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## Crypto Exchanges' Search for Regulatory Certainty – New York Takes First Mover Advantage

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The New York State Department of Financial Services (DFS) last week announced that it had authorized Paxos Trust Co. LLC (formerly itBit Trust Co.) to offer a permissioned, blockchain-based post-trade platform settlement service, and has granted a virtual currency license to Genesis Global Trading Inc. With these authorizations, DFS has now approved seven firms for virtual currency charters or licenses.

DFS issued [guidance](#) in February 2018 applicable to all virtual currency business entities, including entities that have a New York money transmitter license, providing requirements designed to prevent market manipulation, fraud and other wrongdoing. Gemini's DFS authorization permits Gemini Trust Co. LLC to offer custody services and trading of Zcash, Litecoin and Bitcoin Cash, emerging cryptocurrencies, on its virtual currency exchange based in New York City, and provides an exemption from registration with the Financial Crimes Enforcement Network (FinCEN), a bureau of the U.S. Department of Treasury.

While the regulatory debate regarding the status of cryptocurrencies as securities, currencies, commodities, property or other form of recognized asset class continues, practical scrutiny of the industry has shifted to the secondary markets, as many tokens are currently trading over a multitude of lightly or unregulated markets around the world. In March, the Divisions of Enforcement and Trading and Markets of

the U.S. Securities and Exchange Commission (SEC) [issued a joint statement on these issues](#), stressing concerns that many of these trading platforms appeared similar to SEC-regulated national securities exchanges – such as the New York Stock Exchange or Nasdaq – while in fact their trading protocols were not subject to review by the SEC, nor had their listing standards been approved by any regulatory body. Similarly, the marketing language employed by these exchanges suggests that they maintain timely and accurate pricing information regarding transactions, but (in the Divisions' view) no reason exists to believe that this information has the same integrity as information provided by the regulated exchanges.

The joint statement suggests a number of questions crypto investors should consider when deciding where to trade their cryptocurrency or tokens, along with links to additional resources (including the BrokerCheck website maintained by FINRA, the Financial Industry Regulatory Authority). The joint statement also reminds cryptocurrency trading platform operators that any platform that trades securities and operates as an "exchange," as defined by the federal securities laws, must register as a national securities exchange or operate under an exemption from registration – for example, the exemption provided for Alternative Trading Systems under SEC Regulation ATS, which

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requires registering with the SEC as a broker-dealer and becoming a member of a Self-Regulatory Organization like FINRA.

Paxos Trust Co., a subsidiary of Kabompo Holdings Ltd., provides the Bankchain Precious Metals post-trade platform settlement service. In its previous iteration as itBit, Paxos was the first virtual currency company to receive a DFS charter. Gemini, founded by the famous Winklevoss twins, is a next-generation digital asset exchange and custodian that allows customers to buy, sell and store digital assets. The company conducts virtual currency block trading of Bitcoin, Ether, Ether Classic, Litecoin, Ripple and Bitcoin Cash. Authorized by DFS for potential future offerings of Zcash, a fork of the Bitcoin source code, Gemini began accepting customer deposits of Zcash on May 19.

DFS previously granted licenses to bitFlyer USA, Coinbase Inc., XRP II and Circle Internet Financial. In its press release announcing the approval of Gemini and Paxos, the department noted that it had denied approval of applications “that did not meet DFS’s standards” – although it did not mention which or how many companies’ applications it denied.

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