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Sent: Tuesday, July 18, 2017 12:25 AM
To: Fred Miller; Hughes, Sarah Jane; edwin.smith@morganlewis.com
Subject: Some thoughts about the costs of delay. (ammunition for a possible motion to delay)

On the Consequences of delaying approval of the act for another year:

Delaying for another year will leave several states in limbo with respect to regulating these custodial activities leaving the users of exchanges and wallet providers in those states unprotected while also leaving the innovators building those services in a dangerous legal grey area where they are not told that they can get a money transmission license (which may apply to their activities if loosely interpreted) but also not told that they do not need a license to operate. These companies, even if they want to do the right thing and get licensed, are not given licenses or a safe harbor and can still be charged with unlicensed money transmission a crime (at the federal level because of the patriot act) that carries a penalty of five years in prison for the business owners, their investors, and their employees.

The result is very bad for consumer protection and very bad for innovation and industry, a double whammy where no one, regardless of their ideology, is happy with the policy result.

It is also a stark contrast with overseas jurisdiction where there is only one regulator (rather than 53) from whom to seek clarity, and where pro-innovation sandbox approaches and consumer protections have already been implemented by the regulator for over a year.

Several prominent states have delayed for the past year or even year and a half to enact a virtual currency specific licensing law in favor of waiting for the ULC to act (and under the assumption that we would act this summer).

A bill in California, AB 1326, made it through the assembly and was poised to pass the senate before the governor's office threatened a veto. That bill's delay was in large part due to several parties in the legislature, the governor's office, and the business oversight department preferring, instead, to wait to see the product produced by the ULC. The California law shared much more in common with the BitLicense in NY than our Act.

In Pennsylvania, language substantially similar to the ULC Act was poised to be incorporated into that state's money transmission act as part of a badly needed update to the existing statute, but the virtual currency language was struck from the amendment in part because the state wished to wait for the ULC's final draft.

These and other delaying states will not delay for ever, and likely not for another year. The prospect of leaving residents unprotected and businesses in the dark with respect to their obligations is simply unappealing to their legislatures and regulators. (and reasonably so)

When these states act, in the absence of our guidance, they will either act in disarray or, equally bad for us, follow the only other model thus far found in the space, the BitLicense of NY. The bitlicense is a promulgated regulation (note it is not even legislation) that is roundly criticized by industry for providing no clarity, and the department enforcing that regulation has had applications sitting and waiting to be processed for over a year. Despite this dubious pedigree, the regulation is the only other language out there aside from our bill, and legislatures have shown little reservation taking these regulations and concretizing them into statutes.

Uncoordinated action amongst the states is a real threat to both consumers and industry:

In Washington State the legislature has just last spring added virtual currency activities to that state's version of the Uniform Money Services Act

In North Carolina the regulator has had to clarify the application of that state's money transmission law to virtual currencies primarily through a Frequently Asked Questions section of their website. Some companies have pulled out of North Carolina because they are unsure of their obligations.

In Wyoming the regulator has deemed VC activities as a part of the money transmission act but has failed to make allowance in their permissible investment section for companies holding virtual currency on behalf of customers rather than dollars, resulting in some companies abruptly ceasing operation in that state because they simply cannot operate sensibly under the money transmitting requirements.

New Hampshire's legislature passed a law including virtual currency businesses in the state's money transmission statute and then passed another law excluding them from the money transmission statute all within the same year.

A judge in Florida has suggested that virtual currency may not be money under that state's law, leading to deep confusion in that state.

Exchange companies have pulled out of Hawaii because of a lack of clarity from that state's money transmission regulator.

The list goes on, and will get much much worse if another year of unguided non-uniform state law and regulation-making continues.

Of states that haven't started regulating VC activities. Texas, Kansas, Tennessee and Illinois are the only states to clearly state, affirmatively, that VC activities do not require a money transmission license, in every other state the company operates at its own risk (a strict-liability-five-years-in-jail-sized risk) and has to interpret what is usually a unique and vaguely drafted money transmission law. And consumers get no protections.

Industry and consumer/user groups alike have already expressed their support for our model act and the time to act is now. The chance for uniformity is slipping away.