

New York's Relaxed BitLicense Could Still Take Lessons From Wyoming's Permissive Approach

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New York's slogan "if you can make it here, you can make it anywhere" seems like it was written specifically for cryptocurrency companies. Since 2015, the New York Department of Financial Services (NYDFS) established a comprehensive regulatory framework for virtual currency businesses, dubbed the "BitLicense," that requires operations related to transactions involving any form of virtual currency to obtain a license from the state. In many ways, the BitLicense operates as an additive burden for companies engaged in money transmission but imposes heavy requirements on even virtual currency companies not engaged in traditional money transmission.

The BitLicense was intended to safeguard the public, but its greatest impact has been creating a regulatory burden that makes it cost prohibitive for most fledgling companies to operate in New York. As of June 2020, five years after its enactment, New York had only issued 25 BitLicenses. For those interested in applying for one, the process could take years before an application is approved, cost upwards of \$100,000 in legal fees, and require the development and implementation of compliance protocols. The onerous nature of the BitLicense doesn't stop there. After obtaining a BitLicense, companies must grapple with the costs of staying in compliance. As a result, companies looking to make a mark on the future of finance find themselves fleeing the center of the financial world for friendlier jurisdictions...like Wyoming.

Wyoming could not be more different from New York, and with respect to the treatment of virtual currency businesses, the Cowboy State has embraced the opportunity to further differentiate itself. Under the leadership of Caitlin Long and the state's Blockchain Task Force, the state has emerged as the most crypto-friendly jurisdiction in the United States. The state has enacted numerous laws designed to ease the regulatory burden faced by virtual currency companies, including exempting virtual currencies from the state's Money Transmitter Act and providing the groundwork for financial technology companies to build products under a regulatory sandbox. In the actual language of the

“[Financial Technology Sandbox Act](#),” the state seems to make a tacit dig at states like New York that have initiated protectionist regulations:

Wyoming currently offers one of the best business environments in the United States for blockchain and financial technology innovators, and should offer a regulatory sandbox for these innovators to develop the next generation of financial technology products and services in Wyoming.

Now, finally, five years later, New York has decided to take a page out of Wyoming’s playbook and ease some of the requirements for obtaining a BitLicense. On June 24, 2020, the NYDFS proposed a conditional licensing framework for virtual currency businesses. The regulator plans to release new guidance and documentation to assist applicants, letting applicants receive conditional licenses if they partner with already licensed entities to conduct licensed exchanges. The NYDFS also announced that it signed a memorandum of understanding with the State University of New York, allowing virtual currency startups to visit any of the university’s 64 campuses to seek assistance in writing their application or starting their business.

In an interview with the crypto publication *CoinDesk*, NYDFS Superintendent Linda Lacewell said that her agency’s decision to reexamine its approval process stemmed from criticism that entry to the New York marketplace needs to be made more accessible.

Even under the NYDFS’ “relaxed” BitLicense, the state is light years away from Wyoming’s permissive approach and still requires the broadly defined virtual currency businesses wishing to operate in New York to absorb the heavy cost and infrastructure required to obtain a BitLicense and has rejected calls to exempt such businesses from licensure or allow a regulatory sandbox to accelerate innovation. This results in well-funded companies obtaining a license and gaining access to the world’s premier financial market, while bootstrapped startups or companies with less robust financials are prevented from participating in New York’s storied investment and talent pool. While a speedier application process is generally a good thing, the BitLicense remains out of reach for most startups wishing to enter the space.

Regulation is essential to protecting consumers from becoming financially harmed by businesses operating within the virtual currency space. But not every company using or transacting in virtual currencies poses the same risks to consumers and therefore should not be required to jump through the same regulatory hurdles. From its enactment in 2015, New York has seen its BitLicense as a hammer and every business dealing with virtual currencies in any capacity as a nail. The latest guidance from the NYDFS demonstrates that its perspective has not fundamentally changed despite years of criticism and that it is driving innovative financial technology companies out of the center of the financial world. New York could still learn some lessons from Wyoming in cultivating an environment of innovation.

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