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Via Email

DFS Office of General Counsel  
Attn.: Dana V. Syracuse  
New York State Department of Financial Services  
One State Street  
New York, NY 10004  
USA

20 August 2014

**Re: Comments on Proposed Regulations of Superintendent of Financial Services Regarding Virtual Currencies; 23 NYCRR Chapter I, Part 200**

Dear Ms. Syracuse:

CLS Bank International ("CLS") welcomes the opportunity to share its views on the New York State Department of Financial Services' ("NYDFS") proposal to regulate Virtual Currencies. We write to you suggesting clarification of the proposed regulations, which we believe are not intended to regulate payment systems such as CLS that facilitate the exchange of Fiat Currencies. CLS is not opining on the propriety of the regulation of Virtual Currencies or Virtual Currency Business Activity.

CLS is an Edge Act Corporation, organized under the federal laws of the United States, as a payment versus payment system to mitigate settlement risk (loss of principal) associated with the settlement of payments related to foreign exchange transactions (the "CLS System"). CLS is regulated by the Board of Governors of the Federal Reserve System and is the only US foreign exchange settlement system. In addition, 22 central banks representing the 17 Fiat Currencies that are settled in the CLS System have established a Protocol for the Cooperative Oversight Arrangement of CLS, organized and administered by the Federal Reserve, as a mechanism for the fulfilment of their responsibilities to promote safety, efficiency, and stability in the local markets and payment systems in which CLS participates.

CLS is not a retail payments services provider. It offers no opportunities for individuals to enter or exchange retail payments through its operations.

CLS's settlement service begins with the submission by CLS members of electronic payment instructions to the CLS System. These instructions direct CLS to settle on its books certain payment entitlements and obligations relating to underlying foreign exchange and derivative transactions of CLS's member financial institutions. Settlement is undertaken having regard to members' account balances, representing amounts paid to CLS's accounts in the real-time gross settlement systems of the 17 Fiat Currencies.

The intention of the regulations is to regulate Virtual Currencies, rather than Fiat Currencies. However, most transactions in and records of Fiat Currencies are executed and/or recorded electronically, including payment instructions and records of account in payment systems. Given the broad definition of a Virtual Currency, in particular the reference to "any type of digital unit that is used as a medium of exchange or a form of digitally stored value or that is incorporated into payment system technology" and noting the

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absence of a definition of "digital unit," CLS considers it a risk that the terms Virtual Currency (and consequently, Virtual Currency Business Activity) could be construed so as to refer to such electronic instructions and records in relation to Fiat Currencies, thereby applying the regulations to a broad array of electronic financial transactions that are effected within the financial system, including transactions in regulated payment systems. Accordingly, CLS would recommend that the definition of Virtual Currency be amended, either by rephrasing the definition or by including further exceptions, in addition to those relating to online gaming and rewards programs.

CLS does not believe that the proposed regulations were drafted with the intent of including the electronic payment instructions CLS receives from its members or the records of their account balances within the definition of a Virtual Currency, nor does CLS believe that the CLS System was intended to be included within the definition of Virtual Currency Business Activity. Accordingly, should the NYSDFS elect to clarify the potential ambiguity through specific exceptions, CLS proposes that an exception be provided within the proposed regulations to clarify that CLS's payment instructions and records are not a Virtual Currency, thus removing the CLS System from regulation under the NYSDFS proposal. The suggested changes are provided as Appendix A to this letter.

Please do not hesitate to contact CLS if you have any questions regarding this submission.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'A' followed by several horizontal strokes.

Alan Marquard  
Chief Legal Officer  
CLS Group

cc: Dino Kos, Executive Vice President, Head of Global Regulatory Affairs  
Tom Whitford, Executive Director, CLS Regulatory Affairs  
Victoria Cumings, Executive Director, CLS Legal  
Craig Rubin, Director, CLS Legal

Appendix A: Proposed Changes to NYSDFS Regulations on Virtual Currencies  
Title 23, Chapter I, Part 200

(Changes highlighted in red.)

*Virtual Currency* means any type of digital unit that is used as a medium of exchange or a form of digitally stored value or that is incorporated into payment system technology. Virtual Currency shall be broadly construed to include digital units of exchange that (i) have a centralized repository or administrator; (ii) are decentralized and have no centralized repository or administrator; or (iii) may be created or obtained by computing or manufacturing effort. Virtual Currency shall not be construed to include:

- a) digital units that are used solely within online gaming platforms with no market or application outside of those gaming platforms; ~~nor shall Virtual Currency be construed to include~~
- b) digital units that are used exclusively as part of a customer affinity or rewards program, and can be applied solely as payment for purchases with the issuer and/or other designated merchants, but cannot be converted into, or redeemed for, Fiat Currency; or
- c) ~~payment instructions that are submitted electronically to, or the electronic records of accounts in, a foreign exchange settlement system.~~