we anticipate the NYDFS to continue to actively monitor banking organizations engaged in virtual currency-related activities and to continue to develop oversight mechanisms as the banking industry grows more intertwined with virtual currency developments. In addition to the federal prudential regulators' approach, other states might soon follow New York's lead to establish similar prior approval and oversight expectations.

Alston & Bird's attorneys regularly counsel banking organizations and those that partner with them on virtual currency activities and compliance, and routinely engage with federal and state regulators, including the NYDFS, on licensing and other applications and notifications.

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