

What Does New NY Department Of Financial Services Greenlisted Coins Draft Guidance Mean For Market?

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The New York State Department of Financial Services (NYDFS) has instituted a new draft General Framework for Greenlisted Coins. This roadmap for approval of new coin listings shows how the draft guidance issued by NYDFS on Sept. 18 fits into the entire NYDFS process. Public comments are due by Oct. 20, 2023, and should be sent to innovation@dfs.ny.gov with “Proposed Coin-Listing Policy Framework” in the subject line. A few observations:

1. The listing process provides no certainty that any coin can continue to be listed in New York nor any precise temporal parameters for approval and de-listing events. Liquidity and volume will suffer for NYDFS-regulated entities until due process safeguards are in place protecting against NYDFS delisting actions.
2. A well-designed regulatory process allows for straight through processing, approval requests should not be held by supervisory staff. Market intelligence indicates there has been a six- to 24-month waiting periods for staff to approve policies at NYDFS. NYDFS should consider moving to a non-objection regime with a hard outside date (e.g., 10 business days).
3. Knowledgeable supervisory staff is key to regulating this market – financial services experience is a must. Otherwise, supervisory staff is

not in a position to ever say “yes” (leading to chokepoints in the decision-making process) and will focus on form rather than substance (because that’s what junior people do).

4. NYDFS is telling entities to implement the draft guidance now, prior to analysis and testing by industry participants, and without assurance that required policies and procedures positively impact the suitability, safety, and market appropriateness of listed assets. This indicates either an unrealistic implementation period after the draft is finalized or a fait accompli that renders the comment period useless.

Transparency is key to confidence in our financial regulators and the New York financial markets. Comments submitted to NYDFS are not made public except possibly under a Freedom of Information Act (FOIA) request. This allows market participants to speak freely when submitting comments but also makes the process opaque (stay tuned – more to come).