

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

THEO CHINO and CHINO LTD,

Plaintiffs-Petitioners,

-against-

THE NEW YORK STATE DEPARTMENT OF  
FINANCIAL SERVICES and MARIA T. VULLO,  
in her official capacity as Superintendent of the  
New York State Department of Financial Services.

Defendants-Respondents.

**AFFIRMATION OF PIERRE  
CIRIC IN SUPPORT OF  
PLAINTIFFS'-PETITIONERS'  
OPPOSITION TO  
DEFENDANTS'-  
RESPONDENTS' CROSS-  
MOTION TO DISMISS**

Index No. 101880/2015  
Hon. Lucy Billings

I, Pierre Ciric, an attorney duly admitted to practice law before the courts of the State of New York, and not a party to the above-entitled action, affirm the following to be true to the best of my knowledge and under the penalties of perjury pursuant to New York Civil Practice Law and Rules (“CPLR”) § 2106:

1. I am an attorney at the Ciric Law, PLLC and counsel for Plaintiffs-Petitioners Theo Chino and Chino LTD (“Petitioners”) in the above-entitled action.
2. I submit this affirmation in support of the Plaintiffs’-Petitioners’ Opposition to Defendants’-Respondents’ Cross-Motion to Dismiss the Amended Verified Complaint and Article 78 Petition filed by the New York State Department of Financial Services (the “Department”) and Maria T. Vullo, in her official capacity as Superintendent of the Department (collectively the “Respondents”).
3. In my capacity as counsel for Petitioners, I am fully familiar with the facts and circumstances hereinafter contained, the source of such knowledge being the file materials maintained by my office during the course of the action herein.

## Background on Part 200 of Chapter 1 of Title 23 of the New York Codes, Rules and Regulations (the “Regulation”)

4. According to the Regulation imposed by the Department, anyone “performing exchange services as a customer business” is required to obtain a license.<sup>1</sup>

5. Companies have reported spending between \$50,000 and \$100,000 in order to meet the requirements when applying for a license under the Regulation.<sup>2</sup>

6. According to the Regulation, the same requirements apply to all virtual currency transactions, regardless of whether, for example, a Satoshi,<sup>3</sup> worth less than 1 cent, is being transacted, or 100 bitcoins, worth approximately \$56,944, are being transacted.<sup>4</sup>

7. The Regulation requires licensees to maintain a capital requirement as determined by the Superintendent.<sup>5</sup> Generally, capital requirements serve either to reduce or to manage risk in the financial sector.<sup>6</sup> In the banking field they provide a cushion to “reduce risk and protect against failure,” in the insurance arena they “guard against insolvencies,” and in the broker-dealer context they serve to “manage failure.”<sup>7</sup>

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<sup>1</sup> *BitLicense Frequently Asked Questions*, N.Y. State Dep’t of Fin. Servs., [http://www.dfs.ny.gov/legal/regulations/bitlicense\\_reg\\_framework\\_faq.htm](http://www.dfs.ny.gov/legal/regulations/bitlicense_reg_framework_faq.htm).

<sup>2</sup> 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/>.

<sup>3</sup> A Satoshi is the smallest fraction of a bitcoin that can be transacted. ALBERT SZMIGIELSKI, BITCOIN ESSENTIALS 33 (2016). One Satoshi is the equivalent of 0.00000001 bitcoin. *Id.*

<sup>4</sup> *See id*; *Bitcoin Calculator*, COINDESK, <http://www.coindesk.com/calculator/> (last visited Aug. 2, 2016) (valuing one bitcoin at \$565.67 as of August 15, 2016).

<sup>5</sup> 23 NYCRR § 200.8.

<sup>6</sup> *See* Daniel M. Gallagher, *The Philosophies of Capital Requirements*, SEC (Jan. 15, 2014), <https://www.sec.gov/News/Speech/Detail/Speech/1370540629644>.

<sup>7</sup> *See id*; Robert E. Lewis, *Capital from an Insurance Company Perspective*, 4 ECON. POL’Y REV. 183, 183 (1998).

## New York Is An Important Technology Center

8. The technology industry is an increasingly important piece of New York's economy, and digital currency is a prominent emerging technology.<sup>8</sup>

9. 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.<sup>9</sup> The Regulation has transformed this once welcoming New York landscape into an inhospitable environment for digital currency-related startups.<sup>10</sup>

10. 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."<sup>11</sup> Yet the Regulation has done just that.<sup>12</sup> The Regulation has effectively forced digital currency-related startups to relocate outside New York and to otherwise sever ties with New York citizens.<sup>13</sup> The Regulation is unjustifiably burdensome on startups and small

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<sup>8</sup> 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](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>.

<sup>9</sup> 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#.6351p86ks>.

<sup>10</sup> See Roberts, *supra* (reporting that in the wake of the Regulation's adoption, scores of bitcoin companies relocated outside the state of New York and severed ties to New York customers).

<sup>11</sup> Ben Lawsky, *The Final NYDFS BitLicense Framework*, MEDIUM (June 3, 2015), <https://medium.com/@BenLawsky/the-final-nydfs-bitlicense-framework-d4e333588f04#.akxneegmv>.

<sup>12</sup> See, e.g., Roberts, *supra*.

<sup>13</sup> See *id.*; *BitLicense Restrictions for New York Customers*, BITFINEX (Aug. 7, 2015), <https://www.bitfinex.com/posts/51>.

companies, and has in many instances left businesses with no other option than to flee and otherwise abandon New York.<sup>14</sup>

### **Characteristics of Financial Products**

11. Financial products are characterized by their connection to money management and use.<sup>15</sup> Examples of financial products include mortgage loans and car insurance policies.<sup>16</sup>

12. Financial services are facilities “relating to money and investments.”<sup>17</sup> Financial service providers essentially “help channel cash from savers to borrowers and redistribute risk.” Banks that administer payments systems, for example, are financial service providers.<sup>18</sup>

13. Because financial products and service involve money, the general purpose of financial regulation is “to protect borrowers and investors that participate in financial markets and mitigate financial instability.”<sup>19</sup>

### **Bitcoin Is Property, Not Money**

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

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<sup>14</sup> See, e.g. *id.*; Joseph Adinolfi, *Some digital-currency startups are fleeing New York*, MARKETWATCH (Aug. 18, 2015), <http://www.marketwatch.com/story/some-digital-currency-startups-are-fleeing-new-york-2015-08-18>; Everett Rosenfeld, *Company leaves New York, protesting 'BitLicense'*, CNBC (Jun. 11, 2015), <http://www.cnbc.com/2015/06/10/company-leaves-new-york-protesting-bitlicense.html>; Jamie Redman, *Bitlicense Forces Major Bitcoin Businesses to Leave in Droves*, BITCOIN.COM (Aug. 10, 2015), <https://news.bitcoin.com/bitlicense-forces-major-bitcoin-businesses-leave-in-droves/>.

<sup>15</sup> See *Financial Product*, CAMBRIDGE BUS. ENG. DICTIONARY, <http://dictionary.cambridge.org/us/dictionary/english/financial-product>.

<sup>16</sup> Irena Asmundson, *Financial Services: Getting the Goods*, IMF (Mar. 28, 2012), <http://www.imf.org/external/pubs/ft/fandd/basics/finserv.htm>.

<sup>17</sup> *Financial Services*, CAMBRIDGE ADVANCED LEARNER'S DICTIONARY & THESAURUS, <http://dictionary.cambridge.org/us/dictionary/english/financial-services>.

<sup>18</sup> Asmundson, *supra*.

<sup>19</sup> Edward V. Murphy, *Who Regulates Whom and How? An Overview of U.S. Financial Regulatory Policy for Banking and Securities Markets*, CONGRESSIONAL RESEARCH SERVICE (Jan. 30, 2015), <https://www.fas.org/sgp/crs/misc/R43087.pdf>.

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

16. 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).<sup>20</sup>

17. 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.<sup>21</sup> Anyone in the Bitcoin network may operate as a “miner” by using their computer to verify and record transactions.<sup>22</sup>

18. The bitcoin protocol includes built-in algorithms that regulate this mining function across the network.<sup>23</sup> The protocol limits the total number of bitcoins that will be created.<sup>24</sup>

19. Once bitcoins are created, they are used for bartering transactions using the blockchain technology.<sup>25</sup> This technology relies on data “blocks,” which are “a group of transactions, marked with a timestamp, and a fingerprint of the previous block.”<sup>26</sup> A blockchain is “[a] list of validated block, each linking to its predecessor all the way to the genesis block.”<sup>27</sup> The genesis block is “[t]he first block in the blockchain, used to initialize the cryptocurrency,

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<sup>20</sup> ANDREAS M. ANTONOPOULOS, *MASTERING BITCOIN: UNLOCKING DIGITAL CRYPTOCURRENCIES* (2014).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

and the universe of bitcoin transactions in capped at 21 million.”<sup>28</sup>

20. Some states have decided that Bitcoin is not money. Kansas and Texas have taken the same position and issued memoranda stating that Bitcoin is not money.<sup>29</sup>

21. California has tried twice to use the legislative process to pass a bill regulating virtual currency.<sup>30</sup> The bill was ordered to become an inactive file on September 11, 2015 at the request of Senator Mitchell.<sup>31</sup> The bill was reintroduced on August 8, 2016.<sup>32</sup> On August 15, 2016, Assembly member Matt Dababneh withdrew the bill from consideration and stated, “Unfortunately, the current bill in print does not meet the objectives to create a lasting regulatory framework that protects consumers and allows this industry to thrive in our state. More time is needed and these conversations must continue in order for California to be at the forefront of this effort.”<sup>33</sup>

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<sup>28</sup> *Id.*

<sup>29</sup> See 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> (stating “[Bitcoin] as currently implemented cannot be considered money or monetary value under the Money Services Act.”); 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](http://www.osbckansas.org/mt/guidance/mt2014_01_virtual_currency.pdf) (stating “[Bitcoin] as currently in existence [is] not considered ‘money’ or ‘monetary value’ by the [Office of the State Bank Commissioner], [it is] not covered by the [Kansas Money Transmitter Act].”).

<sup>30</sup> 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](https://leginfo.legislature.ca.gov/faces/billHistoryClient.xhtml?bill_id=201520160AB1326).

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> 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>.

22. New Hampshire’s House of Representatives passed HB 436, which seeks to exempt virtual currency users from having to register as money service businesses.<sup>34</sup>

23. 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.<sup>35</sup> The constitutional amendment would prevent any government effort to interfere with that use or ownership of digital currencies like Bitcoin.<sup>36</sup>

24. Bitcoin is not money, and because currencies are representations of money, Bitcoin is not true a currency.<sup>37</sup>

25. 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.”<sup>38</sup>

26. Unlike true currencies, Bitcoin is neither widely accepted as mediums of exchange nor a stable store of value,<sup>39</sup> nor issued by a government.<sup>40</sup>

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<sup>34</sup> 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/>.

<sup>35</sup> Stan Higgins, *Texas Lawmaker Proposes Constitutional Right to Own Bitcoin*, COINDESK (Mar. 3, 2017), <http://www.coindesk.com/texas-lawmaker-proposes-constitutional-right-bitcoin/>.

<sup>36</sup> *Id.*

<sup>37</sup> 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).

<sup>38</sup> *In re Coinflip, Inc.* at 3; 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”).

<sup>39</sup> 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>.

<sup>40</sup> 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>.

27. Because Bitcoin is not issued by a government, no entity is required to accept it as payment.<sup>41</sup>

28. While currencies are generally secured by a commodity or a government's ability to tax and defend, Bitcoin is not safeguarded by either.<sup>42</sup>

29. 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). The IRS has concluded that bitcoins are property, not currency for tax purposes.<sup>43</sup>

30. 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.”<sup>44</sup>

31. Even the definition of Bitcoin is not clear because there are significant differences in the interpretation.<sup>45</sup>

### **The Fundamental Protocol used to Conduct Most Internet Activity Falls within the Regulation's Definition of “Virtual Currency”**

32. Transmission Control Protocol/Internet Protocol (TCP/IP) allows computers to communicate over the Internet.<sup>46</sup> People engage the TCP/IP protocol to send emails, visit websites, or download music.<sup>47</sup>

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<sup>41</sup> 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>.

<sup>42</sup> 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/>.

<sup>43</sup> Notice 2014-21, IRS, <https://www.irs.gov/pub/irs-drop/n-14-21.pdf>.

<sup>44</sup> *Frequently Asked Questions*, BITCOIN, <https://bitcoin.org/en/faq#is-bitcoin-a-bubble> (last visited Aug. 16, 2016).

<sup>45</sup> See Notice 2014-21, IRS, <https://www.irs.gov/pub/irs-drop/n-14-21.pdf>.

<sup>46</sup> Lawrence B. Solum & Minn Chung, *The Layers Principle: Internet Architecture and the Law*, 79 NOTRE DAME L. REV. 815, 821 (2004).

<sup>47</sup> 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->

33. The TCP/IP system takes data, divides it into packets, and then bounces those packets from the starting point to the final destination.<sup>48</sup> A TCP/IP packet is “the smallest unit of transmitted information over the Internet,” and is thus a “digital unit.”<sup>49</sup> TCP/IP packets are also “the exchange medium used by processes to send and receive data through Internet networks.”<sup>50</sup>

### **Blockchain Technologies Are Not Inherently Financial**

34. The Department intended to regulate cryptocurrency financial intermediaries.<sup>51</sup>

35. Many cryptocurrencies, like Bitcoin, are blockchain technologies.<sup>52</sup> Blockchains are essentially public ledgers that record users’ entries.<sup>53</sup> For example, when a person exchanges a bitcoin,<sup>54</sup> or a fraction thereof, the transaction is recorded on the Bitcoin blockchain.<sup>55</sup>

36. Non-financial uses of blockchain technology fall within the Regulation’s

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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).

<sup>48</sup> LAWRENCE LESSIG, CODE 43 (2nd ed. 2006).

<sup>49</sup> 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”).

<sup>50</sup> *TCP/IP Terminology*, IBM KNOWLEDGE CENTER, [https://www.ibm.com/support/knowledgecenter/ssw\\_aix\\_71/com.ibm.aix.networkcomm/tcpip\\_terms.htm](https://www.ibm.com/support/knowledgecenter/ssw_aix_71/com.ibm.aix.networkcomm/tcpip_terms.htm) (last visited Oct. 25, 2016).

<sup>51</sup> See Sarah Jane Hughes & Stephen T. Middlebrook, *Advancing a Framework for Regulating Cryptocurrency Payments Intermediaries*, 32 YALE J. ON REG. 495, 536-37 (2015); Nermin Hajdarbegovic, *Lawsy: Bitcoin Developers and Miners Exempt from BitLicense*, COINDESK (Oct. 15, 2014), <http://www.coindesk.com/lawsy-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”).

<sup>52</sup> 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/>.

<sup>53</sup> See, e.g., *id.*

<sup>54</sup> When “bitcoin” is not capitalized it “describe[s] units of account.” *Some Bitcoin Words You Might Hear*, BITCOIN, <https://bitcoin.org/en/vocabulary#block> (last visited Oct. 25, 2016). When capitalized, Bitcoin “describe[s] the concept of Bitcoin, or the entire network itself.” *Id.*

<sup>55</sup> See *How Does Bitcoin Work?*, BITCOIN, <https://bitcoin.org/en/how-it-works> (last visited Oct. 25, 2016).

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.”<sup>56</sup>

37. Blockchain technologies are not inherently financial.<sup>57</sup> People can, and do use blockchain technologies to engage in a slew of non-financially related activities.<sup>58</sup> 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.<sup>59</sup> Additionally, people can use blockchain technology to cast votes, send messages, or enter into contracts.<sup>60</sup>

### **Virtual Currency Transmitters are Treated Differently Than Money Transmitters**

38. A number of requirements imposed on “virtual currency” businesses are not imposed on other money transmitters (keeping records on all transactions, including the identity and physical address of the parties;<sup>61</sup> reporting and notifying transactions exceeding \$10,000 in

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<sup>56</sup> See § 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/>.

<sup>57</sup> 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/>.

<sup>58</sup> See, e.g. *id.*

<sup>59</sup> See *id.*

<sup>60</sup> 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>.

<sup>61</sup> 23 NYCRR 200.15(e)(1)(i)

an aggregate amount;<sup>62</sup> complying with a Cyber Security Program, including staffing and reporting requirements<sup>63</sup>).

39. In fact, during a speech at Benjamin N. Cardozo School of Law, the Superintendent of the Financial Services for the State of New York at the time, Benjamin M. Lawsky, stated: “Moreover, to the extent that there are some specific areas of the regulation that are somewhat stronger or more robust for virtual currency firms than those for other financial institutions – such as our cyber security rules – that is primarily because we are actually considering using them as models for our regulated banks and insurance companies.”

### **The Department Hearing on Virtual Currency**

40. The Department held a hearing on the topic of virtual currency on January 28 and January 29, 2014 in New York City (“the Hearing”). The Department invited Mark T. Williams, member of the Finance & Economics Faculty at Boston University, as an expert at the Hearing. In his direct testimony in the written record he provided an analysis regarding the economic nature of Bitcoin. His written testimony establishes that Bitcoin should be treated as a commodity, and not as a currency.<sup>64</sup> During the Hearing, no other witness addressed in written or oral testimony, any analysis on the economic nature of Bitcoin.

41. The Department did not discuss, probe, or question Mark T. Williams’ written testimony during the Hearing, and did not seek to discuss under which circumstances Bitcoin

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<sup>62</sup> 23 NYCRR 200.15(e)(2)

<sup>63</sup> 23 NYCRR 200.16

<sup>64</sup> 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](http://www.dfs.ny.gov/about/hearings/vc_01282014/williams.pdf).

should be considered a currency or whether Bitcoin should be considered a “financial product or service” under FSL § 104(a)(2).<sup>65</sup>

### **Credit Card Risks**

42. Credit card fraud is a major problem,<sup>66</sup> yet stores are not required to warn customers about credit card fraud.

43. Gyft is a prime example. Gyft deals with credit card fraud on a daily basis, but the CEO, Vinny Lingham, has stated publically that his company sees zero fraud from accepting bitcoin as a method of payment.<sup>67</sup>

44. In recent years, major companies like Target have had the theft of payment details of millions of credit/debit card users. Credit cards are very vulnerable to fraud.<sup>68</sup>

45. Therefore, Bitcoin technology is considered a safer system over current payment options, such as credit card systems, when it comes to the risk of fraud and theft.<sup>69</sup>

**WHEREFORE**, for the reasons stated in the Petitioners’ opposition to Respondents’ cross-motion to dismiss, Petitioners respectfully request Respondents’ cross-motion to dismiss be denied.

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<sup>65</sup> See New York State Department of Financial Services Hearings on the Regulation of Virtual Currency (2014), [http://www.dfs.ny.gov/about/hearings/vc\\_01282014\\_indx.htm](http://www.dfs.ny.gov/about/hearings/vc_01282014_indx.htm).

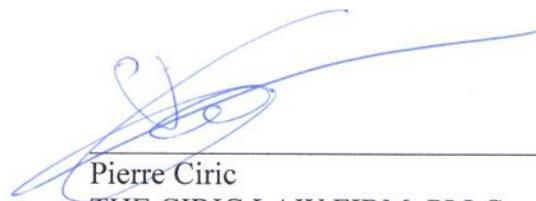
<sup>66</sup> Daniel Cawrey, *Credit Cards Have Not Evolved With the Internet. Enter Bitcoin.*, COINDESK (Jan. 5, 2014), <http://www.coindesk.com/credit-cards-not-evolved-enter-bitcoin/>.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

Dated: July 14, 2017  
New York, New York



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