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July 7, 2017

Liza Karsai
Executive Director
The National Conference of Commissioners on Uniform State Laws
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Dear Ms. Karsai:

The National Conference of Commissioners on Uniform State Laws, its leadership, as well as its Executive Committee ("you") are hereby notified that the Ciric Law Firm, PLLC represents Theo Chino, a New York resident, in connection with the case *Chino vs. NY Dept. Financial Services* ("NYDFS") (Index No. 0101880-2015) challenging the controversial "Virtual Currency" regulation (Part 200 of Chapter 1 of Title 23 of the New York Codes, Rules and Regulations), also known as BitLicense, promulgated by NYDFS in August 2015. A copy of a recently filed Amended Complaint dated May 29, 2017 is attached to this letter as Exhibit A for your review.

On behalf of our client, this letter is submitted to the National Conference of Commissioners on Uniform State Laws (hereinafter "ULC") regarding the proposed uniform statute titled "Uniform Regulation of Virtual Currency Businesses Act" (available at http://www.uniformlaws.org/shared/docs/regulation%20of%20virtual%20currencies/2017AM_VirtualCurrencyBus_Draft.pdf) (hereinafter "Proposed Statute").

Because this Proposed Statute raises a number of significant legal and policy concerns, which are described below, we ask, on behalf of our client, that you seek from the Drafting Committee on Uniform Regulation of Virtual Currency Business Act that the Proposed Statute be withdrawn from further consideration and from any further vote or adoption at the July 14-July 20, 2017 San Diego meeting.

1. **It is neither desirable nor practicable for ULC to propose a model act when many states have drastically different legal views on the topic at hand, here "virtual currency."**

The process designed by ULC has been highly successful and beneficial to the law when the legal issues involved are sufficiently stable and generate sufficient consensus amongst the legal community, allowing ULC, in these circumstances, "to promote uniformity in the law among the several States on subjects as to which uniformity is desirable and practicable" (Constitution of the National Conference of Commissioners on Uniform State Laws, § 1.2).

However, based on the reasons below, it is clear that it would be neither desirable, nor practicable for the Drafting Committee on Uniform Regulation of Virtual Currency Business Act to move forward with the Proposed Statute.

Because a number of states have already taken conflicting positions on both the economic nature of "virtual currencies" such as Bitcoin, as well as on the legal approach to regulate such a new technology, continuing any work on the Model Statute would be ill advised.

First, states have already taken very different legislative approaches regarding "virtual currencies." California has already attempted to introduce legislation twice before withdrawing such attempts due to concerns about potential impacts on new technology start-ups. Additionally, Washington already enacted the Uniform Money Services Act regulating virtual currency as a money transmission. Other states, such as Georgia, New Jersey, North Carolina and Pennsylvania have already passed legislation that correct ambiguities in money transmission law in order to create certainty for innovators. Finally, on June 2, 2017, New Hampshire enacted a statute exempting digital currency traders from the state's money transmission regulations.

Second, it can hardly be said that an agreed-upon definition of "virtual currency" exists, let alone a clear definition of its economic nature. States, as indicated above, have indeed taken opposing views as to the economic nature of Bitcoin in their legislative approaches. Furthermore, widespread conflicts regarding the economic nature of Bitcoin exist across a number of state and federal courts. See *Florida v. Espinoza*, No. F14-2923 at 6 (Fla. 11th Cir. Ct. July 22, 2016) (concluding that "it is very clear, even to someone with limited knowledge in the area, that Bitcoin has a long way to go before it is the equivalent of money" most notably because it is not accepted by all merchants, the value fluctuates significantly, there is a lack of a stabilization mechanism, they have limited ability to act as a store of value, and Bitcoin is a decentralized system.). See also *United States v. Petix*, No. 15-CR-227A 2016 U.S. Dist. LEXIS 165955 (W.D.N.Y., Dec. 1, 2016).

Finally, significant disagreement exists amongst various federal agencies, such as the CFTC or the IRS as to the economic nature of Bitcoin. *See In re Coinflip, Inc.*, CFTC Docket No. 15-29 at 3 (Sept. 17, 2015). *See also* Notice 2014-21, IRS, https://www.irs.gov/pub/irs-drop/n-14- 21.pdf (recognizing that bitcoins "[do] not have legal tender status in any jurisdiction").

Therefore, any further push of the Proposed Statute by ULC would necessarily result in unnecessary conflicts or push-backs for states that have already adopted a position as to a certain

legislative approach and an economic definition of "virtual currencies" which may differ with the assumptions of the Proposed Statute. In states where no definite position would have been adopted, the Proposed Statute will trigger significant lobbying from various constituents, including those with views opposing the Proposed Statute.

2. **Further consideration of the Proposed Statute would inject significant legal uncertainty because its initial framework is subject to a legal challenge in the foreseeable future**

The Proposed Statute's initial framework is based upon the controversial "Virtual Currency" regulation (Part 200 of Chapter 1 of Title 23 of the New York Codes, Rules and Regulations), also known as BitLicense, promulgated by NYDFS in August 2015.

The court challenge against the Bitlicense, known as an Article 78 proceeding in New York State courts, presents arguments which create significant legal uncertainties and concerns for any state interested in adopting the Proposed Statute.

As explained in the attached Amended Complaint, elevating the Bitlicense as a model statute would raise significant concerns as to the true economic nature of "virtual currencies" such as Bitcoin. Furthermore, such a model statute, if adopted by a legislature, would raise federal law preemption and first amendment concerns similar to those raised by client in New York, even if certain aspects of the Bitlicense have been amended in the Proposed Statute.

Because Article 78 proceedings typically get reviewed by multiple appellate jurisdictions, such a legal uncertainty is unlikely to be resolved in the near future. Such legal uncertainty would be a major concern for any state considering the Proposed Statute.

Because of the reasons stated above, we respectfully request, on behalf of our client, that you seek from the Drafting Committee on Uniform Regulation of Virtual Currency Business Act that the Proposed Statute be withdrawn from further consideration and from any further vote or adoption at the July 14-July 20, 2017 San Diego meeting.

If you have any questions please let me know.

Sincerely yours,

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EXHIBIT “A”

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

THEO CHINO and CHINO LTD, Plaintiffs-Petitioners, -against- THE NEW YORK DEPARTMENT OF FINANCIAL SERVICES and MARIA T. VULLO, in her official capacity as the Superintendent of the New York Department of Financial Services, Defendants-Respondents.	Index No. 101880/2015 Hon. Lucy Billings **AMENDED VERIFIED COMPLAINT AND ARTICLE 78 PETITION** **ORAL ARGUMENT REQUESTED**

Plaintiffs-Petitioners Theo Chino and Chino LTD, by and through their attorney, Pierre Ciric, with the Ciric Law Firm, PLLC, upon information and belief, alleges the following against the New York Department of Financial Services ("NYDFS") and Maria T. Vullo, in her official capacity as the Superintendent of NYDFS:

PRELIMINARY STATEMENT

1. This case is about the "Virtual Currency" regulation promulgated by NYDFS at Part 200 of Chapter 1 of Title 23 of the New York Codes, Rules and Regulations (cited as "NYCRR") (the "Regulation"). The effective date of the regulation was June 24, 2015.

2. On November 19, 2013, Theo Chino incorporated Chino LTD. The original purpose of Chino LTD was to install Bitcoin processing services in the State of New York.

3. On December 31, 2014, Theo Chino co-founded Conglomerate Business Consultants, Inc. ("CBC"). CBC entered into formal contracts with seven bodegas in New York to offer Bitcoin processing services provided by Chino, LTD through the resale of calling cards by the bodegas to their customers. Theo Chino's goal was to secure long-term and stable

commercial relationships with the bodegas using CBC's calling cards. Once those relationships were established, bodegas would be able to offer the use of Bitcoin as a settlement method for regular items sold by bodegas (milk, food, etc.). At all times, Chino LTD was providing Bitcoin processing services to CBC and to the bodegas for transactions involving both calling card and regular items.

4. While CBC was a distributor of the Bitcoin processing service directly to bodegas, Chino LTD provided the actual processing services.

5. As required under NYCRR § 200.21, Theo Chino, on behalf of Chino LTD, submitted an application for license on August 7, 2015 to engage in Virtual Currency Business Activity, as defined in 23 NYCRR § 200.2(q).

6. While the application was pending, Theo Chino filed pro se his first complaint/petition on October 16, 2015 because he realized that the Regulation would impose significant costs to run his business and because the deadline to challenge the Regulation, 4 months after the effective date, October 24, 2015, was nearing.

7. On January 4, 2016, NYDFS returned Chino LTD's application without further processing after they performed an initial review. The stated reason for returning the application was that NYDFS was unable to evaluate whether the company's current or planned business activity would be considered Virtual Currency Business Activity that requires licensing under the New York Financial Services Law and regulations.

8. On January 4, 2016, CBC stopped offering Bitcoin processing services when NYDFS did not approve Chino LTD's application.

9. NYDFS acted beyond the scope of its authority when it promulgated the Regulation because NYDFS is only authorized to regulate "financial products and services", but

Bitcoin lacks the characteristic of a financial product or service, and, in the absence of an explicit legislative authorization, NYDFS is not authorized to regulate it.

10. During hearings held by NYDFS on the topic of virtual currency on January 28 and January 29, 2014 in New York City, Mark T. Williams, member of the Finance & Economics Faculty at Boston University, was the only witness present at the hearings who introduced in the written record direct testimony as to the economic nature of Bitcoin. His testimony establishes that Bitcoin is not a currency, but instead should be treated as a commodity. New York State Department of Financial Services Hearings on the Regulation of Virtual Currency (2014)(statement of Mark T. Williams, Member of the Finance & Economics Faculty, Boston University), http://www.dfs.ny.gov/about/hearings/vc_01282014/williams.pdf.

11. NYDFS does not have the authority to imply additional terms to a statute. If the legislature wanted NYDFS to regulate Bitcoin or other so-called "cryptocurrencies," it would have included it in the definition of "financial product or service".

12. The Regulation is preempted by federal law because under the Dodd-Frank Act, State consumer financial laws are preempted if the State law "is preempted by a provision of Federal law other than title 62 of the Revised Statutes." 12 U.S.C. § 25b(b)(1)(C).

13. The Regulation is arbitrary and capricious because: (1) the scope of the Regulation is irrationally broad, (2) the Regulation's recordkeeping requirements are without sound basis in reason, (3) the Regulation irrationally treats virtual currency transmitters differently than fiat currency transmitters, and (4) there is no rational basis underlying a one-size-fits all Regulation that unreasonably prevents startups and small businesses from participating in Virtual Currency Business Activity, and imposes capital requirements on *all* licensees.

14. The Regulation violated the First Amendment of the U.S. Constitution and the New York Constitution under the compelled commercial speech and the restricted commercial speech doctrines because some of the required disclosures under the Regulation are forcing Plaintiffs-Petitioners to make false assertions to customers, or overly broad or unduly burdensome statements to their customers.

PARTIES

15. Plaintiff-Petitioner Chino LTD is a Delaware Sub S-corporation, authorized to do business in New York. Chino LTD's principal place of business is located at 640 Riverside Drive, Apt 10B, New York, NY 10031, in New York County.

16. Plaintiff-Petitioner Theo Chino is a New York State resident, residing at 640 Riverside Drive, Apt 10B, New York, NY 10031, in New York County. He is the owner of Chino LTD.

17. Defendant-Respondent the New York Department of Financial Services is an agency of the State of New York charged with the enforcement of banking, insurance, and financial services law. N.Y. Fin. Serv. Law (cited as "FSL") § 102. NYDFS's principal place of business is located at 1 State St, New York, NY 10004, in New York County.

18. Defendant-Respondent Maria T. Vullo is the Superintendent of NYDFS. The Superintendent is head of NYDFS. FSL § 202. Maria T. Vullo's principal place of business is located at 1 State St, New York, NY 10004, in New York County.

JURISDICTION AND VENUE

19. This Court has subject matter jurisdiction to decide this Petition pursuant to CPLR § 7803 because the body or officer, here Defendant-Respondents, proceeded in excess of jurisdiction, because the Regulation promulgated by Defendants-Respondents is a final

determination made in violation of lawful procedure, affected by an error of law, and is arbitrary and capricious.

20. This Court has subject matter jurisdiction to render a declaratory judgment pursuant to CPLR § 3001.

21. This Court has personal jurisdiction over Defendants-Respondents pursuant to CPLR § 301.

22. Venue properly lies in the County of New York pursuant to CPLR §§ 503(a), 505(a), 506(a), 506(b), and 7804(b), as the parties reside in the County of New York, as Defendants-Respondents' principal office is located in the County of New York, as Defendants-Respondents made the determination at issue in the County of New York, as material events took place in the County of New York, and as claims are asserted against officers whose principal offices are in New York County.

FACTUAL BACKGROUND

Bitcoin

23. Bitcoin was collaboratively developed by an independent community of Internet programmers without any financial backing from any government.

24. Bitcoin is the result of transparent mathematical formulas, which lack the attributes of traditional financial products or transactions.

25. Bitcoin consists of four different components: (1) a decentralized peer-to peer network (the bitcoin protocol), (2) a public transaction ledger (the blockchain), (3) a decentralized mathematical algorithm, and (4) a decentralized verification system (transaction script). Andreas M. Antonopoulos, MASTERING BITCOIN: UNLOCKING DIGITAL CRYPTOCURRENCIES (2014).

26. Bitcoins are created through the computation of a mathematical algorithm through a process called "mining," which involves competing to find solutions to a mathematical problem while processing bitcoin transactions. *Id.* Anyone in the Bitcoin network may operate as a "miner" by using their computer to verify and record transactions. *Id.* The bitcoin protocol includes built-in algorithms that regulate this mining function across the network. *Id.* The protocol limits the total number of bitcoins that will be created. *Id.* Once bitcoins are created, they are used for bartering transactions using the blockchain technology. *Id.* This technology relies on data "blocks," which are "a group of transactions, marked with a timestamp, and a fingerprint of the previous block." *Id.* A blockchain is "[a] list of validated block, each linking to its predecessor all the way to the genesis block." *Id.* The genesis block is "[t]he first block in the blockchain, used to initialize the cryptocurrency, and the universe of bitcoin transactions in capped at 21 million. *Id.*

27. As with traditional commodities, like crude oil and gold, the value of Bitcoin is highly volatile and dependent upon supply and demand. Like gold, bitcoins are a finite resource. "[O]nly 21 million bitcoins will ever be created." *Frequently Asked Questions*, BITCOIN, https://bitcoin.org/en/faq#is-bitcoin-a-bubble (last visited Aug. 16, 2016).

28. Furthermore, acquiring Bitcoin is analogous to acquiring other commodities. A person who wishes to obtain a commodity, like gold, for example, can either purchase gold on the market or can mine the gold himself. Similarly, a person who wishes to obtain bitcoins can either purchase them on the market or "mine" them himself through participation in Bitcoin's transaction verification process. *See* Stephen T. Middlebrook & Sarah Jane Hughes, *Regulating Cryptocurrencies in the United States: Current Issues and Future Directions*, 40 WM. MITCHELL L. REV. 813, 818 (2014).

29. Bitcoin is not money, and because currencies are representations of money, Bitcoin is not a true currency. *See* Leo Haviland, WORD ON THE STREET: LANGUAGE AND THE AMERICAN DREAM ON WALL STREET 294 (2011); *In re Coinflip, Inc.*, CFTC Docket No. 15-29 at 3 (Sept. 17, 2015).

30. True currencies, unlike Bitcoin, "are designated legal tender, [that] circulate and are customarily used and accepted as a medium of exchange in the country of issuance." *In re Coinflip, Inc.* at 3; s*ee also* Notice 2014-21, IRS, https://www.irs.gov/pub/irs-drop/n-14- 21.pdf (recognizing that bitcoins "[do] not have legal tender status in any jurisdiction").

31. Unlike true currencies, Bitcoin is neither widely accepted as mediums of exchange nor a stable store of value, nor issued by a government. Dominic Wilson & Jose Ursua, *Is Bitcoin a Currency?,* 21 GOLDMAN SACHS: TOP OF MIND 6, 6 (2014), http://www.paymentlawadvisor.com/files/2014/01/GoldmanSachs-Bit-Coin.pdf; *See Model State Consumer and Investor Guidance on Virtual Currency*, CONFERENCE OF STATE BANK SUPERVISORS (Apr. 23, 2014), http://www.ncsl.org/documents/summit/summit2014/onlineresources/ModelConsumerGuidance--VirtualCurrencies.pdf; *Virtual Currency: Risks and Regulation*, THE CLEARING HOUSE at 17 (June 23, 2014), https://www.theclearinghouse.org/issues/articles/2014/06/20140623-tch-icba-virtual-currency-paper.

32. In the case *US v. Petix*, Case No. 15-CR-227, currently in the United States District Court, Western District of New York, Magistrate Judge Scott, in his Report and Recommendation dated December 1, 2016, gave a detailed analysis concluding that Bitcoin is not money or funds under 18 U.S.C. § 1960, a federal statute prohibiting unlicensed money transmitting businesses. Magistrate Judge Scott noted that money and funds must involve a

sovereign: "'[m]oney,' in its common use, is some kind of financial instrument or medium of exchange that is assessed value, made uniform, regulated, and protected by *sovereign power.*" (Citation omitted). "Bitcoin is not 'money' as people ordinary understand the term." "Like marbles, Beanie Babies™, or Pokémon™ trading cards, bitcoins have value exclusively to the extent that people at any given time choose privately to assign them value. No governmental mechanisms assist with valuation or price stabilization, which likely explains why Bitcoin value fluctuates much more than that of the typical government-backed fiat currency." *United States v. Petix*, 2016 U.S. Dist. LEXIS 165955 (W.D.N.Y., Dec. 1, 2016, No. 15-CR-227A).

33. Similarly, because Bitcoin is not issued by a government, no entity is required to accept it as payment. Karl Whelan, *How is Bitcoin Different from the Dollar?*, FORBES (Nov. 19, 2013), http://www.forbes.com/sites/karlwhelan/2013/11/19/how-is-bitcoin-different-from-the-dollar/#68c676c86d34.

34. Moreover, while currencies are generally secured by a commodity or a government's ability to tax and defend, Bitcoin is not safeguarded by either. Jonathon Shieber, *Goldman Sachs: Bitcoin Is Not A Currency,* TECHCRUNCH (Mar. 12, 2014), https://techcrunch.com/2014/03/12/goldman-sachs-bitcoin-is-not-a-currency/.

35. Bitcoin lacks the characteristics of a true currency and therefore lacks the characteristics associated with a financial product.

Regulation

36. The New York Legislature has authorized NYDFS to regulate *financial* products and services. However, NYDFS promulgated a Regulation that monitors and controls non-financial products and services.

37. Bitcoin is considered a "virtual currency" for purpose of the Regulation.

38. The Regulation requires those engaged in "virtual currency business activity" that involves New York or New York residents to obtain a license. 23 NYCRR §§ 200.2(q), 200.3(a).

39. Applying for the license under the Regulation requires a non-refundable $5,000 application fee. 23 NYCRR § 200.5.

40. It has been reported that companies spent between $50,000 and $100,000 applying for a license under the Regulation. Daniel Roberts, *Behind the "Exodus" of Bitcoin Startups from New York*, FORTUNE (Aug. 14, 2015), http://fortune.com/2015/08/14/bitcoin-startups-leave-new-york-bitlicense/. These companies are then required to shell out even more money every year to continue complying with the Regulation.

41. According to the Regulation, the same requirements apply to all virtual currency transactions, regardless of whether 1-cent worth or thousands of dollars' worth is being transacted.

42. The Regulation requires licensees to maintain a capital requirement as determined by the Superintendent. 23 NYCRR § 200.8.

43. Further, the fundamental protocol used to conduct most Internet activity falls within the Regulation's definition of "Virtual Currency".

44. Subject to three narrow exceptions, "Virtual Currency" means "*any* type of digital unit that is used as a medium of exchange or a form of digitally stored value." 23 NYCRR § 200.2(p) (emphasis added). Furthermore, 23 NYCRR § 200.2(p) mandates that this definition be "broadly construed." *Id.* Given this instruction and the Regulation's failure to define "digital unit" or "medium of exchange," nearly all Internet activity could be interpreted under the Regulation to involve virtual currency.

45. Transmission Control Protocol/Internet Protocol (TCP/IP) allows computers to

communicate over the Internet. Lawrence B. Solum & Minn Chung, *The Layers Principle: Internet Architecture and the Law*, 79 NOTRE DAME L. REV. 815, 821 (2004). People engage the TCP/IP protocol to send emails, visit websites, or download music. John Gallaugher, *12.3, Get Where You're Going*, A MANAGER'S GUIDE TO THE INTERNET AND TELECOMMUNICATIONS (2012), http://2012books.lardbucket.org/books/getting-the-most-out-of- information-systems-v1.3/s16-a-manager-s-guide-to-the-inter.html; Nick Parlante, *How Email Works*, STANFORD UNIV., https://web.stanford.edu/class/cs101/network-4-email.html (last visited Oct. 25, 2016). The TCP/IP system takes data, divides it into packets, and then bounces those packets from the starting point to the final destination. LAWRENCE LESSIG, CODE 43 (2nd ed. 2006). A TCP/IP packet is "the smallest unit of transmitted information over the Internet," and is thus a "digital unit." *See* Roberto Sanchez, *What is TCP/IP and How Does It Make the Internet Work?*, HOSTINGADVICE.COM (Nov. 17, 2015), http://www.hostingadvice.com/blog/tcpip-make-internet-work/; *Digital*, MERRIAM-WEBSTER, http://www.merriam-webster.com/dictionary/digital (last accessed Oct. 25, 2016) (defining "digital" as "using or characterized by computer technology"). TCP/IP packets are also "the exchange medium used by processes to send and receive data through Internet networks." *TCP/IP Terminology*, IBM KNOWLEDGE CENTER, https://www.ibm.com/support/knowledgecenter/ssw_aix_71/com.ibm.aix.networkcomm/tcpip_terms.htm (last visited Oct. 25, 2016). Accordingly, a TCP/IP packet, which is a "digital unit," is used "as a medium of exchange," and thus falls within the Regulation's definition of "virtual currency". *See* 23 NYCRR § 200.2(p). This means that when people engage in Internet activity, they almost always use "virtual currency", as it is defined in the Regulation, to do so, rendering such activity potentially subject to the Regulation.

46. NYDFS intended to regulate financial intermediaries in so-called

"cryptocurrencies." Nermin Hajdarbegovic, *Lawsky: Bitcoin Developers and Miners Exempt from BitLicense*, COINDESK (Oct. 15, 2014), http://www.coindesk.com/lawsky-bitcoin-developers-miners-exempt-bitlicense/ (noting that the Superintendent clarified, "[w]e are regulating financial intermediaries . . . we do not intend to regulate software or software development"). Many cryptocurrencies, like Bitcoin, are blockchain technologies. *E.g.* Steven Norton, *CIO Explainer: What is Blockchain?*, WALL ST. J. (Feb. 2, 2016), http://blogs.wsj.com/cio/2016/02/02/cio-explainer-what-is-blockchain/. Blockchains are essentially public ledgers that record users' entries. *Id.* For example, when a person exchanges a bitcoin, or a fraction thereof, the transaction is recorded on the Bitcoin blockchain. *See How Does Bitcoin Work?*, BITCOIN, https://bitcoin.org/en/how-it-works (last visited Oct. 25, 2016). Blockchain technologies fall within the Virtual Currency definition because they can be used as a medium or exchange or a form of digitally stored value. *See* 23 NYCRR § 200.2(p). Even non-financial uses of blockchain technology fall within the Regulation's definition of "virtual currency" because, to participate in blockchain technology, a user engages "digital unit[s]," that [are] "used as medium[s] of exchange." It is digital units, like bitcoins, that carry value, and "even non-financial uses require a de minimis amount of currency," a "medium of exchange." *See* 23 NYCRR § 200.2(p); Trevor I. Kiviat, Note, *Beyond Bitcoin: Issues in Regulating Blockchain Transactions*, 65 DUKE L.J. 569, 591, 597 (2016); Jeffrey A. Tucker, *What Gave Bitcoin Its Value?*, FOUND. FOR ECON. EDUC. (Aug. 27, 2014), https://fee.org/articles/what-gave-bitcoin-its- value/. Because blockchain technologies fall within the Regulation's definition of "virtual currency", they are potentially subject to the Regulation. *See* 23 NYCRR §§ 200.2(p)(q)-200.3. Blockchain technologies, however, are not inherently financial. *See* Luke Parker, *Ten Companies Using the Blockchain for Non-Financial Innovation*, BRAVE NEW COIN (Dec. 20,

2015), http://bravenewcoin.com/news/ten-companies-using-the-blockchain- for-non-financial-innovation/. People can, and do use blockchain technologies to engage in a slew of non-financially related activities. *See*, *e.g. id.* Artists use blockchain technology to assert ownership over their works, insurers use blockchain technology to track diamonds, and people use blockchain technology to timestamp documents and photos. *See id.* Additionally, people can use blockchain technology to cast votes, send messages, or enter into contracts. *See Blockchain Technology in Online Voting*, FOLLOW MY VOTE, https://followmyvote.com/online-voting-technology/blockchain-technology/; Naomi O'Leary, *British Traders Have Discovered Bitcoin*, BUS. INSIDER (Apr. 2, 2012), http://www.businessinsider.com/british-traders-have-discovered-bitcoin-2012-4 (noting that the first Bitcoin transaction was used to send a political message); Nik Custodio, *Explain Bitcoin Like I'm Five*, MEDIUM (Dec. 12, 2013), https://medium.com/@nik5ter/explain-bitcoin-like-im- five-73b4257ac833#.ri7s32qfb. Yet, the definition of "virtual currency" does not exclude or otherwise exempt these non- financial uses of blockchain technology, rendering such uses potentially subject to the Regulation. *See* 23 NYCRR § 200.2(p).

47. Five categories of activities qualify as Virtual Currency Business Activities. *See* 23 NYCRR §§ 200.2(q), 200.3. Each category is defined by terms that have a broad range of meanings, and that encompass numerous activities that are entirely unrelated to financial exchanges, services, or products. Furthermore, only one category of activities exempts non-financial uses. *See* 23 NYCRR § 200.2(q).

48. The Regulation requires anyone engaged in "storing, holding or maintaining custody or control of Virtual Currency on behalf of others" to obtain a License and comply with the Regulation. 23 NYCRR § 200.2(q)(2). However, the Regulation fails to clarify what

activities qualify as "storing," "holding," or "maintaining custody or control" of Virtual Currency. *See* 23 NYCRR §§ 200.1-200.22. Thus, if a New York citizen established a trust, designated himself as trustee, and funded the trust with his own bitcoins, he would arguably be required to obtain a license, because, as a trustee, he could be interpreted as "holding... Virtual Currency on behalf of others," in this case, the beneficiaries of the trust. Likewise, a bitcoin owner's fiancée would not legally be allowed to hold her fiancé's Bitcoin wallet for safekeeping unless she first obtained a license, because in safekeeping his Bitcoin wallet, she would arguably be "holding...Virtual Currency on behalf of others."

49. The Regulation also requires anyone "controlling... a Virtual Currency" to obtain a license. The Department did not define "controlling," leaving room for expansive interpretation. *See* 23 NYCRR §§ 200.1-200.22. Arguably, any Bitcoin owner with a tenuous relationship to New York is subject to the Regulation. A Bitcoin owner "controls" a Virtual Currency, regardless of whether that Bitcoin owner uses bitcoins as financial instruments. This means that someone wishing to cast a vote using bitcoins, exercise his freedom of speech using bitcoins, or create digital art using bitcoins would arguably be required to obtain a license and comply with the Regulation in order to do so.

50. The Regulation requires most actors engaged in "controlling, administering, or issuing a Virtual Currency" to obtain a license and abide by minimum capital requirements, even if such "controlling, administering, or issuing" has no tie to the financial sector. *See* 23 NYCRR §§ 200.2(p), 200.2(q)(4), 200.3, 200.8. Furthermore, the blanket Regulation subjects those engaged in "[t]ransmitting Virtual Currency" to minimum capital requirements unless "the transaction is undertaken for non-financial purposes *and* does not involve the transfer of more than a nominal amount of Virtual Currency." 23 NYCRR §§ 200.2(q)(1), 200.3, 200.8 (emphasis

added). Therefore, a father who wishes to give his daughter one bitcoin for her birthday would be transmitting a non-nominal amount of Virtual Currency, and would thus be required to obtain a license and abide by minimum capital requirements in order to do so.

51. The Regulation requires Licensees to: (1) record "each transaction, the amount, date, and precise time of the transaction... the names, account numbers, and physical addresses of (i) the party or parties to the transaction that are customers or accountholders of the Licensee; and (ii) to the extent practicable, any other parties to the transaction," and (2) maintain those records "for at least seven years." 23 NYCRR § 200.12(a). These extensive and onerous requirements apply to *all* virtual currency transactions, regardless of whether, for example, a Satoshi, worth less than 1 cent, is being transacted, or 100 bitcoins, worth approximately $56,944, are being transacted. *See id*. A Licensee could foreseeably be forced to spend more money to make and retain records than the transaction itself is worth.

52. The Regulation's anti-money laundering provisions are inconsistent with NYDFS's preexisting anti-money laundering regulations. NYDFS has imposed stringent anti-money laundering requirements upon Virtual Currency businesses that it has not imposed on fiat currency transmitters. *See* 23 NYCRR § 200.15; 3 NYCRR § 416.1.

53. NYDFS requires money transmitters to comply with federal anti-money laundering laws. 3 NYCRR § 416.1. The Regulation, however, requires virtual currency transmitters to comply with anti-money laundering requirements that go beyond those required under federal law. *See* 23 NYCRR § 200.15.

54. The Regulation requires Licensees to file Suspicious Activity Reports ("SAR") even if they would not be required to do so under federal law. 23 NYCRR § 200.15(e)(3)(ii). Furthermore, this provision subjects such firms to potential liability for submitting SARs because

though the federal SAR requirements include a safe harbor provision that extends immunity to disclosing institutions, the Regulation does not contain a comparable provision. 31 U.S.C. § 5318(g)(3); 23 NYCRR § 200.15. Thus, under NYDFS's regulatory scheme, a money transmitter dealing in fiat currency that is not required to file SARs would be required to file SARs if that transmitter wished to engage in Virtual Currency transmission. *See* 23 NYCRR § 200.15(e)(3)(ii).

55. Additionally, the Regulation requires Licensees to retain all records related to their anti- money laundering programs for at least seven years. 23 NYCRR § 200.12(a). By contrast, fiat currency transmitters are only required to retain such records for five years. 3 NYCRR § 416.1(b)(2)(i) (requiring licensees to retain records in accordance with 31 CFR § 103); 31 CFR § 1010.430(d) (formerly at 31 CFR § 103.38(d); requiring licensees to retain records for five years).

56. A number of other requirements imposed on Virtual Currency business are not imposed on other money transmitters, such as keeping records on all transactions, including the identity and physical address of the parties, 23 NYCRR § 200.15(e)(1)(i); reporting and notifying transactions exceeding $10,000 in an aggregate amount, 23 NYCRR § 200.15(e)(2); or complying with a Cyber Security Program, including staffing and reporting requirements, 23 NYCRR § 200.16.

57. Superintendent Benjamin Lawsky publically admitted that the rationale for these different rules not imposed on other institutions was to test them as "models for our regulated banks and insurance companies," and not as a genuine response to a pressing regulatory need. Superintendent Benjamin M. Lawsky, Address at Benjamin N. Cardozo School of Law (Oct. 14, 2014), at page 2 (transcript available at

http://web.archive.org/web/20150702103620/http://www.dfs.ny.gov/about/speeches_testimony/sp141014.htm).

58. The Regulation is an untailored blanket regulation that fails to consider that not all virtual currency businesses are equally situated, and it irrationally imposes capital requirements on all Licensees.

59. The Regulation has a severe disparate impact on startups and small businesses, which do not have access to the funds and resources the Regulation requires. The cost of applying for a License is exorbitant. *See* 23 NYCRR § 200.5 (requiring a non-refundable $5,000 application fee); Daniel Roberts, *Behind the "Exodus" of Bitcoin Startups from New York*, FORTUNE (Aug. 14, 2015), http://fortune.com/2015/08/14/bitcoin-startups-leave-new-york-bitlicense/. Furthermore, the costs of staying in compliance with the Regulation, if granted a License, are unwarranted and potentially excessive. Licensees are required to "maintain at all times such capital in an amount and form as the superintendent determines is sufficient." 23 NYCRR § 200.8(a). This vague, open-ended requirement is likely to unreasonably impede cash-strapped startups and small businesses from being able to engage in Virtual Currency Business Activity. The Regulation's requirement that Licensees "maintain a surety bond or trust account... in such a form and amount as is acceptable to the superintendent" is similarly prone to effectively prohibit underfunded startups and small businesses from engaging in Virtual Currency related business. *See* 23 NYCRR § 200.9(a).

60. The tech industry is an increasingly important piece of New York's economy, and digital currency is a prominent emerging technology. *See The New York City Tech Ecosystem*, HR&A ADVISORS (Mar. 2014), http://www.hraadvisors.com/wp-content/uploads/2014/03/NYC_Tech_Ecosystem_032614_WEB.pdf; Brian Forde, *How to*

Prevent New York from Becoming the Bitcoin Backwater of the U.S., MEDIUM (May 12, 2015), https://medium.com/mit-media-lab-digital-currency-initiative/how-to-prevent-new-york-from-becoming-the-bitcoin-backwater-of-the-u-s-931505a54560#.u05t446p2. Startups are essential to technological innovation and growth, and in 2015, New York City was recognized as being one of the top startup ecosystems in the world. Richard Florida, *The World's Leading Startup Cities*, CITYLAB (July 27, 2015), http://www.citylab.com/tech/2015/07/the-worlds-leading-startup-cities/399623/; Emily Edwards, *Financial Technology Startups Are Bringing Underbanked Into the Economy*, MEDIUM (May 16. 2016), https://medium.com/village-capital/financial-technology-startups-are-bringing-the- underbanked-into-the-economy-24978561b9ea#.635lp86ks. However, the Regulation has transformed this once welcoming New York landscape into an inhospitable environment for digital currency-related startups. Daniel Roberts, *Behind the "Exodus" of Bitcoin Startups from New York*, FORTUNE (Aug. 14, 2015), http://fortune.com/2015/08/14/bitcoin-startups-leave-new-york-bitlicense/.

61. When Superintendent Lawsky announced the final version of the Regulation, he said: "we should not react so harshly that we doom promising new technologies before they get out of the cradle." Ben Lawsky, *The Final NYDFS BitLicense Framework*, MEDIUM (June 3, 2015), https://medium.com/@BenLawsky/the-final-nydfs-bitlicense-framework-d4e333588f04#.akxneegmv. Yet the Regulation has done just that. The Regulation has effectively forced digital currency-related startups to relocate outside New York and to otherwise severe ties with New York citizens. *See, e.g.*, Roberts, *Behind the "Exodus" of Bitcoin Startups from New York*, FORTUNE (Aug. 14, 2015), http://fortune.com/2015/08/14/bitcoin-startups-leave-new-york-bitlicense/. The Regulation is unjustifiably burdensome on startups and small companies, and has in many instances left businesses with no other option than to flee and

otherwise abandon New York. *See id.*; *BitLicense Restrictions for New York Customers*, BITFINEX (Aug. 7, 2015), https://www.bitfinex.com/posts/51.

62. Between November 2014 and June 2015, Theo Chino filed five Freedom of Information Law ("FOIL") requests to understand NYDFS's process for framing the Regulation. Indeed, as required under New York State's Administrative Procedure Act, Defendant-Respondent referred to, in the statement of "needs and benefits" published with the proposed regulation, an "extensive research and analysis" performed to prepare the Regulation.

63. Theo Chino did not receive any of the requested information. Instead, NYDFS said they did not have any of the records requested or that NYDFS is in possession of some of the records requests but the records have not been provided because they are exempt from disclosure.

64. A similar FOIL was submitted by Jim Harper, then Global Policy Counsel at the Bitcoin Foundation, a not-for-profit organization dedicated to the advancement of Bitcoin, to Defendants-Respondents on August 5, 2014, to which he never received any response.

Other States, Agencies, and Jurisdictions

65. Bitcoin is akin to commodity-like mediums of exchange. This view is consistent with the positions taken by the IRS and the Commodity Future Trading Commission (CFTC).

66. The IRS has concluded that bitcoins are property, not currency for tax purposes. Notice 2014-21, IRS, https://www.irs.gov/pub/irs-drop/n-14-21.pdf.

67. Texas and Kansas have taken the position that Bitcoin is not money and issued memorandum stating this. Tex. Dep't of Banking, Supervisory Memorandum 1037, Regulatory Treatment of Virtual Currencies Under the Texas Money Services Act 2-3 (Apr. 3, 2014), http://www.dob.texas.gov/public/uploads/files/consumer-information/sm1037.pdf; Kan. Office

of the State Bank Commissioner Guidance Document, MT 2014-01, Regulatory Treatment of Virtual Currencies Under the Kansas Money Transmitter Act 2-3 (June 6, 2014), http://www.osbckansas.org/mt/guidance/mt2014_01_virtual_currency.pdf.

68. California has tried twice to use the legislative process to pass a bill regulating virtual currency. California introduced AB-1326 to regulate virtual currency business on February 27, 2015. A.B. 1326, 2015-2016 Reg. Sess. (Cal. 2015), History, https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=201520160AB1326. The bill was ordered to become an inactive file on September 11, 2015 at the request of Senator Mitchell. *Id.* The bill was reintroduced on August 8, 2016. *Id.* On August 15, 2016, Assembly member Matt Dababneh withdrew the bill from consideration. Aaron Mackey, *California Lawmaker Pulls Digital Currency Bill After EFF Opposition,* ELEC. FRONTIER FOUND. (Aug. 18, 2016), https://www.eff.org/deeplinks/2016/08/california- lawmaker-pulls-digital-currency-bill-after-eff-opposition.

69. New Hampshire's House of Representatives passed HB 436, which seeks to exempt virtual currency users from having to register as money service businesses. Rebecca Campbell, *New Hampshire's Bill to Deregulate Bitcoin Passes House,* CryptoCoinsNews (Mar. 11, 2017), https://www.cryptocoinsnews.com/new-hampshires-bill-deregulate-bitcoin-passes-house/.

70. In Texas, a constitutional amendment was proposed, Texas House Joint Resolution 89, which would protect the right to own and use digital currencies like Bitcoin in Texas. Stan Higgins, *Texas Lawmaker Proposes Constitutional Right to Own Bitcoin,* COINDESK (Mar. 3, 2017), http://www.coindesk.com/texas-lawmaker-proposes-constitutional-right-bitcoin/. The constitutional amendment would prevent any government effort to interfere with that use or

ownership of digital currencies like Bitcoin. *Id.*

71. A Florida court recently ruled that Bitcoin is not money. *Florida v. Espinoza*, No. F14-2923 at 6 (Fla. 11th Cir. Ct. July 22, 2016) (concluding that "it is very clear, even to someone with limited knowledge in the area, that Bitcoin has a long way to go before it is the equivalent of money" most notably because it is not accepted by all merchants, the value fluctuates significantly, there is a lack of a stabilization mechanism, they have limited ability to act as a store of value, and Bitcoin is a decentralized system.)

Chino LTD

72. On November 19, 2013, Theo Chino incorporated Chino LTD in Delaware. A copy of the Delaware Certificate of Incorporation is attached as Exhibit I.

73. On February 24, 2014, I submitted an application for authority to conduct business in the state of New York under § 1304 of the Business Corporation Law as a foreign business corporation. The original purpose of Chino LTD was to install Bitcoin processing services in the State of New York. A copy of the New York filing receipt is attached as Exhibit II.

74. In March 2014, Theo Chino hired an employee to sell Chino LTD's Bitcoin-related services in New York County and Bronx County.

75. Chino LTD's employee distributed surveys to local bodegas and stores to evaluate the Bitcoin landscape and identify potential clients in the Manhattan area. A copy of one of the translated surveys is attached as Exhibit III.

76. On December 31, 2014, Theo Chino co-founded Conglomerate Business Consultants, Inc. ("CBC"). A copy of the New York Certificate of incorporation is attached as Exhibit IV.

77. CBC started out by purchasing phone minutes from E-Sigma Online LLC, and later from NobelCom LLC. CBC would distribute the phone minutes to bodegas who would in turn sell the phone minutes to customers. A copy of a receipt of transactions between CBC and Multiservice And Innovations Inc. involving NobelCom LLC phone minutes is attached as Exhibit V.

78. After business relationships were established with bodegas through selling phone minutes, between December 2014 and May 2015, CBC entered into formal contracts with seven bodegas in New York to offer Bitcoin processing services provided by Chino LTD. A copy of one of the contracts between CBC and a bodega is attached as Exhibit VI. Theo Chino's goal was to secure long-term and stable commercial relationships with the bodegas using CBC's calling cards. Once those relationships were established, bodegas would be able to offer the use of Bitcoin as a payment method for regular items sold by bodegas (milk, food, etc.). At all times, Chino LTD was providing Bitcoin processing services to CBC and to the bodegas for transactions involving both calling card and regular items.

79. The bodegas were given signage to display that they accepted Bitcoins. A photo of the signage is attached as Exhibit VII.

80. Every day, Chino LTD would provide the bodegas the daily exchange rate that would be used for the Bitcoin processing services.

81. While CBC was a distributor of phone minutes and the Bitcoin processing services directly to bodegas, Chino LTD provided the actual processing services.

82. Chino LTD provided all the research and development for Bitcoin processing, bought all of the computer to run the backend of processing Bitcoin, rented all of the hosting equipment to run the front end of processing Bitcoin, and developed custom operating systems to

run the Bitcoin processing.

83. Chino LTD's Bitcoin processing business fell within the "Virtual Currency Business Activity" under the Regulation. The Regulation requires those engaged in "Virtual Currency Business Activity" that involves New York or New York residents to obtain a license. 23 NYCRR §§ 200.2(q), 200.3(a).

84. Theo Chino is a New York resident who conducted business in New York with New York residents thus the Regulation applied to Theo Chino and Chino LTD.

85. In 2013, the year Chino LTD was incorporated, it suffered losses of only $4,367. The losses were due to the cost of purchasing computer equipment to test how to protect Bitcoin and figure out how to monetize it. A copy of Chino LTD's 2013 U.S. Income Tax Return for an S-Corporation is attached as Exhibit XII.

86. In 2014, Chino LTD suffered losses of $59,667. The losses were mainly due to the cost of computer hardware required to run the Bitcoin warehousing, the cost of renting computer time on the cloud, and marketing the service to bodegas. A copy of Chino LTD's 2014 U.S. Income Tax Return for an S-Corporation is attached as Exhibit XIII.

87. In 2015, the year Chino LTD submitted an application for a license to engage in Virtual Currency Business Activity, Chino LTD suffered losses of $30,588. The losses were due to the cost of the utilities to process Bitcoin (computer time on the internet cloud), the interest on the borrowed capital required to purchase the equipment the previous year, the cost associated with supporting CBC (who entered into the agreements with bodegas), and the cost of litigation. A copy of Chino LTD's 2015 U.S. Income Tax Return for an S Corporation is attached as Exhibit XIV.

88. As required under NYCRR § 200.21, Theo Chino, on behalf of Chino LTD,

submitted an application for a license on August 7, 2015 to engage in "Virtual Currency Business Activity," as defined in 23 NYCRR § 200.2(q). A copy of the application is attached as Exhibit IX.

89. Theo Chino took other affirmative steps and researched New York banking law and requested an application fee waiver, which he believed he was entitled to receive under N.Y. Banking Law § 18-a, which allows the superintendent to waive or reduce an application fee.

90. August 16, 2015, Theo Chino submitted an application under the New York State Minority Owned/Women Owned Business Enterprise Program for Chino LTD, which is still pending with New York State. A copy of the application and of its status information is attached as Exhibit VIII.

91. Realizing he would be required to incur expenses beyond his means to comply with the burdensome compliance costs under the Regulation, Theo Chino initiated this lawsuit on October 16, 2015, one week before the expiration of the deadline to challenge the Regulation.

92. In January 2016, one customer at a bodega named Rehana's Wholesale made a purchase using Bitcoin which was processed by Chino LTD. A copy of the bill indicating the purchase is attached as Exhibit X.

93. On January 4, 2016, NYDFS returned Chino LTD's application without further processing after they performed an initial review. The stated reason for returning the application was that NYDFS was unable to evaluate whether the company's current or planned business activity would be considered Virtual Currency Business Activity that requires licensing under the New York Financial Services Law and regulations. A copy of the January 4, 2016 letter is attached as Exhibit XI.

94. On January 4, 2016, CBC stopped offering Bitcoin processing services when

NYDFS did not approve Chino LTD's application. In 2016, even though Chino LTD could no longer offer Bitcoin services because it did not receive a license, Chino LTD remained an active S-Corporation and suffered losses of $53,053. The losses were due to the utilities for keeping the equipment to process Bitcoin in the event of a successful litigation, the interest on the borrowed capital from the previous three years, and the cost of the litigation. A copy of Chino LTD's 2016 U.S. Income Tax Return for an S Corporation is attached as Exhibit XV.

FIRST CAUSE OF ACTION
Violation of the Separation of Powers Doctrine and Ultra Vires Conduct

95. Plaintiffs-Petitioners incorporate by reference all of the preceding paragraphs.

96. Under the New York State Constitution Art. III, § 1, "[t]he legislative power of this state shall be vested in the senate and assembly."

97. A delegated agency may only adopt regulations that are consistent with its enabling legislation and its underlying purposes.

98. When an administrative agency moves beyond enforcing policies enacted by the legislative branch and implements policy on its own accord, it is acting outside the scope of its authorized power.

99. On, October 3, 2011 the New York State Banking Department and the New York State Insurance Department were abolished and the functions and authority of both former agencies transferred to NYDFS. The New York Legislature has authorized NYDFS to regulate *financial* products and services. FSL §§ 201(a) and 302(a). It did not offer any definition which included the concept of virtual currency. *See* FSL § 104(a)(2).

100. As explained above, Bitcoin is not a financial product or service.

101. Therefore, NYDFS has promulgated a Regulation that monitors and controls non-financial products and services.

102. The Regulation promulgated by Defendants-Respondents is in violation of the separation of powers established by the New York Constitution, is *ultra vires*, without lawful authority, and in violation of law. Therefore, Defendant-Respondents proceeded in excess of jurisdiction.

SECOND CAUSE OF ACTION
Arbitrary and Capricious Regulation

103. Plaintiffs-Petitioners incorporate by reference all of the preceding paragraphs.

104. An administrative regulation will be upheld only if it has a rational basis, and is not unreasonable, arbitrary or capricious.

105. A regulation is irrational, and therefore arbitrary and capricious, if it is excessively broad in scope.

106. The Regulation is arbitrary and capricious because it does not have a rational basis and it is excessively board in scope.

107. Subject to three narrow exceptions, "Virtual Currency" means "*any* type of digital unit that is used as a medium of exchange or a form of digitally stored value." 23 NYCRR § 200.2(p) (emphasis added). Furthermore, 23 NYCRR § 200.2(p) mandates that this definition be "broadly construed." *Id.* Given this instruction and the Regulation's failure to define "digital unit" or "medium of exchange," nearly all Internet activity could be interpreted under the Regulation to involve Virtual Currency. Thus, the definition of Virtual Currency is grossly overinclusive and irrational.

108. Even non-financial uses of blockchain technology fall within the Regulation's definition of Virtual Currency because, to participate in blockchain technology, a user engages

"digital unit[s]," that [are] "used as medium[s] of exchange." the definition of Virtual Currency does not exclude or otherwise exempt these non- financial uses of blockchain technology, rendering such uses potentially subject to the Regulation. *See* 23 NYCRR § 200.2(p).

109. The Regulation requires anyone engaged in "storing, holding or maintaining custody or control of Virtual Currency on behalf of others" to obtain a License and comply with the Regulation. 23 NYCRR § 200.2(q)(2). However, the Regulation fails to clarify what activities qualify as "storing," "holding," or "maintaining custody or control" of Virtual Currency. *See* 23 NYCRR §§ 200.1-200.22.

110. The Regulation also requires anyone "controlling... a Virtual Currency" to obtain a license. NYDFS did not define "controlling," leaving room for expansive interpretation. *See* 23 NYCRR §§ 200.1-200.22. Arguably any Bitcoin owner with a tenuous relationship to New York is subject to the Regulation

111. The Regulation requires Licensees to: (1) record "each transaction, the amount, date, and precise time of the transaction... the names, account numbers, and physical addresses of (i) the party or parties to the transaction that are customers or accountholders of the Licensee; and (ii) to the extent practicable, any other parties to the transaction," and (2) maintain those records "for at least seven years." 23 NYCRR § 200.12(a). These extensive and onerous requirements apply to *all* virtual currency transactions, regardless of whether 1-cent worth or thousands of dollars' worth are being transacted. It is unreasonable to require Licensees to create and maintain records of microtransactions

112. The Regulation's anti-money laundering provisions are inconsistent with NYDFS's preexisting anti-money laundering regulations. NYDFS has imposed stringent anti-money laundering requirements upon Virtual Currency businesses that it has not imposed on fiat

currency transmitters. NYDFS requires money transmitters to comply with federal anti-money laundering laws. 3 NYCRR § 416.1. The Regulation, however, requires virtual currency transmitters to comply with anti-money laundering requirements that go beyond those required under federal law. *See* 23 NYCRR § 200.15. There is no rational basis or objective reason provided by NYDFS for subjecting fiat money transmitters and Virtual Currency transmitters to different anti-money laundering requirements.

113. The Regulation requires Licensees to file Suspicious Activity Reports ("SAR") even if they would not be required to do so under federal law. 23 NYCRR § 200.15(e)(3)(ii). This requirement imposes an unreasonable burden on virtual currency firms who would not otherwise be subject to federal SAR provisions. Furthermore, this provision subjects such firms to potential liability for submitting SARs because though the federal SAR requirements include a safe harbor provision that extends immunity to disclosing institutions, the Regulation does not contain a comparable provision. 31 U.S.C. § 5318(g)(3); 23 NYCRR § 200.15. Thus, under NYDFS's regulatory scheme, a money transmitter dealing in fiat currency that is not required to file SARs would be required to file SARs if that transmitter wished to engage in Virtual Currency transmission. *See* 23 NYCRR § 200.15(e)(3)(ii). There is no rational basis to support NYDFS's inconsistent treatment of money transmitters.

114. The Regulation requires Licensees to retain all records related to their anti-money laundering programs for at least seven years. 23 NYCRR § 200.12(a). By contrast, fiat currency transmitters are only required to retain such records for five years. 3 NYCRR § 416.1(b)(2)(i) (requiring licensees to retain records in accordance with 31 CFR § 103); 31 CFR § 1010.430(d) (formerly at 31 CFR § 103.38(d); requiring licensees to retain records for five years). There is no rational reason or objective rationale to require virtual currency transmitters to retain their

records two years longer than non-technology based financial transmitters are required to retain their records.

115. The Regulation has a severe disparate impact on startups and small businesses, which do not have access to the funds and resources the Regulation requires. The cost of applying for a License is exorbitant. *See* 23 NYCRR § 200.5 (requiring a non-refundable $5,000 application fee).

116. The costs of staying in compliance with the Regulation, if granted a License, are unwarranted and potentially excessive. Licensees are required to "maintain at all times such capital in an amount and form as the superintendent determines is sufficient." 23 NYCRR § 200.8(a). This vague, open-ended requirement is likely to unreasonably impede cash-strapped startups and small businesses from being able to engage in Virtual Currency Business Activity. The Regulation's requirement that Licensees "maintain a surety bond or trust account... in such a form and amount as is acceptable to the superintendent" is similarly prone to effectively prohibit underfunded startups and small businesses from engaging in Virtual Currency related business. *See* 23 NYCRR § 200.9(a).

117. At that point the Regulation was promulgated, both the application fee and the compliance costs were overly burdensome to Plaintiffs-Petitioners. Chino LTD does not run a high volume business, rather offering small processing services for small purchases in retail stores. The capital requirements imposed by the Regulation are disproportionate compared to the profit Chino LTD would make on each transaction or each retail relationship. Having the same standards apply to Chino LTD that apply to large financial institutions is unreasonable.

118. While it may be appropriate to impose minimum capital requirements on select Virtual Currency businesses, it is irrational, arbitrary, and capricious, to impose blanket capital

requirements on *all* actors subject to the Regulation. The Regulation, however, applies to a wide range of virtual currency businesses that do not pose the same risks banks, insurance companies, and broker-dealers do. Applying capital requirements to such businesses is inappropriate and irrational

119. Chino LTD would be forced to maintain a minimum capital requirement even though it is operating at a very low risk.

120. Defendants-Respondents have never provided an objective rationale for these burdensome and arbitrary requirements.

121. Therefore, the Regulation promulgated by Defendants-Respondents is arbitrary and capricious.

THIRD CAUSE OF ACTION
Federal Preemption

122. Plaintiffs-Petitioners incorporate by reference all of the preceding paragraphs.

123. Implied preemption exists where federal law is sufficiently comprehensive to make a reasonable inference that Congress left no room for supplementary state regulation.

124. Federal law defines “financial service or product’ in eleven carefully constructed subparagraphs of 12 U.S.C. § 5481(15).

125. The federal law is sufficiently comprehensive to reasonably infer that Congress left no room for supplementary state regulation.

126. The Dodd-Frank Act states that a "statute, regulation, order, or interpretation . . . in any State is not inconsistent with... this title if the protection that [it] affords to consumers is greater than the protection provided under this title." 12 U.S.C. § 5551. However, under the Dodd-Frank Act, State consumer financial laws are preempted if the State law “is preempted by a provision of Federal law other than title 62 of the Revised Statutes.” 12 U.S.C. § 25b(b)(1)(C).

Title 62 of the Revised Statutes contains 12 U.S.C. §§ 5133 through 5243, therefore excluding 12 U.S.C. §5481, making preemption appropriate.

127. Congress' objectives in enacting Title 12 of the United States Code was to implement and enforce Federal consumer financial law consistently to ensure that *all consumers* have access to markets for consumer financial products and services and that markets for consumer financial products and services are fair, transparent, and competitive. 12 U.S.C. § 5511(a) (emphasis added). The term "all consumers" establishes a purpose of uniformity in markets for consumer financial products and services. New York does not have the authority to define for themselves a term with the history of substantial federal regulation.

128. Therefore, the Regulation is preempted by federal law.

FOURTH CAUSE OF ACTION
Violation of the First Amendment of the U.S. Constitution and the New York Constitution

129. Plaintiffs-Petitioners incorporate by reference all of the preceding paragraphs.

130. The Regulation violated the First Amendment of the U.S. Constitution, as applied to the states through the Fourteenth Amendment, under the compelled commercial speech doctrine and/or the restricted commercial speech doctrine.

131. The First Amendment protection under the New York Constitution is stronger than the one provided in the U.S. Constitution, therefore, the First Amendment claims sought by Plaintiffs-Petitioners under the U.S. constitution are also asserted under the New York Constitution.

132. The following section of the Regulation violate either the compelled commercial speech or the restricted commercial speech doctrine under the U.S. Constitution and violate the First Amendment of the New York Constitution: 23 NYCRR §§ 200.19, 200.19(a)(6), 200.19(a)(7), 200.19(a)(8), 200.19(a)(9), 200.19(b)(1), 200.19(b)(2), 200.19(c)(3), 200.19(c)(4),

and 200.19(g).

133. The disclosures are not purely factual and uncontroversial.

134. One of the required disclosures is that "the nature of Virtual Currency may lead to an increased risk of fraud or cyber attack." FSL § 200.19(a)(8). However, this is blatantly false. Using virtual currencies puts you at no greater risk of fraud or cyber-attack than using a credit card or online shopping. The compelled disclosures are not reasonably related to the State's interest in preventing deception of consumers.

135. The compelled disclosures do not directly advance—and are far more extensive than is necessary to serve—any interest the state might have.

136. 23 NYCRR § 200.19(a)(6) requires Plaintiffs-Petitioners to make a specific disclosure about the lack of business continuity. This compelled disclosure is speculative, because using Bitcoin does not trigger a business continuity risk higher or lower than using other forms of payments. This disclosure is both unjustified and unduly burdensome because Plaintiffs-Petitioners contracted with each bodega customer to provide Bitcoin processing services for each transaction, which is no more or less riskier than any other service used by Plaintiffs-Petitioners' customers, especially if Defendants-Respondents do not have the jurisdictional basis to regulate Bitcoin.

137. 23 NYCRR § 200.19(a)(7) requires Plaintiffs-Petitioners to make a specific disclosure about the volatility of Bitcoin's value. This compelled disclosure is irrelevant, since Plaintiffs-Petitioners guarantees an exchange rate to the bodega's customer, and has agreed to take the exchange rate risk away from the bodega's customer. This disclosure is both unjustified and unduly burdensome because Plaintiffs-Petitioners contracted with each bodega customer to eliminate the exchange rate risk from the bodega customer.

138. 23 NYCRR § 200.19(a)(9) requires Plaintiffs-Petitioners to make a specific disclosure about the technological difficulties which Plaintiffs-Petitioners may encounter in delivering their Bitcoin processing services. This compelled disclosure is inaccurate, as the Bitcoin technology is no more or less reliable than other technological devices, such as credit card payment machines, and because technological difficulties relate to the equipment used by the customer and are not intrinsically related to the nature of Bitcoin. Furthermore, this requirement restricts Plaintiffs-Petitioners' commercial speech rights, because they can no longer make any statements as to the reliability of a payment using Bitcoin. This disclosure is both untrue, and is also unjustified and unduly burdensome because Plaintiffs-Petitioners' speech is severely restricted AND his ability to market Bitcoin processing services is severely restricted.

139. 23 NYCRR § 200.19(b)(1) requires Plaintiffs-Petitioners to make a specific disclosure about the customer's liability for unauthorized Bitcoin transactions. This compelled disclosure is overly broad, because Plaintiffs-Petitioners would be unable to identify specifically a given customer liability when the bodega customer uses Bitcoin as compared to using other forms of payments. This disclosure is unjustified and unduly burdensome because Plaintiffs-Petitioners' ability to market Bitcoin processing services is hampered by the lack of specific instructions from the government in articulating the customer's liability when he uses Bitcoin as compared to using other forms of payments.

140. 23 NYCRR § 200.19(b)(2) requires Plaintiffs-Petitioners to make a specific disclosure about the customer's right to stop a pre-authorized Bitcoin transaction. This compelled disclosure is both irrelevant and overly broad, since Plaintiffs-Petitioners guarantee a return policy at least equivalent to the return policy of the bodega to the bodega's customer. Therefore, this disclosure is overly broad, because Plaintiffs-Petitioners cannot guarantee more

than what the bodega provides to its current customer under existing New York law. This disclosure is unjustified and unduly burdensome because Plaintiffs-Petitioners cannot guarantee more than what the bodega provides to its current customer under existing New York law.

141. 23 NYCRR § 200.19(c)(3) requires Plaintiffs-Petitioners to make a specific disclosure about the type and nature of the Bitcoin transaction. This compelled disclosure is overly broad, since Plaintiffs-Petitioners would be unable to identify specifically the extent to which this information should be provided when the bodega customer uses Bitcoin as compared to using other forms of payments. This disclosure is unjustified and unduly burdensome because Plaintiffs-Petitioners cannot guarantee more than what the bodega provides to its current customer under existing New York law.

142. 23 NYCRR § 200.19(c)(4) requires Plaintiffs-Petitioners to make a specific disclosure about the ability to undo the Bitcoin transaction. This compelled disclosure is both irrelevant and overly broad, since Plaintiffs-Petitioners guarantees a return policy at least equivalent to the return policy of the bodega to the bodega's customer, therefore eviscerating the need for this required disclosure. This disclosure is both irrelevant and unduly burdensome because Plaintiffs-Petitioners cannot guarantee more than what the bodega provides to its current customer under existing New York law.

143. Similarly, 23 NYCRR § 200.19(g) requires Plaintiffs-Petitioners to make a specific disclosure about fraud prevention. This compelled disclosure is both irrelevant and overly broad, since Plaintiffs-Petitioners are already required to engage in fraudulent activity prevention under New York law, and because this requirement would trigger enormous administrative burdens well in excess of the Plaintiffs-Petitioners' ability to generate income from Bitcoin processing services. This disclosure is both irrelevant and unduly burdensome

because Plaintiffs-Petitioners would be subject to an enormous administrative burden well in excess of his ability to generate income from Bitcoin processing services.

144. Therefore, the Regulation violates both the First Amendment of the U.S. Constitution and of the New York Constitution.

REQUEST FOR RELIEF

WHEREFORE, Plaintiffs-Petitioners respectfully request judgment as follows:

(a) Enjoining and permanently restraining Defendants-Respondents and any of their agents, officers, and employees from implementing or enforcing the Regulation on the basis that it is unlawfully *ultra vires*, and declaring the Regulation invalid;

(b) Declaring the Regulation unconstitutional because it violates the separation-of-powers doctrine to the extent they are found to have delegated and/or authorized Defendants-Respondents to promulgate the Regulation;

(c) Enjoining and permanently restraining Defendants-Respondents and any of their agents, officers and employees from implementing or enforcing the Regulation on the basis that it is arbitrary and capricious;

(d) Enjoining and permanently restraining Defendants-Respondents and any of their agents, officers and employees from implementing or enforcing the Regulation on the basis that it is preempted by federal law;

(e) Enjoining and permanently restraining Defendants-Respondents and any of their agents, officers and employees from implementing or enforcing the Regulation on the basis that it violates both the First Amendment of the U.S. Constitution and of the New York Constitution;

(h) Declaring that the Regulation is preempted by federal law;

(i) Declaring that the Regulation violates both the First Amendment of the U.S. Constitution and of the New York Constitution;

(j) Awarding Plaintiffs-Petitioners incidental monetary relief as well as its reasonable attorneys' fees, costs and interest, including without limitation attorney's fees permitted under CPLR Article 86, and;

(k) Granting such other and further relief as the Court deems just and proper.

Dated: May 25, 2017
New York, New York

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Attorney for Plaintiffs-Petitioners

VERIFICATION

STATE OF NEW YORK)

) ss:

COUNTY OF NEW YORK)

Theo Chino, being duly sworn, deposes and says:

I am a plaintiff-petitioner in the above-entitled action. I have a read the foregoing complaint and know the content thereof. The same are true to my knowledge, except as to matters therein stated to be alleged on the information and belief and as to those matters I believe them to be true.

THEO CHINO

SWORN to before me, this 24 day May, 2017

NOTARY PUBLIC

SHAKIRA LATEEFAH SPENCE
Notary Public - State of New York
NO. 01SP6295206
Qualified in Bronx County
My Commission Expires Dec 30, 2017

VERIFICATION

STATE OF NEW YORK)

) ss:

COUNTY OF NEW YORK)

Theo Chino, being duly sworn, deposes and says:

I am the owner of Chino LTD, a plaintiff-petitioner in the above-entitled action. I have a read the foregoing complaint and know the content thereof. The same are true to my knowledge, except as to matters therein stated to be alleged on the information and belief and as to those matters I believe them to be true. The reason this verification is not made by plaintiff-petition is that plaintiff-petitioner is a corporation and Theo Chino is its duly authorized representative. The sources on which I rely in verifying the truth of the allegations in the complaint are the documents contained in the accompanying exhibits to the complaint and other books and records maintained by Chino LTD.

THEO CHINO
On behalf of Chino LTD

SWORN to before me, this 24 day May, 2017

NOTARY PUBLIC

SHAKIRA LATEEFAH SPENCE
Notary Public - State of New York
NO. 01SP6259206
Qualified in Bronx County
My Commission Expires Dec 30, 2017