



May 13, 2019

FINCEN PROVIDES EXAMPLES OF VIRTUAL CURRENCY MODELS SUBJECT TO REGULATION

The Financial Crimes Enforcement Network (“FinCEN”) has issued guidance on the application of FinCEN’s regulations to certain business models involving convertible virtual currency (the “Guidance”). The Guidance is intended to help financial institutions comply with their existing obligations under the Bank Secrecy Act as they relate to current and emerging business models involving convertible virtual currency (“CVC”).

FinCEN defines virtual currency as a medium of exchange that can operate like currency but does not have all of the attributes of “real currency,” including legal tender status. CVC is a type of virtual currency that either has an equivalent value as currency, or acts as a substitute for currency, and is therefore a type of value that substitutes for currency. The Guidance states that transactions denominated in CVC will be subject to FinCEN regulations regardless of whether the CVC is represented by a physical or digital token, whether the type of ledger used to record the transactions is centralized or distributed, or the type of technology utilized for the transmission of value.

The Guidance states that a person accepting and transmitting CVC is required to register with FinCEN as a money service business and comply with anti-money laundering provisions, recordkeeping, monitoring and reporting requirements. The Guidance also set forth examples of how FinCEN’s money transmitter regulations apply to several common business models involving transactions in CVC. These models include:

- Natural and legal persons acting as peer-to-peer exchangers engaged in the business of buying and selling CVCs;
- Hosted wallet providers that receive, store and transmit CVCs on behalf of their accountholders;
- Owner-operators of CVC kiosks (*i.e.*, electronic terminals that act as mechanical agencies of the owner-operator to enable the owner-operator to facilitate the exchange of CVC for currency or other CVC);
- Decentralized applications (DApps) that operate on a peer-to-peer network of computers running a blockchain

platform, designed such that they are not controlled by a single person or groups of persons;

- A money transmitter that operates in anonymity-enhanced CVCs for its own account or for the account of others;
- Anonymizing service providers; and
- Persons providing payment processing services in CVC.

In addition to the example of models that are subject to money transmitter regulations, the Guidance also provides a list of specific business models involved in CVC transactions that may be exempt from the definition of money transmission. The list of potentially exempt models include:

- CVC peer-to-peer trading platforms that only provide a forum where buyers and sellers of CVC post their bids and offers and the parties themselves settle any matched transactions through an outside venue;
- Initial Coin Offerings when (i) the issuer, intermediary or investor is a bank, foreign bank or a person registered with and functionally regulated or examined by the Security Exchange Commission or Commodities Future Trading Commission or (ii) when the acceptance and transmission of CVCs is only integral to the sale of goods or servicing;
- A person that mines CVC and uses it solely to purchase goods or services on its own behalf; and
- The transfer of CVC to members of “mining pools” to distribute the amount earned to the mining pool members.

Although the Guidance provides some clarity as to the entities that are subject to FinCEN’s money transmission regulations, uncertainty still remains for those financial institutions and persons involved in virtual currency transactions as to what additional federal and state laws apply to their business models. See our prior ALERT of Mar. 28, 2018. As the use of virtual currencies continue to evolve and increase, this area would benefit from uniform regulation. If you have any questions about money transmission laws or virtual currency regulation, please let us know. □

✧ *Michael Tomkies and Lindsay Valentine*

Darrell L. Dreher
ddreher@dtlaw.com

Elizabeth L. Anstaett
eanstaett@dtlaw.com

Emily C. Cellier
ecellier@dtlaw.com

Susan L. Ostrander
sostrander@dtlaw.com

2750 HUNTINGTON CENTER
41 S. HIGH STREET
COLUMBUS, OHIO 43215
TELEPHONE: (614) 628-8000 FACSIMILE: (614) 628-1600
WWW.DTLAW.COM

To see previously sent ALERTS, visit our website at www.dtlaw.com

To decline future ALERTS, please contact us at ALERTS@DTLAW.COM. This ALERT has been prepared for informational purposes only. It does not constitute legal advice and does not create an attorney-client relationship.

Michael C. Tomkies
mtomkies@dtlaw.com

Susan M. Seaman
sseaman@dtlaw.com

Lindsay P. Valentine
lvalentine@dtlaw.com

Judith M. Scheiderer
jscheiderer@dtlaw.com

Robin R. De Leo
robin@deher-la.com