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NYDFS remakes coin
listing guidance
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Center for
**Regulatory
Strategy**
US

Last month, the New York Department of Financial Services (NYDFS) released proposed updated expectations on the adoption or listing of virtual currencies. This proposed guidance affects which tokens virtual currency entities ("VC entities") can offer to their customers, enhances the oversight of the processes by which an entity approves a new cryptocurrency on their platform, and introduces the addition of coin delisting policies and procedures in the event the VC entity removes a token from its platform. This new guidance by the NYDFS is aimed at limiting the offering of riskier tokens and requiring VC entities to have established processes for handling token removal that reduce impacts to customers. As a result, VC entities could see many coins currently offered delisted once the guidance goes into effect at the end of 2024.

This follows previous virtual currency guidance released by the New York state regulator in January surrounding risks associated with custody requirements in the event of an insolvency. The new requirements come on the heels of action by other US regulators including the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC) looking for better oversight of the crypto market following a tumultuous year including bankruptcies, insider trading, and a market crash. In requiring firms to establish delisting procedures, the NYDFS likely hopes to limit reactionary de-listings and require firms to formalize their processes.

Below, we provide more details on the new requirements for Bit license holders.¹

This guidance applies to virtual currency business entities that are either licensed under 23 NYCRR Part 200 or chartered as a limited purpose trust company under the New York Banking Law. Per the new guidance,² the NYDFS has increased scrutiny over the

coin listing and delisting processes now requiring regulated firms to implement new policies, including heightened risk assessment standards for coin listing policies; tailored, enhanced requirements for retail consumer-facing products or service offerings; and new requirements associated with coin delisting policies.

There are multiple paths virtual currency businesses can take to list virtual currencies:

- Approval of a specific application to NYDFS for a material change of business
- Self-certification of a coin listing policy approved by NYDFS
- Use of virtual currencies already on the Greenlist

Regulated entities engaged in VC business activity may submit to the NYDFS a self-certification policy, pursuant to guidance the NYDFS issued in September 2023. Once the NYDFS approves such a policy and the entity seeks to self-certify a coin for listing or custody, it must submit a self-certification form.

Also on September 18, 2023, the NYDFS separately published its General Framework for Greenlisted Coins,³ which confirms that VC entities do not need the Department's prior approval to list coins included on the Greenlist. However, prior to supporting a particular coin, a VC entity should give advance notification to the NYDFS and have a NYDFS-approved coin delisting policy.

The proposed guidance is open for public feedback until October 20, 2023. All VC Entities must then meet with the NYDFS by December 8, 2023, and submit final coin delisting policies for approval by January 31, 2024.

Comparison of 2020 and 2023 guidance

Governance		
Component	2020 Guidance ⁴	2023 Guidance ⁵
Governing authority	A board of directors (or equivalent governing authority) must approve and regularly review its coin listing policy and independently review and approve decisions to approve new coins	Additional context given around approval of coin listing policies, increased specificity and emphasis regarding the governing authority's responsibilities
Conflicts of interest	Any potential or actual conflicts of interest in review or decision-making processes must be assessed and addressed	Any actual or potential conflicts of interest in review or decision-making processes must be publicly disclosed
Reporting, documentation, and recordkeeping	Requires entities to store, and produce when asked for by NYDFS, documentation reviewed and produced by the governing authority	Mandates additional documentation surrounding records for coin-listing recommendations and risk assessments
Policy changes and regulatory approval	The governing authority must not make any changes or revisions to its coin listing policy without approval of DFS	The governing authority must not make any changes or revisions to its coin listing policy without approval of DFS

Risk assessment		
Component	2020 Guidance	2023 Guidance
Technical design and technology risk	VC entity must complete “thorough due diligence” to ensure the coin is issued for “legitimate purposes and not for evading compliance with applicable laws and regulations”	VC entity must now conduct due diligence on entities issuing the coin; coin issuers must be reputable and must issue the coin “for lawful and legitimate purposes” and in compliance with applicable regulation
Operational risk	VC entities must “asses operational risks associated with a new coin,” including demand on resources, infrastructure, personnel, and capacity for continued support	VC entities will again need to “assess operational risk associated with a coin”
IT and cybersecurity risk	VC entities must assess any risks associated with “technology or systems enhancements” as well as risks relating to code defects, breaches, and other threats to new coins	VC entities must also assess any risks to “confidentiality, integrity, and availability of all systems” relating to coins, blockchains, practices, and protocols
Market and liquidity risk	VC entities must assess market risks, as well as risks relating to potential non-compliance with NYDFS requirements	Updated guidance includes new consideration around liquidity risk and removes reference to capital requirements
Illicit finance risk	VC entities must ensure that their processes are “subject to a strong governance and control framework,” including protections against market risk (i.e., price manipulation and fraud) and risk of malfeasance (i.e., theft)	Expands on the risk of malfeasance and theft section from the old guidance to create a new Illicit Finance Risk stripe; VC entities must now consider risks related to coins being used for sanctions evasion and other illicit activities; VC entity must also establish controls to mitigate this risk
Legal risk	Entities must disclose any legal risks surrounding a new coin “including any pending or potential civil, regulatory, criminal, or enforcement action relating to the issuance, distribution, or use of the coin”	Broadens the scope of legal risk guidance from impacting “new coins” to “all coins”
Reputational risk	No guidance issued	VC entities must now assess the potential impact “of any negative publicity” on the entity’s business as a result of self-certifying specific coins
Regulatory risk	Coins must comply with any and all “applicable laws, rules, regulations, and regulatory guidance,” including whether the coin is considered a security	Updated guidance includes and mandates compliance with NYDFS and relevant cybersecurity regulations

Monitoring		
Component	2020 Guidance	2023 Guidance
Reevaluations	Entities must periodically reevaluate the coin, including “whether material changes have occurred” on an at least annual basis	Guidance further specifies who is responsible for reevaluating coins and what is defined as a “material change” (i.e., any and all protocol changes, token or design changes, hard forks, etc.)
Risk management and control	Entities must manage the “adoption, documentation, and implementation of control measures to manage risks associated with the coin”	Entities must also now “manage risks associated with the coin, including but not limited to those risks involving cybersecurity and illicit activity”
Compliance with external regulations	No guidance issued	Entities must now comply with all elements of the Department’s “Guidance on the Use of Blockchain Analytics” and other relevant regulations
Risk management framework integration	No guidance issued	VC entities must “verify that their coin listing policies are appropriately integrated into ... the overall framework”
Independent testing	No guidance issued	Entities must “verify independent testing includes coin listing and delisting”



Creation of coin delisting policies

In addition to implementing an enhanced coin listing policy, VC entities are now required to begin standing up coin delisting policies and procedures. At a minimum, the delisting policy should cover governance standards, and the process in which the delisting is communicated with the VC entities customer. Firms have until the beginning of December 2023 to meet with the NYDFS on the development of the new policies. Once guidance is finalized, firms will have until the end of 2024 to submit final delisting policies.

Governance	
Component	2023 Guidance ⁶
Independent governance	Independent governing authority to approve and annually reassess the robustness of the governance, monitoring, and oversight framework of the coin delisting policy
Scenario and processes	Detailed processes underpinning an event, a clear set of roles and responsibilities that establishes who has the authority to initiate a delisting event, the chain of approval through management, and the escalation to the governing authority for final delisting approval
Delisting execution	Action plan in place for when the decision to delist a coin has been made, including communicating to customers and any additional reasonable actions to ensure protection of customers and the general public
Advance notice	Notifying customers at least 30 days prior including the rationale supporting the decision to delist the coin, the timing of the delisting, and the steps that customers who are impacted may take to sell or transfer delisted off the VC entity's platform
Customer support	Customer support available to answer any questions and assist customers and (if warranted) additional resources (phone, email, chat support, or tailored FAQs) to impacted customers to respond to various forms of inquiries
Documentation	Delisting documentation including the monitoring that led to a delisting decision, approval of the delisting decision, data regarding the estimated impact on its customer base, communications shared with customers and regulators, and documentation responsive to any issues related to customer support
Ongoing monitoring	Monitor the safety and soundness of a delisting, including the ability to detect issues related to the financial health of the business, introduction of cybersecurity vulnerabilities, illicit finance risk, technological, or other challenges that would affect the customer experience
Impact analysis	Analyze second-order impacts a delisting may have on its internal business operations, counterparties, and third-party service providers leveraging or supporting a coin

What firms should do

Firms should begin developing enhanced procedures surrounding their coin listing and delisting policies and procedures to mitigate risk. Leading firms are also creating Digital Asset Risk Appetite statements that include formal delisting policies. Firms are also standing up new governance committees or enhancing and upskilling existing governance structures to also assess digital asset activity.

Digital assets represent a new paradigm in risk management. As the concept of digital asset risk assessment develops, it should remain anchored to the foundation of traditional risk assessments, while acknowledging the idiosyncratic characteristics of digital asset products and services.

An effective risk program includes but is not limited to analyzing illicit activity, executing cybersecurity obligations, performing coin risk assessments, monitoring third parties, and defining a regulatory engagement strategy. Financial crime compliance programs will have to start leveraging blockchain analytics tools to meet evolving regulatory expectations for know your customer (KYC), know your transaction (KYT), and virtual asset service provider diligence. Lastly, once delisting policies have been established, firms will need to assess first- and second-order business impacts should the firm be required to remove a coin.

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Endnotes

1. New York State Department of Financial Services (NYDFS), "[DFS Superintendent Adrienne A. Harris announces update on two year transformational initiative to strengthen DFS' nation-leading virtual currency oversight](#)," press release, September 18, 2023.
2. NYDFS, "[RE: Proposed updates to guidance regarding listing of virtual currencies](#)," September 18, 2023.
3. NYDFS, "[RE: General framework for Greenlisted coins](#)," September 18, 2023.
4. NYDFS, "[Guidance regarding adoption or listing of virtual currencies](#)," accessed October 2023.
5. NYDFS, "[RE: Proposed updates to guidance regarding listing of virtual currencies](#)."
6. Ibid.

Center for Regulatory Strategy US

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