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## Key Points From NY Regulators' Crypto Listing Update

By **Tiffany Smith, Zachary Goldman and Isabel Dai** (November 2, 2023, 10:42 AM EDT)

On Sept. 18, the New York State Department of Financial Services **issued** proposed guidance for companies holding virtual currency business licenses and limited-purpose trust companies — collectively referred to as virtual currency entities, or VCEs — seeking to list virtual currencies on their platforms.

The proposed guidance updates the department's framework for self-certification of coins and establishes new policy requirements for coin listings and delistings.[1]

Concurrently, the department updated its list of coins that VCEs can list without the NYDFS' prior approval and revised the process for coins to be added to the greenlist, which is the department's general framework for greenlisted coins.[2]

The proposed guidance would require VCEs to develop and implement a coin-listing policy in compliance with heightened risk assessment standards and enhanced requirements for retail consumer-facing businesses before self-certifying any coins. It also would require any VCE, regardless of whether it has a NYDFS-approved coin-listing policy, to establish a separate coin-delisting policy to ensure safety, customer protection and regulatory compliance.

As part of the updates on Sept. 18, the NYDFS also revised its general framework for reenlisted coins and significantly pared back the number of coins on its greenlist to Bitcoin, Ethereum, and six stablecoins issued by NYDFS-regulated limited purpose trust companies.

### Key Points

#### ***Heightened Standards for Coin-Listing Policies***

Among other things, the proposed guidance advises VCEs to include in their coin-listing policy "robust procedures that comprehensively address all steps involved in the review and approval of coins." [3]

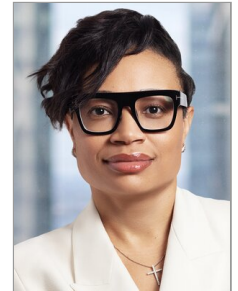
The coin-listing policy should be customized to fit the entity's "specific business model, operations, customers and counterparties, geographies of operations, and service providers, and must also account for the use, purpose, and specific features of the coins being considered." [4]

Like the original guidance, the proposed guidance organizes its requirements for coin-listing policies according to three pillars: governance, risk assessment and monitoring.

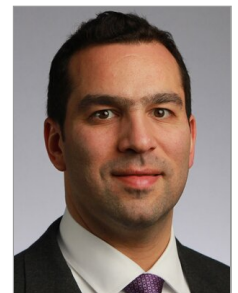
#### ***Governance***

The proposed guidance imposes new independence requirements for entities' board of directors or equivalent governing authority and requires VCEs to publicly disclose any conflicts of interest between a VCE or its affiliates and their owners, principals, employees or their respective families.

It also requires VCEs to keep records of any documentation reviewed and produced by those responsible for approval and/or disapproval recommendations related to coin-listing and the risk assessment conducted on the specific coins under consideration. A breakdown of the update in these requirements is below.



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Governance Requirements	
Original Guidance	Proposed Guidance
The board of directors or equivalent governing authority (the Governing Authority) must annually review and approve the coin-listing policy.	No change.
The Governing Authority must oversee the review and approval process for listing new coins.	No change.
None.	<b>New Requirement:</b> The Governing Authority must remain independent from those who recommend listing and/or delisting coins.
Required to assess and address any conflicts of interest related to the VCE and its owners, principals, employees or their respective families.	<b>Revised Requirement:</b> Required to assess, address <b>and publicly disclose</b> any conflicts of interest related to the VCE <b>or its affiliates</b> , and to their owners, principals, employees or their respective families.
Required to keep records of (1) any Governing Authority's meeting minutes and (2) all documents they reviewed in connection with each coin's approval or disapproval.	<b>Revised Requirement:</b> Required to keep records of (1) any Governing Authority's meeting minutes, (2) all documents they reviewed in connection with each coin's approval or disapproval, (3) <b>documentation reviewed and produced by those responsible for approval and/or disapproval recommendations related to coin-listing and (4) the risk assessment conducted on the specific coin(s) under consideration.</b>

### Risk Assessment

The proposed guidance prohibits VCEs from self-certifying any coins that are not included on the greenlist and that share any of the following features — or if a VCE cannot determine that such coin does not have these features — for retail consumer-facing products or services:

- Coins designed or substantially used to circumvent laws and regulations;
- Coins that may facilitate the obfuscation or concealment of customer or counterparty identities;
- Stablecoins, including any coin designed to serve as collateral for a stablecoin that is not included on the greenlist;
- Exchange coins, i.e., coins issued by a cryptocurrency exchange or that can otherwise be used to provide benefits on an exchange;
- Bridge coins, including any coin designed to serve as collateral or governance for an application that enables the transfer of coins across different protocols;
- Coins native to a protocol where there are concerns related to the protocol's decentralization, i.e., if a single entity or individual controls more than 51% of the hash power for protocols with proof of work or similar consensus mechanisms; or
- Coins with a circulation supply of less than 35% of the total supply.

Any VCE seeking to list coins with any of these characteristics for its retail consumer-facing business must request approval from the NYDFS as a material change to its business operations. This request must include a comprehensive risk assessment that aligns with the proposed guidance.

The NYDFS will review the request and conduct its own analysis. The changes from the original guidance are reflected in the chart below.

Risk Assessment Requirements	
Original Guidance	Proposed Guidance
Required to perform a comprehensive risk assessment of each coin and its uses in accordance with the consumer protection and other standards embodied in 23 NYCRR Part 200.	No change.
None.	<b>New Requirement:</b> Required to incorporate the NYDFS's guidance on preventing market manipulation in the risk assessment process.
None.	<p><b>New Requirement:</b> Not permitted to self-certify any coins that are not included on the Greenlist and shares any of the following features (or it cannot be determined that such coin does <i>not</i> have these features) for retail consumer-facing products or services:</p> <ul style="list-style-type: none"> <li>• Coins designed or substantially used to circumvent laws and regulations,</li> <li>• Coins that may facilitate the obfuscation or concealment of customer or counterparty identities,</li> <li>• Stablecoins (including any coin designed to serve as collateral for a stablecoin that is not included on the Greenlist),</li> <li>• Exchange coins (i.e., coins issued by a cryptocurrency exchange or can otherwise be used to provide benefits on an exchange),</li> <li>• Bridge coins (including any coin designed to serve as collateral or governance for an application that enables the transfer of coins across different protocols),</li> <li>• Coins native to a protocol where there are concerns related to the protocol's decentralization (i.e., if a single entity or individual controls more than 51% of the hash power for protocols with proof of work or similar consensus mechanisms), or</li> <li>• Coins with a circulation supply less than 35% of the total supply.</li> </ul> <p>Any VCE seeking to list coins with any of these characteristics for its retail consumer-facing business must request approval from the NYDFS as a material change to its business operations. This request must include a comprehensive risk assessment that aligns with the Proposed Guidance. The NYDFS will review the request and conduct its own analysis.</p>

### Ongoing Monitoring Requirements

VCEs are required to establish a coin-delisting policy, described in more detail below, and integrate coin-listing policies into their broader risk and compliance framework. They also are required to ensure that independent testing includes coin-listing and coin-delisting in its scope as part of annual planning.

Ongoing Monitoring Requirements	
Original Guidance	Proposed Guidance
Required to adopt, document and implement control measures to manage risks associated with the coin.	No change.
Required to have a process for delisting the coin, including notice to affected customers or counterparties.	<b>Revised Requirement:</b> Required to <b>establish a coin-delisting policy in accordance with the Proposed Guidance</b> (described in more detail below).
None.	<b>New Requirement:</b> Required to integrate coin-listing policies into the VCE's broader risk and compliance framework.
None.	<b>New Requirement:</b> Required to ensure that independent testing includes <b>coin-listing and coin-delisting in its scope as part of annual planning</b> .

### Framework for Coin-Delisting Policies

The proposed guidance further requires any VCE, regardless of whether it has a NYDFS-approved coin-listing policy, to establish a separate coin-delisting policy to ensure safety, customer protection and compliance with Title 23 of the New York Codes, Rules and Regulations, Part 200, and the proposed guidance.

Whereas the proposed changes to the coin-listing policy would not apply to VCEs that solely custody or list coins on the greenlist, all VCEs would need to adopt a coin-delisting policy.

A coin-delisting policy must outline the specific process for initiating a delisting event. This includes defining roles and responsibilities, designating individuals with the authority to initiate a delisting, establishing an approval chain within the organization, and specifying how the matter escalates to the governing authority for final approval.

It also must set clear criteria and thresholds for the triggers of a delisting event, such as new findings from periodic evaluations, shifts in the legal or regulatory landscape, or a directive from the NYDFS to delist a coin.

Once a decision has been made to delist a coin, a VCE must inform the NYDFS in writing of its decision at least 10 days prior to informing its customers. A VCE is required to provide customers with at least 30 days' prior written notice.

The notice must include details about the coins to be delisted, the reasons for the delisting, the timing of the delisting, and instructions for affected customers on how to sell or transfer the delisted coin from the VCE's platform.

The coin-delisting policy should specify how and when customers will receive the required communication, ensure the availability of customer support to address inquiries and assist affected customers, require proper documentation of the delisting decision — which must be readily available to the NYDFS — and dedicate resources for ongoing monitoring of safe and soundness issues associated with a delisting.

### **Revised General Framework for Greenlisted Coins**

In addition to the proposed guidance, the NYDFS revised its general framework for greenlisted coins as part of the updates on Sept. 18.

Under the revised framework, the NYDFS will consider adding a coin to the greenlist if the coin or coin issuer has a history of safety, soundness and customer protection, as well as broad market adoption, or the coin is a stablecoin approved by the NYDFS for issuance in New York by a VCE.

VCEs do not need the department's prior approval to list or custody coins included on the greenlist.

However, VCEs that choose to list greenlisted coins must provide advance notice to the NYDFS prior to beginning support of the coin and have a NYDFS-approved coin-delisting policy.

At any time and in its sole discretion, the NYDFS has the authority to add, remove or modify coins on the greenlist; prohibit or otherwise limit a coin's use before or after a VCE begins using a coin; or require a VCE to delist or limit activity with respect to any coin.

### **Revised Greenlist**

The NYDFS also significantly pared back the number of coins on its greenlist. There had been more than 20 greenlisted tokens prior to Sept. 18. The list now contains only eight — including Bitcoin, Ethereum and six stablecoins (Gemini Dollar, GMO JPY, GMO USD, Pax Gold, Pax Dollar and PayPal Dollar).

All have been issued by NYDFS-regulated limited purpose trust companies. Among the coins removed from the prior greenlist are Bitcoin Cash, Dogecoin, Ripple's XRP and Litecoin.

Whereas the prior greenlist distinguished between coins that were approved for listing versus custody, or both,[5] the new greenlist does not make such a distinction.

Instead, the department has clarified that the new greenlist identifies the coins it has approved for VCEs "to custody or list without first establishing an approved coin-listing policy or otherwise seeking prior approval." [6]

VCEs that currently list coins that are no longer included on the greenlist are not required to immediately delist the removed coins. The NYDFS has stated that it will coordinate with all VCEs as appropriate to ensure each VCE has an approved coin-delisting policy and associated procedures prior to requiring the delisting of any coin.

Any action to require VCEs to delist or otherwise limit access to coins that are not included on the greenlist, according to the NYDFS, "will be taken over an appropriate timeline to mitigate any impact to New Yorkers and the broader marketplace." [7]

### **Looking Forward**

The proposed guidance comes as Superintendent Adrienne Harris approaches her two-year mark on the job as New York's top financial regulator and one of the most high-profile state regulators in the country. Under her leadership, the NYDFS has expanded its oversight of digital assets and engaged in active enforcement. [8]

The proposed guidance also comes in the midst of a debate between U.S. Reps. Patrick McHenry, R-N.C., and Maxine Waters, D-Calif., the respective chair and ranking member of the House Financial Services Committee. They have been negotiating legislation to create a framework at the federal level for the issuance and oversight of payment stablecoins.

Key areas of negotiation between the Republican and Democratic proposals include the extent to which federal and state regulators should share oversight of the stablecoin industry.

The proposed guidance signals that the NYDFS remains committed to being a leading regulator of virtual currency. In furtherance of this goal, we can expect the NYDFS to continue to carve new paths in regulation, supervision and enforcement related to digital assets.

VCEs to which this proposed guidance would apply should review the proposed guidance and evaluate its impact on their existing practices and coin-listing policies, procedures and processes. VCEs should also begin creating their newly required coin-delisting policies. [9]

The proposed guidance, if finalized, would require VCEs to meet with the NYDFS to discuss their draft coin-delisting policy by Dec. 8, and submit the policy to the NYDFS for approval by Jan. 31, 2024.

The comment period for the proposed guidance was open until Oct. 20., and the final guidance is now forthcoming.

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[1] See N.Y. Dept. Fin. Servs., Letter re: Proposed Updates to Guidance Regarding Listing of Virtual Currencies (Sept. 18, 2023), [https://www.dfs.ny.gov/industry\\_guidance/industry\\_letters/il20230918\\_guidance\\_vc\\_listing](https://www.dfs.ny.gov/industry_guidance/industry_letters/il20230918_guidance_vc_listing).

[2] N.Y. Dept. Fin. Servs., Letter re: General Framework for Greenlisted Coins (Sept. 18, 2023), [https://www.dfs.ny.gov/industry\\_guidance/industry\\_letters/il20230918\\_gen\\_framework\\_greenlisted\\_coins](https://www.dfs.ny.gov/industry_guidance/industry_letters/il20230918_gen_framework_greenlisted_coins).

[3] N.Y. Dept. Fin. Servs., Letter re: Proposed Updates to Guidance Regarding Listing of Virtual Currencies (Sept. 18, 2023), [https://www.dfs.ny.gov/industry\\_guidance/industry\\_letters/il20230918\\_guidance\\_vc\\_listing](https://www.dfs.ny.gov/industry_guidance/industry_letters/il20230918_guidance_vc_listing).

[4] N.Y. Dept. Fin. Servs., Letter re: Proposed Updates to Guidance Regarding Listing of Virtual Currencies (Sept. 18, 2023), [https://www.dfs.ny.gov/industry\\_guidance/industry\\_letters/il20230918\\_guidance\\_vc\\_listing](https://www.dfs.ny.gov/industry_guidance/industry_letters/il20230918_guidance_vc_listing).

[5] For example, among the coins identified above, Bitcoin Cash and Litecoin were approved for listing and for custody. In contrast, Dogecoin and XRP were only approved for custody.

[6] N.Y. Dept. Fin. Servs., Letter re: Proposed Updates to Guidance Regarding Listing of Virtual Currencies (Sept. 18, 2023), [https://www.dfs.ny.gov/industry\\_guidance/industry\\_letters/il20230918\\_guidance\\_vc\\_listing](https://www.dfs.ny.gov/industry_guidance/industry_letters/il20230918_guidance_vc_listing).

[7] *Id.*

[8] See, e.g., Press Release, N.Y. Dept. Fin. Servs., "DFS Superintendent Harris Announces \$30 Million Penalty on Robinhood Crypto for Significant Anti-Money Laundering, Cybersecurity & Consumer Protection Violations" (Aug. 2, 2022), [https://www.dfs.ny.gov/reports\\_and\\_publications/press\\_releases/pr202208021](https://www.dfs.ny.gov/reports_and_publications/press_releases/pr202208021); Press Release, N.Y. Dept. Fin. Servs., "Superintendent Adrienne A. Harris Announces \$100 Million Settlement with Coinbase, Inc. after DFS Investigation Finds Significant Failings in the Company's Compliance Program" (Jan. 4, 2023), [https://www.dfs.ny.gov/reports\\_and\\_publications/press\\_releases/pr202301041](https://www.dfs.ny.gov/reports_and_publications/press_releases/pr202301041); Press Release, N.Y. Dept. Fin. Servs., "The New York State Department of Financial Services Announces the Results of the Review of the Supervision and Closure of Signature Bank" (April 28, 2023), [https://www.dfs.ny.gov/reports\\_and\\_publications/press\\_releases/pr202304281](https://www.dfs.ny.gov/reports_and_publications/press_releases/pr202304281).

[9] In the letter announcing the Proposed Guidance, the DFS "strongly encouraged" VCEs to begin creating their coin-delisting policies during the public comment period. See N.Y. Dept. Fin. Servs., Letter re: Proposed Updates to Guidance Regarding Listing of Virtual Currencies (Sept. 18, 2023), [https://www.dfs.ny.gov/industry\\_guidance/industry\\_letters/il20230918\\_guidance\\_vc\\_listing](https://www.dfs.ny.gov/industry_guidance/industry_letters/il20230918_guidance_vc_listing).