

requirements of the Administrative Procedure Act and related administrative laws, as well as the sufficiency of those laws. For the past dozen years, I have been director of information policy studies and then a senior fellow at the Cato Institute. At the beginning of February, I joined the Competitive Enterprise Institute as vice president.

4. During 2014, I served as Global Policy Counsel at the Bitcoin Foundation, an organization dedicated to the advancement of Bitcoin and cryptocurrency. In that role, I sought to introduce Bitcoin to lawmakers and regulators in Washington, D.C., and Brussels, and I worked in various ways to help them and the Bitcoin business community navigate the substantial challenges in adapting law and regulation to the different functionality and characteristics of Bitcoin.

5. In the New York Department of Financial Services' (NYDFS) rulemaking entitled: DFS-29-14-00015-P, "Regulation of the conduct of virtual currency businesses," I filed preliminary comments for the Bitcoin Foundation dated August 5, 2014. The comments can be found at the NYDFS web site at: http://www.dfs.ny.gov/legal/vcrf_0500/20140805%20-%20VC%20Proposed%20Reg%20Comment%2055%20-%20Bitcoin%20Foundation.pdf. I filed later, more substantive comments on October 8, 2014.

6. One part of the August 5 comments focused on the NYDFS's statement of "needs and benefits" for the proposed regulation, which is a requirement of New York's State Administrative Procedure Act. My comment noted the detailed nature of the law's public disclosure requirements, and the relative lack of information provided by the NYDFS.

7. My comment noted that the European Banking Authority (EBA) had issued a 46-page report a month earlier that used a comprehensive methodology to assess the benefits and risks of Bitcoin. The EBA report can be found at:

<https://www.eba.europa.eu/documents/10180/657547/EBA-Op-2014-08+Opinion+on+Virtual+Currencies.pdf>.

8. My comment asked the NYDFS to share the “[e]xtensive research and analysis” that it identified in its statement of needs and benefits as supporting the proposed regulation: “The Bitcoin community would like to know—and could comment more helpfully if it did know—what novel aspects of digital currency your research and analysis identified. In the view of your office, what risks exist with digital currencies that don’t exist with other currencies? There certainly are risks—the community would benefit from understanding how your office frames them. We recommend that you publish the research and analysis referred to in the statement of needs and benefits as soon as possible, but well before the close of the first round of comments.” (footnote omitted)

9. My comment also asked for treatment as a request under New York’s Freedom of Information Law, N.Y. Pub. Off. Law sec. 84 et seq., “for the opportunity to inspect or obtain copies of any risk management and cost-benefit analysis (or any other systematic assessment) that is a part of the ‘extensive research and analysis’ referred to in the statement of needs and benefits for the proposed regulation.”

10. The NYDFS responded by promising to fulfill my request for these materials within 20 days. A response at the end of that 20-day period would have made the materials available to the Bitcoin community just days before the close of the original comment period, but the NYDFS had signaled elsewhere that it would extend the comment period, which it ultimately did.


11. On September 8, 2014, the NYDFS sent me a brief letter extending its original 20-day deadline to produce the materials, saying “it is anticipated that a response will be

forthcoming within 120 days from the date of this letter.” That delay, well beyond the five-business-day requirement of the Freedom of Information Law, would give the community access to these materials after the close of the comment period pending at the time.

12. Since September 8, 2014, I have received no further communications from the NYDFS. I did not receive any of the research and analysis cited by the NYDFS in its statement of need and promised in response to my FOIL request.

13. At the end of December, 2014, I left the Bitcoin Foundation as an employee. I was elected to the Foundation’s Board of Directors effective March, 15, 2015, and I resigned from the board at the end of 2015. My Bitcoin Foundation email address, on which I had received NYDFS correspondence, was functional for the entire year of 2015.

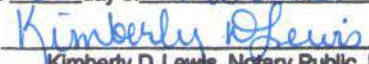
Dated: March 3, 2017
District of Columbia



Jim Harper
Vice President
Competitive Enterprise Institute
1310 L Street NW, 7th Floor
Washington, DC 20005

SWORN to before me this

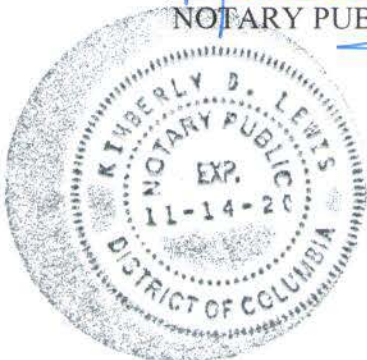
Third day of March, 2017

District of Columbia: SS
Subscribed and sworn to before me, in my presence,
this 3 day of March, 2017


Kimberly D. Lewis, Notary Public, D.C.
My commission expires November 14, 2020.



NOTARY PUBLIC



KIMBERLY D. LEWIS
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires November 14, 2020