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# Summary of New York Department of Financial Services Stablecoin Guidance

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On June 8th, 2022, the New York Department of Financial Services (“NYDFS”) issued guidance for NYDFS-regulated entities that issue U.S. dollar-backed stablecoins.<sup>1</sup> These entities include those with a “BitLicense” and New York-chartered limited purpose trust companies that engage in virtual currency activity.

## **APPROVAL REQUIRED**

The guidance notes that any applicant for a BitLicense or a limited purpose trust charter is required to provide NYDFS with its proposed business plan and product offerings, and that any stablecoin-related aspects of the company’s business model are evaluated as a part of the licensing or charter decision. In addition, the guidance notes that BitLicensees and limited purpose trust companies are required to receive approval prior to commencing stablecoin issuance.

## **BACKING AND REDEEMABILITY**

NYDFS requires stablecoins to be “fully backed” by a reserve of assets. This requirement means that the market value of the reserve assets must be at least equal to the nominal value of all outstanding units of the stablecoin at the end of each business day.

Before issuing a stablecoin, the issuer must have clear, “timely” redemption policies in writing that allow the holder to redeem at par value—a 1:1 exchange rate to the U.S. dollar, net of any ordinary and well-disclosed fees. NYDFS must review and approve these policies. In addition, NYDFS mandates that issuers adopt specific, default terms outlined below:

### **Redemption in U.S. Dollars**

Redemption has occurred once the issuer has processed and initiated the transfer to the customer’s financial or other institution, if requested by the holder, or has credited the funds to the customer’s cash account with the issuer, if requested by the holder.

### **Timely Redemption**

NYDFS defines timely as redemption occurring not more than two full business days after the business day when an issuer has received a compliant redemption order. A redemption order is deemed compliant when the issuer has received the order and “the holder or the holder’s designee has onboarded successfully with the Issuer and all other conditions necessary to permit compliant redemption have been met”. Notably, in situations where NYDFS determines timely redemption would risk the reserve asset-backing requirement or orderly liquidation of reserve assets, the agency may require or allow a redemption that is not “timely”.

## RESERVE ASSETS

The assets held in the reserve must be segregated from the proprietary assets of the issuer. Further, these assets must be held in custody by state or federally chartered depository institutions insured by the FDIC and/or by asset custodians, approved in advance in writing by NYDFS. These reserve assets must be held for the benefit of the holders of the stablecoin and have appropriate titling of accounts. In addition, issuers shall manage the liquidity risk of the reserve “in accordance with the redemption requirements” (described above). The types of assets in the reserve may consist of:

1. U.S. Treasury bills acquired by the issuer three months or less from their respective maturities.
2. Reverse repurchase agreements fully collateralized by U.S. Treasury bills, U.S. Treasury notes and/or U.S. Treasury bonds on an overnight basis. Such agreements are subject to NYDFS-approved requirements concerning overcollateralization and may be either tri-party, or bilateral (with a counterparty that the issuer has found to be adequately creditworthy and whose identity has been submitted to the NYDFS in writing, without objection, together with the issuer’s credit assessment, at least 14 days prior to the issuer’s commencing to enter into contracts with such counterparty).
3. Government money market funds that are subject to NYDFS-approved caps on the fraction of reserves to be held in such funds and NYDFS restrictions on such funds. Such restrictions may include “minimum percentage allocation to direct obligations of the Government of the United States and reverse repurchase agreements on such obligations”.
4. Deposit accounts at U.S. state or federally chartered depository institutions subject to NYDFS-approved restrictions. Such restrictions may include “percentage-of-Reserve or absolute-dollar-value caps on the assets to be deposited at any given depository institution and/or . . . limitations based on [NY]DFS’s conclusions concerning the risk characteristics of particular depository institutions, taking into consideration the amounts reasonably needed to be held at depository institutions to meet anticipated redemption demands”.

## ATTESTATION

The reserve assets are subject to monthly and annual attestations. At least once each month, issuers must have an independent, U.S. licensed, certified public accountant (“CPA”) create a report that details the findings of the attestation. Such an attestation must be made available to the public and delivered to NYDFS within 30 days of the covered period. The CPA must apply the standards of the American Institute of Certified Public Accountants (“AICPA”) when performing the attestation and the CPA and CPA engagement letter are required to be approved in advance in writing by NYDFS. In the monthly attestation, the CPA must attest to management’s assertions of the following as of the last business day of the covered period for at least one randomly selected business day each month:

- the end-of-day market value of the reserve assets in aggregate and broken down by asset classes;
- the end-of-day quantity of outstanding stablecoin units;
- whether the reserve had adequate assets to back those outstanding stablecoin units; and
- whether the assets in the reserve met NYDFS requirements (described above).

In addition, issuers are required to hire an independent, U.S. licensed CPA for an annual attestation under the AICPA standards. The annual attestation requires the CPA to attest to the effectiveness of management’s internal controls, structure and procedure for compliance with the monthly attestations. Like the monthly attestation, such a CPA and the CPA’s engagement letter must be approved in advance in writing by NYDFS. Each annual attestation must be sent to NYDFS in writing within 120 days after the end of the period covered by the report.

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<sup>1</sup> DFS, *Virtual Currency Guidance* (June 8, 2022), available [here](#). The guidance notes that it is not the only requirements NYDFS places or may place on the issuance of stablecoins, and the risks connected to these factors are not the only risks NYDFS considers.