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January 27, 2020

New York State Department of Financial Services
1 State Street
New York, NY 10004

Via Email to innovation@dfs.ny.gov

Re: Proposed Coin Listing Policy Framework

To whom it may concern:

Grant Thornton LLP appreciates the opportunity to comment on the Proposed Coin Listing Policy Framework (Framework). We support the New York Department of Financial Services' (DFS) undertaking to enhance efficiency and enable virtual currency licensees "to offer and use new coins in a timely fashion." We believe this is an important area of opportunity for both investors and other users of virtual currencies to promote and offer new coins, particularly as this medium continues to grow. Nevertheless, we note appropriate regulation of such listings is in the public interest. We respectfully submit our comments and recommendations on the proposed Framework for DFS's consideration.

General Terms

With respect to certain of the terms used in the proposal, specifically "coins" and "virtual currencies," we recommend the DFS consider using the term "digital assets." We believe using the terms in the proposal may be interpreted to be more narrowly applied, for example, not to include certain coins or tokens as not being deemed a "virtual currency." We believe digital assets is a more neutral term and would provide appropriate regulation over the various forms of coins, currencies, tokens, etc., that may be listed.

Risk

We support the need for a risk framework to guide entities in their development of coin listing policies and procedures. However, we note certain concerns with the proposal as described below.

The proposal requires licensees to “ensure that an independent audit review of all associated risks relating to a new coin is conducted to ensure that all risks have been assessed and addressed.” We note several issues with the proposed requirement.

It is not clear what assurance is being required. As currently phrased, we believe this will result in inconsistent and possibly less robust attestation from the independent third party. We note that standards of the American Institute of Certified Public Accountants (AICPA) currently provide various attestation services that may be relevant in providing third-party involvement in the evaluation of the risk assessment. Those services include examinations, reviews, and agreed-upon procedures. The AICPA standards also include consulting standards that do not require the practitioner to be independent. We encourage the DFS to revise this requirement to be clearer on the appropriate level of assurance over the risk assessment process and suggest an examination-level service (which is akin to an audit) if this is the direction DFS intends. This would also require the practitioner to be independent of the entity under defined standards (that is, the AICPA Code of Professional Conduct).

We also recommend that the description of the third-party examination requirement be revised to address “relevant risks, including those set forth in the Framework that could materially affect the listings.” We do not believe the proposed requirement to “ensure that all risks have been assessed and addressed” is operational as it could be interpreted as applying to every possible risk, regardless of significance or likelihood. Such an overly broad requirement would be difficult, if not impossible, to cover in any type of attestation engagement.

Finally, we note the risk assessment is proposed to be performed “entirely free of conflict of interest.” It is not clear what is intended by the phrase. Further clarity would assist in more consistent evaluation of conflicts of interest that would be deemed problematic.

Governance

We generally support the proposed requirements with respect to an entity’s governance over the adoption or listing of virtual currencies. We do note certain proposed requirements related to approvals that may be challenging to operationalize and define. We agree that documentation of the relevant approvals by the board of directors (or equivalent) and members of senior management should be required. However, we note that the requirement indicates “all stakeholders” and provides a list of possible approvers. We believe that the parties could vary from entity to entity and the interpretation of “approval” may be inconsistent. For example, if management engages third-party legal counsel to provide assistance with the proposed listing, would that constitute approval? We recommend, therefore, that the requirement be revised to (i) require approvals of the board and senior management; and (ii) require documentation in the entity’s coin-listing policy (as defined in the Framework) of the processes and controls that management has established to address the steps involved in the development and approval of virtual currencies. We also recommend that the documentation be limited to key participants in those processes and controls.

As the policy is required to be submitted to DFS, it would also be helpful to outline circumstances where a change in such policy may require resubmission and DFS’s

approval of the changes. We recommend this because certain changes to policies, procedures, or controls may be perfunctory or not substantive to the policy and as such may not require resubmission.

Monitoring

We support the DFS proposal to require periodic monitoring. We note that proposed requirements related to “managing risks associated with the coin” is somewhat vague. We believe that this aspect of monitoring could be strengthened if the requirement were linked back to the identified risks in the initial listing of the coin. As per our comments above, the proposal would benefit from more clarity as it relates to the nature of the risks that DFS believes are relevant to a coin listing.

Additionally, we note there is no required involvement of the independent third party to evaluate the entity’s performance of the monitoring requirements. We believe continued management attention to the circumstances of listed coins is important to the protection of the public interest. As such, we recommend the entity obtain a similar third-party examination report over the entity’s compliance with the monitoring requirements in the Framework. While there would be an ongoing cost to the entity to have this examination performed, we do not believe the costs would be significant in comparison to the additional protection of the public interest.

We would be pleased to discuss our comments with you. If you have any questions, please contact Jim Burton, Partner-in-Charge of Audit Methodology and Standards, at (303) 813-3945 or via email at Jim.Burton@us.gt.com.

Sincerely,

/s/ Grant Thornton LLP