



**FIN-2014-R012**

**Issued: October 27, 2014**

**Subject: Request for Administrative Ruling on the Application of  
FinCEN's Regulations to a Virtual Currency Payment System**

Dear [ ]:

This responds to your letter of January 6, 2014, seeking an administrative ruling from the Financial Crimes Enforcement Network ("FinCEN") on behalf of [ ] (the "Company"), about the Company's possible status as a money services business ("MSB") under the Bank Secrecy Act ("BSA"). Specifically, you ask whether the convertible virtual currency payment system the Company intends to set up (the "System") would make the Company a money transmitter under the BSA. Based on the following analysis of the description of the System to provide payments to merchants who wish to receive customer payments in Bitcoin, FinCEN finds that, if the Company sets up the System, the Company would be a money transmitter and should comply with all risk management, risk mitigation, recordkeeping, reporting, and transaction monitoring requirements corresponding to such status.

You state in your letter that the Company wishes to set up a System that will provide virtual currency-based payments to merchants in the United States and (mostly) Latin America, who wish to receive payment for goods or services sold in a currency other than that of legal tender in their respective jurisdictions. The Company would receive payment from the buyer or debtor in currency of legal tender ("real currency"), and transfer the equivalent in Bitcoin to the seller or creditor, minus a transaction fee. The current intended market for the System is the hotel industry in four Latin American countries where, because of currency controls and extreme inflation, merchants face substantial foreign exchange risks when dealing with overseas customers.

According to your letter, a merchant will sign up with the Company to use the System, and incorporate the Company's software into its website. Customers purchasing the merchant's goods or services (e.g., hotel reservations) will pay for the purchase using a credit card. Instead of the credit card payment going to the merchant, it will go to the Company, which will transfer the equivalent in Bitcoin to the merchant. The Company pays the merchant using the reserve of Bitcoin it has acquired from wholesale purchases from virtual currency exchangers at the Company's discretion (thus the Company assumes any exchange risk that occurs during the time between the Company's wholesale purchases and its payment to a merchant). The Company has no agreement with the customer and will only make payment to the merchant.

You maintain that the Company should not be regulated as a money transmitter because it does not conform to the definition of virtual currency exchanger, due to the fact that the Company makes payments from an inventory it maintains, rather than funding each individual transaction. You also maintain that, should the Company be considered an exchanger of convertible virtual currency, the Company's business should be covered under an exemption that applies to certain payment processing activities,<sup>1</sup> and/or the Company's transmissions should be deemed integral to the transaction and thereby covered under another exemption from money transmission.<sup>2</sup>

### ***FinCEN's Virtual Currency Guidance***

On March 18, 2013, FinCEN issued guidance on the application of FinCEN's regulations to transactions in virtual currencies (the "Guidance").<sup>3</sup> FinCEN's regulations define "currency" as "[t]he coin and paper money of the United States or of any other country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in the country of issuance."<sup>4</sup> In contrast to real currency, "virtual" currency is a medium of exchange that operates like a currency in some environments, but does not have all the attributes of real currency. In particular, virtual currency does not have legal tender status in any jurisdiction. The Guidance addresses "convertible" virtual currency. This type of virtual currency either has an equivalent value in real currency, or acts as a substitute for real currency.

For purposes of the Guidance, FinCEN refers to the participants in generic virtual currency arrangements, using the terms "exchanger," "administrator," and "user." An *exchanger* is a person engaged as a business in the exchange of virtual currency for real currency, funds, or other virtual currency. An *administrator* is a person engaged as a business in issuing (putting into circulation) a virtual currency, and who has the authority to redeem (to withdraw from circulation) such virtual currency. A *user* is a person that obtains virtual currency to purchase goods or services.<sup>5</sup> Under the Guidance, both exchangers and administrators are considered to be money transmitters unless a limitation or exemption from the definition of money transmitter applies to that person.<sup>6</sup>

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<sup>1</sup> 31 CFR § 1010.100(ff)(5)(ii)(B).

<sup>2</sup> 31 CFR § 1010.100(ff)(5)(ii)(F).

<sup>3</sup> FIN-2013-G001 ("Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies," March 18, 2013).

<sup>4</sup> 31 CFR § 1010.100(m).

<sup>5</sup> FIN-2014-R001 "Application of FinCEN's Regulations to Virtual Currency Mining Operations" - 01/30/2014, clarified that a *user* is a person that obtains virtual currency to purchase goods or services on the user's own behalf. (emphasis added)

<sup>6</sup> See FIN-2013-G001.

FinCEN disagrees with your position that the Company does not convert the customer's real currency into virtual currency because the Company purchases and stores large quantities of Bitcoin that the Company then uses to pay the merchant. As described above, the Company is an exchanger under the Guidance because it engages as a business in accepting and converting the customer's real currency into virtual currency for transmission to the merchant. The fact that the Company uses its cache of Bitcoin to pay the merchant is not relevant to whether it fits within the definition of money transmitter. An exchanger will be subject to the same obligations under FinCEN regulations regardless of whether the exchanger acts as a broker (attempting to match two (mostly) simultaneous and offsetting transactions involving the acceptance of one type of currency and the transmission of another) or as a dealer (transacting from its own reserve in either convertible virtual currency or real currency).

FinCEN concludes that the Company would be a money transmitter, specifically because it is acting as an exchanger of convertible virtual currency, as that term was described in the Guidance. Additionally, you then ask, if FinCEN determines that the Company is an exchanger, whether either an exemption for certain payment processing activities or an exemption for transactions integral to the sale of other goods or services would apply.

***FinCEN's definition of money transmission and existing exemptions***

On July 21, 2011, FinCEN published a Final Rule amending definitions and other regulations relating to MSBs (the "Rule").<sup>7</sup> The amended regulations define an MSB as "a person wherever located doing business, whether or not on a regular basis or as an organized or licensed business concern, wholly or in substantial part within the United States, in one or more of the capacities listed in paragraphs (ff)(1) through (ff)(7) of this section. This includes but is not limited to maintenance of any agent, agency, branch, or office within the United States."<sup>8</sup>

BSA regulations, as amended, define the term "money transmitter" to include a person that provides money transmission services, or any other person engaged in the transfer of funds. The term "money transmission services" means the acceptance of currency, funds, or other value that substitutes for currency from one person *and* the transmission of currency, funds, or other value that substitutes for currency to another location or person by any means.<sup>9</sup> The regulations also stipulate that whether a person is a money transmitter is a matter of facts and circumstances, and identifies circumstances under which a person's activities would not make such person a money transmitter.<sup>10</sup>

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<sup>7</sup> Bank Secrecy Act Regulations – Definitions and Other Regulations Relating to Money Services Businesses, 76 FR 43585 (July 21, 2011).

<sup>8</sup> 31 CFR § 1010.100(ff).

<sup>9</sup> 31 CFR § 1010.100(ff)(5)(i)(A).

<sup>10</sup> 31 CFR § 1010.100(ff)(5)(ii).

FinCEN stipulates four conditions for the payment processor exemption to apply to a particular business pattern:

- (a) the entity providing the service must facilitate the purchase of goods or services, or the payment of bills for goods or services (other than money transmission itself);
- (b) the entity must operate through clearance and settlement systems that admit only BSA-regulated financial institutions;
- (c) the entity must provide the service pursuant to a formal agreement; and
- (d) the entity's agreement must be at a minimum with the seller or creditor that provided the goods or services and receives the funds.<sup>11</sup>

The Company fails to satisfy one of these conditions. The Company is not operating through clearing and settlement systems that only admit BSA-regulated financial institutions as members. According to your letter the real currency payments from the consumer take place within a clearing and settlement system that only admits BSA-regulated financial institutions as members (specifically, a credit card network), however, the payment of the Bitcoin equivalent to the merchant, by definition, takes place outside such a clearing and settlement system, either to a merchant-owned virtual currency wallet or to a larger virtual currency exchange that admits both financial institution and non-financial institution members, for the account of the merchant.

With regard to whether the money transmission is integral to the provision of the Company's service, and thus potentially eligible for exemption, FinCEN has concluded that the money transmission that takes place within the System does not qualify for the exemption. There are three fundamental conditions that must be met for the exemption to apply:

- a) The money transmission component must be part of the provision of goods or services distinct from money transmission itself;
- b) The exemption can only be claimed by the person that is engaged in the provision of goods or services distinct from money transmission;
- c) The money transmission component must be integral (that is, necessary) for the provision of the goods or services.

In FinCEN's view, the payment service that the Company intends to offer meets the definition of money transmission. Such money transmission is the sole purpose of the

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<sup>11</sup> See 31 CFR § 1010.100(ff)(5)(ii)(B); see also FIN-2013-R002 ("Whether a Company that Offers a Payment Mechanism Based on Payable-Through Drafts to its Commercial Customers is a Money Transmitter" - 11/13/2013). FIN-2013-R002 clarifies that for the payment processor exemption to apply, the entity must use a clearance and settlement system that intermediates solely between BSA regulated institutions.

Company's System, and is not a necessary part of another, non-money transmission service being provided by the Company. Although rendered before the 2011 modifications to MSB definitions and in some cases involving a different type of MSB, FinCEN reached the same conclusion in several administrative rulings that apply to this particular point.<sup>12</sup>

For the above reasons, FinCEN has determined that the Company is engaged in money transmission, and such activity is not covered by either the payment processor or the integral exemption. Please note that FinCEN would reach the same conclusions if payments were made in virtual currencies other than Bitcoin. As a money transmitter, the Company will be required to (a) register with FinCEN, (b) conduct a comprehensive risk assessment of its exposure to money laundering,<sup>13</sup> (c) implement an Anti-Money Laundering Program based on such risk assessment, and (d) comply with the recordkeeping, reporting and transaction monitoring obligations set down in Parts 1010 and 1022 of 31 CFR Chapter X. Examples of such requirements include the filing of Currency Transaction Reports (31 CFR § 1022.310) and Suspicious Activity Reports (31 CFR § 1022.320), whenever applicable, general recordkeeping maintenance (31 CFR § 1010.410), and recordkeeping related to the sale of negotiable instruments (31 CFR § 1010.415). Furthermore, to the extent that any of the Company's transactions constitute a "transmittal of funds" (31 CFR § 1010.100(ddd)) under FinCEN's regulations, then the Company must also comply with the "Funds Transfer Rule" (31 CFR § 1010.410(e)) and the "Funds Travel Rule" (31 CFR § 1010.410(f)).

This ruling is provided in accordance with the procedures set forth at 31 CFR Part 1010 Subpart G. In arriving at the conclusions in this administrative ruling, we have relied upon the accuracy and completeness of the representations you made in your communications with us. Nothing precludes FinCEN from arriving at a different conclusion or from taking other action should circumstances change or should any of the information you have provided prove inaccurate or incomplete. We reserve the right, after redacting your name and address, and similar identifying information for your clients, to publish this letter as guidance to financial institutions in accordance with our regulations.<sup>14</sup> You have fourteen days from the date of this letter to identify any other information you believe should be redacted and the legal basis for redaction.

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<sup>12</sup> See FIN-2008-R007 ("Whether a Certain Operation Protecting On-line Personal Financial Information is a Money Transmitter" - 06/11/2008); FIN-2008-R004 ("Whether a Foreign Exchange Consultant is a Currency Dealer or Exchanger or Money Transmitter" - 05/09/2008); FIN-2008-R003 ("Whether a Person That is Engaged in the Business of Foreign Exchange Risk Management is a Currency Dealer or Exchanger or Money Transmitter" - 05/09/2008); and FIN-2008-R002 ("Whether a Foreign Exchange Dealer is a Currency Dealer or Exchanger or Money Transmitter" - 05/09/2008).

<sup>13</sup> We caution the Company about incorporating into its comprehensive risk assessment the delicate balance between helping merchants avoid losses due to the fluctuation of their currencies of legal tender because of inflationary trends or devaluation, on the one hand, and collaboration with their potential evasion of foreign exchange control regulations applicable in their jurisdictions, on the other.

<sup>14</sup> 31 CFR §§ 1010.711-717.

If you have questions about this ruling, please contact FinCEN's regulatory helpline at (703) 905-3591.

Sincerely,

//signed//

Jamal El-Hindi  
Associate Director  
Policy Division



**FIN-2014-R011**

**Issued: October 27, 2014**

**Subject: Request for Administrative Ruling on the Application of  
FinCEN's Regulations to a Virtual Currency Trading Platform**

Dear [ ]:

This responds to your letter of December 3, 2013, seeking an administrative ruling from the Financial Crimes Enforcement Network ("FinCEN") on behalf of [ ] (the "Company"), about the Company's possible status as a money services business ("MSB") under the Bank Secrecy Act ("BSA"). Specifically, you ask whether the convertible virtual currency trading and booking platform that the Company intends to set up (the "Platform") would make the Company a money transmitter under the BSA. Based on the following analysis of the description of the Platform as presented in your letter, FinCEN finds that the Company would be a money transmitter pursuant to our regulations.

You state in your letter that the Company wishes to set up a Platform that consists of a trading system (the "System") to match offers to buy and sell convertible virtual currency for currency of legal tender ("real currency"), and a set of book accounts in which prospective buyers or sellers of one type of currency or the other ("Customers") can deposit funds to cover their exchanges. The Company will maintain separate accounts in U.S. dollars and a virtual wallet, both segregated from the Company's operational accounts and protected from seizure by the Company's creditors (the "Funding Accounts"), in which Customers will deposit their U.S. dollars or convertible virtual currency to fund the exchanges. The Company will maintain the funding received from each Customer in its separate book entry account (the "Customer Account").

Once the exchange is funded, the Customer will submit an order to the Company to purchase or sell the currency deposited at a given price. The Platform will automatically attempt to match each purchase order of one currency to one or more sell orders of the same currency. If a match is found, the Company will purchase from the Customer acting as seller and sell to the Customer acting as buyer, without identifying one to the other. If a match is not found, the Customer may elect to withdraw the funds or keep them in its Customer Account to fund future orders.

According to your letter, the Company will not allow inter-account transfers, third-party funding of a Customer Account, or payments from one Customer Account to a third party. Payments to or from the Customer are sent or received by credit transmittals of funds through the Automatic Clearinghouse (ACH) system or wire transfers from U.S. banks. In addition, you note that the Platform will not allow any Customer to know the

identity of another Customer, and Customers must conduct transactions exclusively through their formal agreements with the Company.

In your letter, you state that the Company is already registered with FinCEN as a money transmitter and a dealer in foreign exchange. However, you assert that the Company should not be regulated as a money transmitter for the following reasons:

- The Company acts in a similar manner to securities or commodities exchanges, and there is no money transmission between the Company and any counterparty.
- If FinCEN were to find that the Company is engaged in money transmission, then such activity would be integral to the Company's business or eligible for the payment processor exemption.
- Lastly, should FinCEN find that the above exemptions do not apply, the Company fits the definition of "user" rather than "exchanger" or "administrator" pursuant to FinCEN's guidance.<sup>1</sup>

This letter first will address the application of the definition of money transmission and its exemptions to the Company's activities, and then address whether the Company should be considered a user rather than an exchanger or administrator of virtual currency.

### ***FinCEN's definition of money transmission and existing exemptions***

In your letter, you reference language from FinCEN's definition of money transmitter that existed prior to FinCEN's 2011 amendments to the MSB definition. On July 21, 2011, FinCEN published a Final Rule amending definitions and other regulations relating to MSBs (the "Rule").<sup>2</sup> The amended regulations define an MSB as "a person wherever located doing business, whether or not on a regular basis or as an organized or licensed business concern, wholly or in substantial part within the United States, in one or more of the capacities listed in paragraphs (ff)(1) through (ff)(7) of this section. This includes but is not limited to maintenance of any agent, agency, branch, or office within the United States."<sup>3</sup>

The Rule defines the term "money transmitter" to include a person that provides money transmission services, or any other person engaged in the transfer of funds. The term "money transmission services" means the acceptance of currency, funds, or other

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<sup>1</sup> FIN-2013-G001, "Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies," March 18, 2013 (the "Guidance").

<sup>2</sup> Bank Secrecy Act Regulations – Definitions and Other Regulations Relating to Money Services Businesses, 76 FR 43585 (July 21, 2011).

<sup>3</sup> 31 CFR § 1010.100(ff).



value that substitutes for currency from one person *and* the transmission of currency, funds, or other value that substitutes for currency to another location or person by any means.<sup>4</sup> The regulations also stipulate that whether a person is a money transmitter is a matter of facts and circumstances, and identifies circumstances under which a person's activities would not make such person a money transmitter.<sup>5</sup>

You argue that the Platform renders exchanges anonymous among Customers in the same way open exchanges for publicly traded equities keep the identity of each member's counterparty confidential. At this time, your analogy to the securities and futures industries and their traditional methods for buying and selling securities and commodities is not relevant for analysis of the Company's obligations under the BSA. FinCEN's guidance issued on a product or service under one set of specific facts and circumstances should only be relied upon when applied to another product or service that shares the same specific facts and circumstances.

As explained in the Guidance, a person is an exchanger and a money transmitter if the person accepts convertible virtual currency from one person and transmits it to another person as part of the acceptance and transfer of currency, funds, or other value that substitutes for currency.<sup>6</sup> We disagree with your contention that there is no money transmission when the instructions of the Customers are issued subject to the condition of finding an offsetting match. The regulatory definition of money transmission does not contain any element of conditionality before it applies. A person that accepts currency, funds, or any value that substitutes for currency, with the intent and/or effect of transmitting currency, funds, or any value that substitutes for currency to another person or location if a certain predetermined condition established by the transmitter is met, is a money transmitter under FinCEN's regulations. The fact that such a transmission sometimes may not occur in your business model if no match is found does not remove the Company from the scope of the regulations for those transactions that do occur.

You state that if money transmission occurs at all, it occurs between the Customer that sells and the Customer that purchases virtual currency. Your letter clearly describes the Company's Platform as consisting of two parts: an electronic matching book for offers of buying and selling virtual currency and a set of book accounts that pre-fund the transactions ordered by Customers that want to exchange virtual currency for real currency (and, on the other hand, by Customers that want to exchange real currency for virtual currency). You state that a key feature of the Platform is that Customers are never identified to each other, even after the buyer and the seller are matched. The fact that Customers are never identified to each other does not affect FinCEN's analysis of the transactions. FinCEN finds that in each trade conducted through the Platform, two

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<sup>4</sup> 31 CFR § 1010.100(ff)(5)(i)(A).

<sup>5</sup> 31 CFR § 1010.100(ff)(5)(ii).

<sup>6</sup> See FIN-2013-G001.

money transmission transactions occur: one between the Company and the Customer wishing to buy virtual currency, and another between the Company and the Customer wishing to sell such virtual currency at the same exchange rate.

With regard to whether the money transmission is integral to the provision of the Company's service, and thus potentially eligible for exemption, FinCEN has concluded that the money transmission that takes place within the System does not qualify for the exemption. There are three fundamental conditions that must be met for the exemption to apply:

- The money transmission component must be part of the provision of goods or services distinct from money transmission itself.
- The exemption can only be claimed by the person that is engaged in the provision of goods or services distinct from money transmission.
- The money transmission component must be integral (that is, necessary) for the provision of the goods or services.

In FinCEN's view, the payment service that the Company intends to offer meets the definition of money transmission. The Company is facilitating the transfer of value, both real and virtual, between third parties. Such money transmission is the sole purpose of the Company's System, and is not a necessary part of another, non-money transmission service being provided by the Company. Although rendered before the 2011 modifications to MSB definitions and in some cases involving a different type of MSB, FinCEN reached the same conclusion in several administrative rulings that apply to this particular point.<sup>7</sup>

As you noted in your letter, FinCEN stipulates four conditions for the payment processor exemption to apply to a particular business pattern:<sup>8</sup>

- (a) the entity providing the service must facilitate the purchase of goods or services, or the payment of bills for goods or services (other than money transmission itself);
- (b) the entity must operate through clearance and settlement systems that admit only BSA-regulated financial institutions;
- (c) the entity must provide the service pursuant to a formal agreement; and

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<sup>7</sup> See FIN-2008-R007 ("Whether a Certain Operation Protecting On-line Personal Financial Information is a Money Transmitter" - 06/11/2008); FIN-2008-R004 ("Whether a Foreign Exchange Consultant is a Currency Dealer or Exchanger or Money Transmitter" - 05/09/2008); FIN-2008-R003 ("Whether a Person That is Engaged in the Business of Foreign Exchange Risk Management is a Currency Dealer or Exchanger or Money Transmitter" - 05/09/2008); FIN-2008-R002 ("Whether a Foreign Exchange Dealer is a Currency Dealer or Exchanger or Money Transmitter" - 05/09/2008).

<sup>8</sup> FIN-2013-R002 ("Whether a Company that Offers a Payment Mechanism Based on Payable-Through Drafts to its Commercial Customers is a Money Transmitter" - 11/13/2013).

(d) the entity's agreement must be at a minimum with the seller or creditor that provided the goods or services and receives the funds.

Despite your assertion that this exemption would apply to the Platform, the Company fails to meet two of the conditions for the exemption. Specifically, the Customer is not receiving payment as a seller or creditor from a buyer or debtor for the provision of non-money transmission related goods or services (FinCEN does not consider providing virtual currency for real currency or vice versa as a non-money transmission related service), and the Company is not operating through a clearing and settlement system that only admits BSA-regulated financial institutions as members. Although, according to your letter, payments to or from the Customer Accounts may take place in part using a clearing and settlement system such as EPN, FedACH, or FedWire, the Platform itself is not a clearance and settlement system that admits only BSA-regulated financial institutions, and the payments of convertible virtual currency to and from the Customers, by definition, take place outside such a clearance and settlement system.

For the above reasons, FinCEN has determined that the Company is engaged in money transmission, and such activity is not covered by either the integral exemption or the payment processor exemption.

### ***FinCEN's Virtual Currency Guidance***

On March 18, 2013, FinCEN issued guidance on the application of FinCEN's regulations to transactions in virtual currencies (the "Guidance").<sup>9</sup> FinCEN's regulations define currency as "the coin and paper money of the United States or of any other country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in the country of issuance."<sup>10</sup> In contrast to real currency, "virtual" currency is a medium of exchange that operates like a currency in some environments, but does not have all the attributes of real currency. In particular, virtual currency does not have legal tender status in any jurisdiction. The Guidance addresses "convertible" virtual currency. This type of virtual currency either has an equivalent value in real currency, or acts as a substitute for real currency.

For purposes of the Guidance, FinCEN refers to the participants in generic virtual currency arrangements, using the terms "exchanger," "administrator," and "user." An *exchanger* is a person engaged as a business in the exchange of virtual currency for real currency, funds, or other virtual currency. An *administrator* is a person engaged as a business in issuing (putting into circulation) a virtual currency, and who has the authority

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<sup>9</sup> See footnote 1.

<sup>10</sup> 31 CFR § 1010.100(m).

to redeem (to withdraw from circulation) such virtual currency. A *user* is a person that obtains virtual currency to purchase goods or services on the user's own behalf

The Guidance makes clear that an administrator or exchanger of convertible virtual currencies that accepts and transmits a convertible virtual currency, or buys or sells convertible virtual currency in exchange for currency of legal tender or another convertible virtual currency for any reason is a money transmitter under FinCEN's regulations, unless a limitation to or exemption from the definition applies to the person.<sup>11</sup> The guidance also makes clear that "a user who obtains convertible virtual currency and uses it to purchase real or virtual goods or services is not an MSB under FinCEN's regulations."

How a user engages in obtaining a virtual currency may be described using any number of other terms, such as "earning," "harvesting," "mining," "creating," "auto-generating," "manufacturing," or "purchasing," depending on the details of the specific virtual currency model involved. The label applied to a particular process of obtaining virtual currency is not material to its characterization under the BSA. Whether a person is deemed to be an MSB depends on how that person uses the convertible virtual currency, and for whose benefit. The mechanism by which the virtual currency is obtained is not material in determining MSB status.

FinCEN does not accept the Company's argument that it should be considered a user and not an exchanger, because "a true virtual currency exchange would have its own reserve of virtual currency and dollars that it would buy and sell in order to fund exchanges with its users." As explained in the Guidance and indicated above, a person is an exchanger and a money transmitter if the person accepts convertible virtual currency from one person and transmits it to another person as part of the acceptance and transfer of currency, funds, or other value that substitutes for currency. The method of funding the transactions is not relevant to the definition of money transmitter. An exchanger will be subject to the same obligations under FinCEN regulations regardless of whether the exchanger acts as a broker (attempting to match two (mostly) simultaneous and offsetting transactions involving the acceptance of one type of currency and the transmission of another) or as a dealer (transacting from its own reserve in either convertible virtual currency or real currency). Therefore, FinCEN finds that the Company is acting as an exchanger of convertible virtual currency, as that term was described in the Guidance.

When engaging in convertible virtual currency transactions as an exchanger, a person must register with FinCEN as a money transmitter, assess the money laundering risk involved in its non-exempt transactions, and implement an anti-money laundering

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<sup>11</sup> The definition of "money transmitter" in FinCEN's regulations defines six sets of circumstances – variously referred to as limitations or exemptions – under which a person is not a money transmitter, despite accepting and transmitting currency, funds, or value that substitutes for currency. 31 CFR § 1010.100(ff)(5)(ii)(A)-(F).

program to mitigate such risk. In addition, the Company must comply with the recordkeeping, reporting, and transaction monitoring requirements under FinCEN regulations. Examples of such requirements include the filing of Currency Transaction Reports (31 CFR § 1022.310) and Suspicious Activity Reports (31 CFR § 1022.320), whenever applicable, general recordkeeping maintenance (31 CFR § 1010.410), and recordkeeping related to the sale of negotiable instruments (31 CFR § 1010.415). Furthermore, to the extent that any of the Company's transactions constitute a "transmittal of funds" (31 CFR § 1010.100(ddd)) under FinCEN's regulations, then the Company must also comply with the "Funds Transfer Rule" (31 CFR § 1010.410(e)) and the "Funds Travel Rule" (31 CFR § 1010.410(f)).<sup>12</sup>

This ruling is provided in accordance with the procedures set forth at 31 CFR Part 1010 Subpart G. In arriving at the conclusions in this administrative ruling, we have relied upon the accuracy and completeness of the representations you made in your communications with us. Nothing precludes FinCEN from arriving at a different conclusion or from taking other action should circumstances change or should any of the information you have provided prove inaccurate or incomplete. We reserve the right, after redacting your name and address, and similar identifying information for your clients, to publish this letter as guidance to financial institutions in accordance with our regulations.<sup>13</sup> You have fourteen days from the date of this letter to identify any other information you believe should be redacted and the legal basis for redaction.

If you have questions about this ruling, please contact FinCEN's regulatory helpline at (703) 905-3591.

Sincerely,

//signed//

Jamal El-Hindi  
Associate Director  
Policy Division

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<sup>12</sup> For example, the definition of transmittal of funds involves unconditional transmittal orders. Please note that FinCEN does not consider some predetermined conditions (such as "at market") to exempt a series of transactions involving the acceptance and transmission of currency, funds, or value that substitutes for currency from a transmitter to a recipient from the definition of transmittal of funds and its related recordkeeping requirements.

<sup>13</sup> 31 CFR §§ 1010.711-717.



# Department of the Treasury Financial Crimes Enforcement Network

## Guidance

### **FIN-2013-G001**

**Issued:** March 18, 2013

**Subject:** Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies

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The Financial Crimes Enforcement Network ("FinCEN") is issuing this interpretive guidance to clarify the applicability of the regulations implementing the Bank Secrecy Act ("BSA") to persons creating, obtaining, distributing, exchanging, accepting, or transmitting virtual currencies.<sup>1</sup> Such persons are referred to in this guidance as "users," "administrators," and "exchangers," all as defined below.<sup>2</sup> A user of virtual currency is *not* an MSB under FinCEN's regulations and therefore is not subject to MSB registration, reporting, and recordkeeping regulations. However, an administrator or exchanger *is* an MSB under FinCEN's regulations, specifically, a money transmitter, unless a limitation to or exemption from the definition applies to the person. An administrator or exchanger is not a provider or seller of prepaid access, or a dealer in foreign exchange, under FinCEN's regulations.

### **Currency vs. Virtual Currency**

FinCEN's regulations define currency (also referred to as "real" currency) as "the coin and paper money of the United States or of any other country that [i] is designated as legal tender and that [ii] circulates and [iii] is customarily used and accepted as a medium of exchange in the country of issuance."<sup>3</sup> In contrast to real currency, "virtual" currency is a medium of exchange that operates like a currency in some environments, but does not have all the attributes of real currency. In particular, virtual currency does not have legal tender status in any jurisdiction. This guidance addresses "convertible" virtual currency. This type of virtual currency either has an equivalent value in real currency, or acts as a substitute for real currency.

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<sup>1</sup> FinCEN is issuing this guidance under its authority to administer the Bank Secrecy Act. See Treasury Order 180-01 (March 24, 2003). This guidance explains only how FinCEN characterizes certain activities involving virtual currencies under the Bank Secrecy Act and FinCEN regulations. It should not be interpreted as a statement by FinCEN about the extent to which those activities comport with other federal or state statutes, rules, regulations, or orders.

<sup>2</sup> FinCEN's regulations define "person" as "an individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture, or other unincorporated organization or group, an Indian Tribe (as that term is defined in the Indian Gaming Regulatory Act), and all entities cognizable as legal personalities." 31 CFR § 1010.100(mm).

<sup>3</sup> 31 CFR § 1010.100(m).

## **Background**

On July 21, 2011, FinCEN published a Final Rule amending definitions and other regulations relating to money services businesses (“MSBs”).<sup>4</sup> Among other things, the MSB Rule amends the definitions of dealers in foreign exchange (formerly referred to as “currency dealers and exchangers”) and money transmitters. On July 29, 2011, FinCEN published a Final Rule on Definitions and Other Regulations Relating to Prepaid Access (the “Prepaid Access Rule”).<sup>5</sup> This guidance explains the regulatory treatment under these definitions of persons engaged in virtual currency transactions.

## **Definitions of User, Exchanger, and Administrator**

This guidance refers to the participants in generic virtual currency arrangements, using the terms “user,” “exchanger,” and “administrator.”<sup>6</sup> A *user* is a person that obtains virtual currency to purchase goods or services.<sup>7</sup> An *exchanger* is a person engaged as a business in the exchange of virtual currency for real currency, funds, or other virtual currency. An *administrator* is a person engaged as a business in issuing (putting into circulation) a virtual currency, and who has the authority to redeem (to withdraw from circulation) such virtual currency.

## **Users of Virtual Currency**

A user who obtains convertible virtual currency and uses it to purchase real or virtual goods or services is **not** an MSB under FinCEN’s regulations.<sup>8</sup> Such activity, in and of itself, does not fit within the definition of “money transmission services” and therefore is not subject to FinCEN’s registration, reporting, and recordkeeping regulations for MSBs.<sup>9</sup>

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<sup>4</sup> *Bank Secrecy Act Regulations – Definitions and Other Regulations Relating to Money Services Businesses*, 76 FR 43585 (July 21, 2011) (the “MSB Rule”). This defines an MSB as “a person wherever located doing business, whether or not on a regular basis or as an organized or licensed business concern, wholly or in substantial part within the United States, in one or more of the capacities listed in paragraphs (ff)(1) through (ff)(7) of this section. This includes but is not limited to maintenance of any agent, agency, branch, or office within the United States.” 31 CFR § 1010.100(ff).

<sup>5</sup> *Final Rule – Definitions and Other Regulations Relating to Prepaid Access*, 76 FR 45403 (July 29, 2011),

<sup>6</sup> These terms are used for the exclusive purpose of this regulatory guidance. Depending on the type and combination of a person’s activities, one person may be acting in more than one of these capacities.

<sup>7</sup> How a person engages in “obtaining” a virtual currency may be described using any number of other terms, such as “earning,” “harvesting,” “mining,” “creating,” “auto-generating,” “manufacturing,” or “purchasing,” depending on the details of the specific virtual currency model involved. For purposes of this guidance, the label applied to a particular process of obtaining a virtual currency is not material to the legal characterization under the BSA of the process or of the person engaging in the process.

<sup>8</sup> As noted above, this should not be interpreted as a statement about the extent to which the user’s activities comport with other federal or state statutes, rules, regulations, or orders. For example, the activity may still be subject to abuse in the form of trade-based money laundering or terrorist financing. The activity may follow the same patterns of behavior observed in the “real” economy with respect to the purchase of “real” goods and services, such as systematic over- or under-invoicing or inflated transaction fees or commissions.

<sup>9</sup> 31 CFR § 1010.100(ff)(1-7).

## **Administrators and Exchangers of Virtual Currency**

An administrator or exchanger that (1) accepts and transmits a convertible virtual currency or (2) buys or sells convertible virtual currency for any reason *is* a money transmitter under FinCEN's regulations, unless a limitation to or exemption from the definition applies to the person.<sup>10</sup> FinCEN's regulations define the term "money transmitter" as a person that provides money transmission services, or any other person engaged in the transfer of funds. The term "money transmission services" means "the acceptance of currency, funds, or other value that substitutes for currency from one person *and* the transmission of currency, funds, or other value that substitutes for currency to another location or person by any means."<sup>11</sup>

The definition of a money transmitter does not differentiate between real currencies and convertible virtual currencies. Accepting and transmitting anything of value that substitutes for currency makes a person a money transmitter under the regulations implementing the BSA.<sup>12</sup> FinCEN has reviewed different activities involving virtual currency and has made determinations regarding the appropriate regulatory treatment of administrators and exchangers under three scenarios: brokers and dealers of e-currencies and e-precious metals; centralized convertible virtual currencies; and de-centralized convertible virtual currencies.

### ***a. E-Currencies and E-Precious Metals***

The first type of activity involves electronic trading in e-currencies or e-precious metals.<sup>13</sup> In 2008, FinCEN issued guidance stating that as long as a broker or dealer in real currency or other commodities accepts and transmits funds solely for the purpose of effecting a *bona fide* purchase or sale of the real currency or other commodities for or with a customer, such person is not acting as a money transmitter under the regulations.<sup>14</sup>

However, if the broker or dealer transfers funds between a customer and a third party that is not part of the currency or commodity transaction, such transmission of funds is no longer a fundamental element of the actual transaction necessary to execute the contract for the purchase or sale of the currency or the other commodity. This scenario is, therefore, money

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<sup>10</sup> FinCEN's regulations provide that whether a person is a money transmitter is a matter of facts and circumstances. The regulations identify six circumstances under which a person is not a money transmitter, despite accepting and transmitting currency, funds, or value that substitutes for currency. 31 CFR § 1010.100(ff)(5)(ii)(A)–(F).

<sup>11</sup> 31 CFR § 1010.100(ff)(5)(i)(A).

<sup>12</sup> *Ibid.*

<sup>13</sup> Typically, this involves the broker or dealer electronically distributing digital certificates of ownership of real currencies or precious metals, with the digital certificate being the virtual currency. However, the same conclusions would apply in the case of the broker or dealer issuing paper ownership certificates or manifesting customer ownership or control of real currencies or commodities in an account statement or any other form. These conclusions would also apply in the case of a broker or dealer in commodities other than real currencies or precious metals. A broker or dealer of e-currencies or e-precious metals that engages in money transmission could be either an administrator or exchanger depending on its business model.

<sup>14</sup> *Application of the Definition of Money Transmitter to Brokers and Dealers in Currency and other Commodities*, FIN-2008-G008, Sept. 10, 2008. The guidance also notes that the definition of money transmitter excludes any person, such as a futures commission merchant, that is "registered with, and regulated or examined by...the Commodity Futures Trading Commission."



transmission.<sup>15</sup> Examples include, in part, (1) the transfer of funds between a customer and a third party by permitting a third party to fund a customer's account; (2) the transfer of value from a customer's currency or commodity position to the account of another customer; or (3) the closing out of a customer's currency or commodity position, with a transfer of proceeds to a third party. Since the definition of a money transmitter does not differentiate between real currencies and convertible virtual currencies, the same rules apply to brokers and dealers of e-currency and e-precious metals.

***b. Centralized Virtual Currencies***

The second type of activity involves a convertible virtual currency that has a centralized repository. The administrator of that repository will be a money transmitter to the extent that it allows transfers of value between persons or from one location to another. This conclusion applies, whether the value is denominated in a real currency or a convertible virtual currency. In addition, any exchanger that uses its access to the convertible virtual currency services provided by the administrator to accept and transmit the convertible virtual currency on behalf of others, including transfers intended to pay a third party for virtual goods and services, is also a money transmitter.

FinCEN understands that the exchanger's activities may take one of two forms. The first form involves an exchanger (acting as a "seller" of the convertible virtual currency) that accepts real currency or its equivalent from a user (the "purchaser") and transmits the value of that real currency to fund the user's convertible virtual currency account with the administrator. Under FinCEN's regulations, sending "value that substitutes for currency" to another person or to another location constitutes money transmission, unless a limitation to or exemption from the definition applies.<sup>16</sup> This circumstance constitutes transmission *to another location*, namely from the user's account at one location (e.g., a user's real currency account at a bank) to the user's convertible virtual currency account with the administrator. It might be argued that the exchanger is entitled to the exemption from the definition of "money transmitter" for persons involved in the sale of goods or the provision of services. Under such an argument, one might assert that the exchanger is merely providing the service of connecting the user to the administrator and that the transmission of value is integral to this service. However, this exemption does not apply when the only services being provided are money transmission services.<sup>17</sup>

The second form involves a *de facto* sale of convertible virtual currency that is not completely transparent. The exchanger accepts currency or its equivalent from a user and privately credits the user with an appropriate portion of the exchanger's own convertible virtual currency held with the administrator of the repository. The exchanger then transmits that

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<sup>15</sup> In 2011, FinCEN amended the definition of money transmitter. The 2008 guidance, however, was primarily concerned with the core elements of the definition – accepting and transmitting currency or value – and the exemption for acceptance and transmission integral to another transaction not involving money transmission. The 2011 amendments have not materially changed these aspects of the definition.

<sup>16</sup> See footnote 11 and adjacent text.

<sup>17</sup> 31 CFR § 1010.100(ff)(5)(ii)(F).

internally credited value to third parties at the user's direction. This constitutes transmission *to another person*, namely each third party to which transmissions are made at the user's direction. To the extent that the convertible virtual currency is generally understood as a substitute for real currencies, transmitting the convertible virtual currency at the direction and for the benefit of the user constitutes money transmission on the part of the exchanger.

***c. De-Centralized Virtual Currencies***

A final type of convertible virtual currency activity involves a de-centralized convertible virtual currency (1) that has no central repository and no single administrator, and (2) that persons may obtain by their own computing or manufacturing effort.

A person that creates units of this convertible virtual currency and uses it to purchase real or virtual goods and services is a user of the convertible virtual currency and not subject to regulation as a money transmitter. By contrast, a person that creates units of convertible virtual currency and sells those units to another person for real currency or its equivalent is engaged in transmission to another location and is a money transmitter. In addition, a person is an exchanger and a money transmitter if the person accepts such de-centralized convertible virtual currency from one person and transmits it to another person as part of the acceptance and transfer of currency, funds, or other value that substitutes for currency.

**Providers and Sellers of Prepaid Access**

A person's acceptance and/or transmission of convertible virtual currency cannot be characterized as providing or selling prepaid access because prepaid access is limited to real currencies.<sup>18</sup>

**Dealers in Foreign Exchange**

A person must exchange the currency of two or more countries to be considered a dealer in foreign exchange.<sup>19</sup> Virtual currency does not meet the criteria to be considered "currency" under the BSA, because it is not legal tender. Therefore, a person who accepts real currency in

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<sup>18</sup> This is true even if the person holds the value accepted for a period of time before transmitting some or all of that value at the direction of the person from whom the value was originally accepted. FinCEN's regulations define "prepaid access" as "access to funds or the value of funds that have been paid in advance and can be retrieved or transferred at some point in the future through an electronic device or vehicle, such as a card, code, electronic serial number, mobile identification number, or personal identification number." 31 CFR § 1010.100(ww). Thus, "prepaid access" under FinCEN's regulations is limited to "access to funds or the value of funds." If FinCEN had intended prepaid access to cover funds denominated in a virtual currency or something else that substitutes for real currency, it would have used language in the definition of prepaid access like that in the definition of money transmission, which expressly includes the acceptance and transmission of "other value that substitutes for currency." 31 CFR § 1010.100(ff)(5)(i).

<sup>19</sup> FinCEN defines a "dealer in foreign exchange" as a "person that accepts the currency, or other monetary instruments, funds, or other instruments denominated in the currency, of one or more countries in exchange for the currency, or other monetary instruments, funds, or other instruments denominated in the currency, of one or more other countries in an amount greater than \$1,000 for any other person on any day in one or more transactions, whether or not for same-day delivery." 31 CFR § 1010.100(ff)(1).

exchange for virtual currency, or *vice versa*, is not a dealer in foreign exchange under FinCEN's regulations.

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Financial institutions with questions about this guidance or other matters related to compliance with the implementing regulations of the BSA may contact FinCEN's Regulatory Helpline at (800) 949-2732.

**NEW YORK STATE**  
**DEPARTMENT OF FINANCIAL SERVICES**

**NEW YORK CODES, RULES AND REGULATIONS**

**TITLE 23. DEPARTMENT OF FINANCIAL SERVICES**

**CHAPTER I. REGULATIONS OF THE SUPERINTENDENT OF FINANCIAL SERVICES**

**PART 200. VIRTUAL CURRENCIES**

**(ALL MATERIAL IS NEW)**

Statutory Authority: Financial Services Law Sections 102, 104, 201, 206, 301, 302, 309, and 408

Section 200.1 Introduction

Section 200.2 Definitions

Section 200.3 License

Section 200.4 Application

Section 200.5 Application fees

Section 200.6 Action by superintendent

Section 200.7 Compliance

Section 200.8 Capital requirements

Section 200.9 Custody and protection of customer assets

Section 200.10 Material change to business

Section 200.11 Change of control; mergers and acquisitions

Section 200.12 Books and records

Section 200.13 Examinations

Section 200.14 Reports and financial disclosures

Section 200.15 Anti-money laundering program

Section 200.16 Cyber security program

Section 200.17 Business continuity and disaster recovery

Section 200.18 Advertising and marketing

Section 200.19 Consumer protection

Section 200.20 Complaints

Section 200.21 Transitional period

Section 200.22 Severability

## Section 200.1 Introduction

This Part contains regulations relating to the conduct of business involving Virtual Currency, as defined herein, in accordance with the superintendent's powers pursuant to the above-stated authority.

## Section 200.2 Definitions

For purposes of this Part only, the following definitions shall apply:

- (a) *Affiliate* means any Person that directly or indirectly controls, is controlled by, or is under common control with, another Person;
- (b) *Cyber Security Event* means any act or attempt, successful or unsuccessful, to gain unauthorized access to, disrupt, or misuse a Licensee's electronic systems or information stored on such systems;
- (c) *Department* means the New York State Department of Financial Services;
- (d) *Exchange Service* means the conversion or exchange of Fiat Currency or other value into Virtual Currency, the conversion or exchange of Virtual Currency into Fiat Currency or other value, or the conversion or exchange of one form of Virtual Currency into another form of Virtual Currency;
- (e) *Fiat Currency* means government-issued currency that is designated as legal tender in its country of issuance through government decree, regulation, or law;
- (f) *Licensee* means any Person duly licensed by the superintendent pursuant to this Part;
- (g) *New York* means the State of New York;
- (h) *New York Resident* means any Person that resides, is located, has a place of business, or is conducting business in New York;
- (i) *Person* means an individual, partnership, corporation, association, joint stock association, trust, or other entity, however organized;
- (j) *Prepaid Card* means an electronic payment device that: (i) is usable at a single merchant or an affiliated group of merchants that share the same name, mark, or logo, or is usable at multiple, unaffiliated merchants or service providers; (ii) is issued in and for a specified amount of Fiat Currency; (iii) can be reloaded in and for only Fiat Currency, if at all; (iv) is issued and/or reloaded on a prepaid basis for the future purchase or delivery

of goods or services; (v) is honored upon presentation; and (vi) can be redeemed in and for only Fiat Currency, if at all;

(k) *Principal Officer* means an executive officer of an entity, including, but not limited to, the chief executive, financial, operating, and compliance officers, president, general counsel, managing partner, general partner, controlling partner, and trustee, as applicable;

(l) *Principal Stockholder* means any Person that directly or indirectly owns, controls, or holds with power to vote ten percent or more of any class of outstanding capital stock or other equity interest of an entity or possesses the power to direct or cause the direction of the management or policies of the entity;

(m) *Principal Beneficiary* means any Person entitled to ten percent or more of the benefits of a trust;

(n) *Qualified Custodian* means a bank, trust company, national bank, savings bank, savings and loan association, federal savings association, credit union, or federal credit union in the State of New York, subject to the prior approval of the superintendent. To the extent applicable, terms used in this definition shall have the meaning ascribed by the Banking Law;

(o) *Transmission* means the transfer, by or through a third party, of Virtual Currency from a Person to a Person, including the transfer from the account or storage repository of a Person to the account or storage repository of a Person;

(p) *Virtual Currency* means any type of digital unit that is used as a medium of exchange or a form of digitally stored value. Virtual Currency shall be broadly construed to include digital units of exchange that (i) have a centralized repository or administrator; (ii) are decentralized and have no centralized repository or administrator; or (iii) may be created or obtained by computing or manufacturing effort. Virtual Currency shall not be construed to include any of the following:

(1) digital units that (i) are used solely within online gaming platforms, (ii) have no market or application outside of those gaming platforms, (iii) cannot be converted into, or redeemed for, Fiat Currency or



Virtual Currency, and (iv) may or may not be redeemable for real-world goods, services, discounts, or purchases.

(2) digital units that can be redeemed for goods, services, discounts, or purchases as part of a customer affinity or rewards program with the issuer and/or other designated merchants or can be redeemed for digital units in another customer affinity or rewards program, but cannot be converted into, or redeemed for, Fiat Currency or Virtual Currency; or

(3) digital units used as part of Prepaid Cards;

(q) *Virtual Currency Business Activity* means the conduct of any one of the following types of activities involving New York or a New York Resident:

(1) receiving Virtual Currency for Transmission or Transmitting Virtual Currency, except where the transaction is undertaken for non-financial purposes and does not involve the transfer of more than a nominal amount of Virtual Currency;

(2) storing, holding, or maintaining custody or control of Virtual Currency on behalf of others;

(3) buying and selling Virtual Currency as a customer business;

(4) performing Exchange Services as a customer business; or

(5) controlling, administering, or issuing a Virtual Currency.

The development and dissemination of software in and of itself does not constitute Virtual Currency Business Activity.

### Section 200.3 License

- (a) License required. No Person shall, without a license obtained from the superintendent as provided in this Part, engage in any Virtual Currency Business Activity. Licensees are not authorized to exercise fiduciary powers, as defined under Section 100 of the Banking Law.
- (b) Unlicensed agents prohibited. Each Licensee is prohibited from conducting any Virtual Currency Business Activity through an agent or agency arrangement when the agent is not a Licensee.
- (c) Exemption from licensing requirements. The following Persons are exempt from the licensing requirements otherwise applicable under this Part:
  - (1) Persons that are chartered under the New York Banking Law and are approved by the superintendent to engage in Virtual Currency Business Activity; and
  - (2) merchants and consumers that utilize Virtual Currency solely for the purchase or sale of goods or services or for investment purposes.

#### Section 200.4 Application

(a) Application for a license required under this Part shall be in writing, under oath, and in a form prescribed by the superintendent, and shall contain the following:

(1) the exact name of the applicant, including any doing business as name, the form of organization, the date of organization, and the jurisdiction where organized or incorporated;

(2) a list of all of the applicant's Affiliates and an organization chart illustrating the relationship among the applicant and such Affiliates;

(3) a list of, and detailed biographical information for, each individual applicant and each director, Principal Officer, Principal Stockholder, and Principal Beneficiary of the applicant, as applicable, including such individual's name, physical and mailing addresses, and information and documentation regarding such individual's personal history, experience, and qualification, which shall be accompanied by a form of authority, executed by such individual, to release information to the Department;

(4) a background report prepared by an independent investigatory agency acceptable to the superintendent for each individual applicant, and each Principal Officer, Principal Stockholder, and Principal Beneficiary of the applicant, as applicable;

(5) for each individual applicant; for each Principal Officer, Principal Stockholder, and Principal Beneficiary of the applicant, as applicable; and for all individuals to be employed by the applicant who have access to any customer funds, whether denominated in Fiat Currency or Virtual Currency: (i) a set of completed fingerprints, or a receipt indicating the vendor (which vendor must be acceptable to the superintendent) at which, and the date when, the fingerprints were taken, for submission to the State Division of Criminal Justice Services and the Federal Bureau of Investigation; (ii) if applicable, such processing fees as prescribed by the superintendent; and (iii) two portrait-style photographs of the individuals measuring not more than two inches by two inches;

(6) an organization chart of the applicant and its management structure, including its Principal Officers or senior management, indicating lines of authority and the allocation of duties among its Principal Officers or senior management;

(7) a current financial statement for the applicant and each Principal Officer, Principal Stockholder, and Principal Beneficiary of the applicant, as applicable, and a projected balance sheet and income statement for the following year of the applicant's operation;

(8) a description of the proposed, current, and historical business of the applicant, including detail on the products and services provided and to be provided, all associated website addresses, the jurisdictions in which the applicant is engaged in business, the principal place of business, the primary market of operation, the projected customer base, any specific marketing targets, and the physical address of any operation in New York;

(9) details of all banking arrangements;

(10) all written policies and procedures required by, or related to, the requirements of this Part;

(11) an affidavit describing any pending or threatened administrative, civil, or criminal action, litigation, or proceeding before any governmental agency, court, or arbitration tribunal against the applicant or any of its directors, Principal Officers, Principal Stockholders, and Principal Beneficiaries, as applicable, including the names of the parties, the nature of the proceeding, and the current status of the proceeding;

(12) verification from the New York State Department of Taxation and Finance that the applicant is compliant with all New York State tax obligations in a form acceptable to the superintendent;

(13) if applicable, a copy of any insurance policies maintained for the benefit of the applicant, its directors or officers, or its customers;

(14) an explanation of the methodology used to calculate the value of Virtual Currency in Fiat Currency;  
and

(15) such other additional information as the superintendent may require.

(b) As part of such application, the applicant shall demonstrate that it will be compliant with all of the requirements of this Part upon licensing.

(c) Notwithstanding Subsection (b) of this Section, the superintendent may in his or her sole discretion and consistent with the purposes and intent of the Financial Services Law and this Part approve an application by granting a conditional license.

(1) A conditional license may be issued to an applicant that does not satisfy all of the regulatory requirements upon licensing.

(2) A Licensee that holds a conditional license may be subject to heightened review, whether in regard to the scope and frequency of examination or otherwise.

(3) Unless the superintendent removes the conditional status of or renews a conditional license, said license shall expire two years after its date of issuance.

i) The superintendent may in his or her sole discretion and consistent with the purposes and intent of the Financial Services Law and this Part:

(A) renew a conditional license for an additional length of time; or

(B) remove the conditional status from a conditional license.

(4) A conditional license may be suspended or revoked pursuant to Section 200.6 of this Part.

(5) A conditional license may impose any reasonable condition or conditions, as determined by the superintendent in his or her sole discretion.

(6) The superintendent may remove any condition or conditions from a conditional license that has been issued.

(7) In determining whether to issue a conditional license, renew or remove the conditional status of a conditional license, or impose or remove any specific conditions on a conditional license, the superintendent may consider any relevant factor or factors. Relevant factors may include but are not limited to:

- i) the nature and scope of the applicant's or Licensee's business;
  - ii) the anticipated volume of business to be transacted by the applicant or Licensee;
  - iii) the nature and scope of the risks that the applicant's or Licensee's business presents to consumers, Virtual Currency markets, financial markets, and the general public;
  - iv) the measures which the applicant or Licensee has taken to limit or mitigate the risks its business presents;
  - v) whether the applicant or Licensee is registered with FinCEN;
  - vi) whether the applicant or Licensee is licensed, registered, or otherwise authorized by any governmental or self-regulatory authority to engage in financial services or other business activities;
  - vii) the applicant's or Licensee's financial services or other business experience; and
  - viii) the Licensee's history as a holder of a conditional license issued by the superintendent.
- (d) The superintendent may permit that any application for a license under this Part, or any other submission required by this Part, be made or executed by electronic means.

#### Section 200.5 Application fees

As part of an application for licensing under this Part, each applicant must submit an initial application fee, in the amount of five thousand dollars, to cover the cost of processing the application, reviewing application materials, and investigating the financial condition and responsibility, financial and business experience, and character and general fitness of the applicant. If the application is denied or withdrawn, such fee shall not be refunded. Each Licensee may be required to pay fees to the Department to process additional applications related to the license.

## Section 200.6 Action by superintendent

- (a) Generally. Upon the filing of an application for licensing under this Part, payment of the required fee, and demonstration by the applicant of its ability to comply with the provisions of this Part upon licensing, the superintendent shall investigate the financial condition and responsibility, financial and business experience, and character and general fitness of the applicant. If the superintendent finds these qualities are such as to warrant the belief that the applicant's business will be conducted honestly, fairly, equitably, carefully, and efficiently within the purposes and intent of this Part, and in a manner commanding the confidence and trust of the community, the superintendent shall advise the applicant in writing of his or her approval of the application, and shall issue to the applicant a license to conduct Virtual Currency Business Activity, subject to the provisions of this Part and such other conditions as the superintendent shall deem appropriate; or the superintendent may deny the application.
- (b) Approval or denial of application. The superintendent shall approve or deny every application for a license hereunder within 90 days from the filing of an application deemed by the superintendent to be complete. Such period of 90 days may be extended at the discretion of the superintendent for such additional reasonable period of time as may be required to enable compliance with this Part. A license issued pursuant to this Part shall remain in full force and effect until it is surrendered by the Licensee, is revoked or suspended, or expires as provided in this Part.
- (c) Suspension or revocation of license. The superintendent may suspend or revoke a license issued under this Part on any ground on which the superintendent might refuse to issue an original license, for a violation of any provision of this Part, for good cause shown, or for failure of the Licensee to pay a judgment, recovered in any court, within or without this State, by a claimant or creditor in an action arising out of, or relating to, the Licensee's Virtual Currency Business Activity, within thirty days after the judgment becomes final or within thirty days after expiration or termination of a stay of execution thereon; provided, however, that if execution on



the judgment is stayed, by court order or operation of law or otherwise, then proceedings to suspend or revoke the license (for failure of the Licensee to pay such judgment) may not be commenced by the superintendent during the time of such stay, and for thirty days thereafter. “Good cause” shall exist when a Licensee has defaulted or is likely to default in performing its obligations or financial engagements or engages in unlawful, dishonest, wrongful, or inequitable conduct or practices that may cause harm to the public.

(d) Hearing. No license issued under this Part shall be revoked or suspended except after a hearing thereon. The superintendent shall give a Licensee no less than ten days’ written notice of the time and place of such hearing by registered or certified mail addressed to the principal place of business of such Licensee. Any order of the superintendent suspending or revoking such license shall state the grounds upon which it is based and be sent by registered or certified mail to the Licensee at its principal place of business as shown in the records of the Department.

(e) Preliminary injunction. The superintendent may, when deemed by the superintendent to be in the public interest, seek a preliminary injunction to restrain a Licensee from continuing to perform acts that violate any provision of this Part, the Financial Services Law, Banking Law, or Insurance Law.

(f) Preservation of powers. Nothing in this Part shall be construed as limiting any power granted to the superintendent under any other provision of the Financial Services Law, Banking Law, or Insurance Law, including any power to investigate possible violations of law, rule, or regulation or to impose penalties or take any other action against any Person for violation of such laws, rules, or regulations.

## Section 200.7 Compliance

- (a) Generally. Each Licensee is required to comply with all applicable federal and state laws, rules, and regulations.
- (b) Compliance officer. Each Licensee shall designate a qualified individual or individuals responsible for coordinating and monitoring compliance with this Part and all other applicable federal and state laws, rules, and regulations.
- (c) Compliance policy. Each Licensee shall maintain and enforce written compliance policies, including policies with respect to anti-fraud, anti-money laundering, cyber security, privacy and information security, and any other policy required under this Part, which must be reviewed and approved by the Licensee's board of directors or an equivalent governing body.

## Section 200.8 Capital requirements

(a) Each Licensee shall maintain at all times such capital in an amount and form as the superintendent determines is sufficient to ensure the financial integrity of the Licensee and its ongoing operations based on an assessment of the specific risks applicable to each Licensee. In determining the minimum amount of capital that must be maintained by a Licensee, the superintendent may consider a variety of factors, including but not limited to:

- (1) the composition of the Licensee's total assets, including the position, size, liquidity, risk exposure, and price volatility of each type of asset;
- (2) the composition of the Licensee's total liabilities, including the size and repayment timing of each type of liability;
- (3) the actual and expected volume of the Licensee's Virtual Currency Business Activity;
- (4) whether the Licensee is already licensed or regulated by the superintendent under the Financial Services Law, Banking Law, or Insurance Law, or otherwise subject to such laws as a provider of a financial product or service, and whether the Licensee is in good standing in such capacity;
- (5) the amount of leverage employed by the Licensee;
- (6) the liquidity position of the Licensee;
- (7) the financial protection that the Licensee provides for its customers through its trust account or bond;
- (8) the types of entities to be serviced by the Licensee; and
- (9) the types of products or services to be offered by the Licensee.

(b) Each Licensee shall hold capital required to be maintained in accordance with this Section in the form of cash, virtual currency, or high-quality, highly liquid, investment-grade assets, in such proportions as are acceptable to the superintendent.

## Section 200.9 Custody and protection of customer assets

- (a) Each Licensee shall maintain a surety bond or trust account in United States dollars for the benefit of its customers in such form and amount as is acceptable to the superintendent for the protection of the Licensee's customers. To the extent a Licensee maintains a trust account in accordance with this section, such trust account must be maintained with a Qualified Custodian.
- (b) To the extent a Licensee stores, holds, or maintains custody or control of Virtual Currency on behalf of another Person, such Licensee shall hold Virtual Currency of the same type and amount as that which is owed or obligated to such other Person.
- (c) Each Licensee is prohibited from selling, transferring, assigning, lending, hypothecating, pledging, or otherwise using or encumbering assets, including Virtual Currency, stored, held, or maintained by, or under the custody or control of, such Licensee on behalf of another Person except for the sale, transfer, or assignment of such assets at the direction of such other Person.

## Section 200.10 Material change to business

- (a) Each Licensee must obtain the superintendent's prior written approval for any plan or proposal to introduce or offer a materially new product, service, or activity, or to make a material change to an existing product, service, or activity, involving New York or New York Residents.
- (b) A "materially new product, service, or activity" or a "material change" may occur where:
  - (1) the proposed new product, service, or activity, or the proposed change may raise a legal or regulatory issue about the permissibility of the product, service, or activity;
  - (2) the proposed new product, service, or activity, or the proposed change may raise safety and soundness or operational concerns; or
  - (3) a change is proposed to an existing product, service, or activity that may cause such product, service, or activity to be materially different from that previously listed on the application for licensing by the superintendent.
- (c) The Licensee shall submit a written plan describing the proposed materially new product, service, or activity, or the proposed material change, including a detailed description of the business operations, compliance policies, and the impact on the overall business of the Licensee, as well as such other information as requested by the superintendent.
- (d) If a Licensee has any questions about the materiality of any proposed new product, service, or activity, or of any proposed change, the Licensee may seek clarification from the Department prior to introducing or offering that new product, service, or activity or making that change.

## Section 200.11 Change of control; mergers and acquisitions

(a) Change of Control. No action shall be taken, except with the prior written approval of the superintendent, that may result in a change of control of a Licensee.

(1) Prior to any change of control, the Person seeking to acquire control of a Licensee shall submit a written application to the superintendent in a form and substance acceptable to the superintendent, including but not limited to detailed information about the applicant and all directors, Principal Officers, Principal Stockholders, and Principal Beneficiaries of the applicant, as applicable.

(2) For purposes of this Section, the term “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Licensee whether through the ownership of stock of such Licensee, the stock of any Person that possesses such power, or otherwise. Control shall be presumed to exist if a Person, directly or indirectly, owns, controls, or holds with power to vote ten percent or more of the voting stock of a Licensee or of any Person that owns, controls, or holds with power to vote ten percent or more of the voting stock of such Licensee. No Person shall be deemed to control another Person solely by reason of his being an officer or director of such other Person.

(3) The superintendent may determine upon application that any Person does not or will not upon the taking of some proposed action control another Person. Such determination shall be made within 30 days or such further period as the superintendent may prescribe. The filing of an application pursuant to this Subsection in good faith by any Person shall relieve the applicant from any obligation or liability imposed by this Section with respect to the subject of the application until the superintendent has acted upon the application. The superintendent may revoke or modify his or her determination, after notice and opportunity to be heard, whenever in his or her judgment revocation or modification is consistent with this Part. The superintendent may consider the following factors in making such a determination:

- i) whether such Person's purchase of common stock is made solely for investment purposes and not to acquire control over the Licensee;
- ii) whether such Person could direct, or cause the direction of, the management or policies of the Licensee;
- iii) whether such Person could propose directors in opposition to nominees proposed by the management or board of directors of the Licensee;
- iv) whether such Person could seek or accept representation on the board of directors of the Licensee;
- v) whether such Person could solicit or participate in soliciting proxy votes with respect to any matter presented to the shareholders of the Licensee; or
- vi) any other factor that indicates such Person would or would not exercise control of the Licensee.

(4) The superintendent shall approve or deny every application for a change of control of a Licensee hereunder within 120 days from the filing of an application deemed by the superintendent to be complete. Such period of 120 days may be extended by the superintendent, for good cause shown, for such additional reasonable period of time as may be required to enable compliance with the requirements and conditions of this Part.

(5) In determining whether to approve a proposed change of control, the superintendent shall, among other factors, take into consideration the public interest and the needs and convenience of the public.

(b) Mergers and Acquisitions. No action shall be taken, except with the prior written approval of the superintendent, that may result in a merger or acquisition of all or a substantial part of the assets of a Licensee.

(1) Prior to any such merger or acquisition, an application containing a written plan of merger or acquisition shall be submitted to the superintendent by the entities that are to merge or by the acquiring entity, as applicable. Such plan shall be in form and substance satisfactory to the superintendent, and shall specify

each entity to be merged, the surviving entity, or the entity acquiring all or substantially all of the assets of the Licensee, as applicable, and shall describe the terms and conditions of the merger or acquisition and the mode of carrying it into effect.

(2) The superintendent shall approve or deny a proposed merger or a proposed acquisition of all or a substantial part of the assets of a Licensee within 120 days after the filing of an application that contains a written plan of merger or acquisition and is deemed by the superintendent to be complete. Such period of 120 days may be extended by the superintendent, for good cause shown, for such additional reasonable period of time as may be required to enable compliance with the requirements and conditions of this Part.

(3) In determining whether to so approve a proposed merger or acquisition, the superintendent shall, among other factors, take into consideration the public interest and the needs and convenience of the public.



## Section 200.12 Books and records

(a) Each Licensee shall, in connection with its Virtual Currency Business Activity, make, keep, and preserve all of its books and records in their original form or native file format for a period of at least seven years from the date of their creation and in a condition that will allow the superintendent to determine whether the Licensee is complying with all applicable laws, rules, and regulations. The books and records maintained by each Licensee shall, without limitation, include:

- (1) for each transaction, the amount, date, and precise time of the transaction, any payment instructions, the total amount of fees and charges received and paid to, by, or on behalf of the Licensee, and the names, account numbers, and physical addresses of (i) the party or parties to the transaction that are customers or accountholders of the Licensee; and (ii) to the extent practicable, any other parties to the transaction;
- (2) a general ledger containing all asset, liability, ownership equity, income, and expense accounts;
- (3) bank statements and bank reconciliation records;
- (4) any statements or valuations sent or provided to customers and counterparties;
- (5) records or minutes of meetings of the board of directors or an equivalent governing body;
- (6) records demonstrating compliance with applicable state and federal anti-money laundering laws, rules, and regulations, including customer identification and verification documents, records linking customers to their respective accounts and balances, and a record of all compliance breaches;
- (7) communications and documentation related to investigations of customer complaints and transaction error resolution or concerning facts giving rise to possible violations of laws, rules, or regulations;
- (8) all other records required to be maintained in accordance with this Part; and
- (9) all other records as the superintendent may require.

(b) Each Licensee shall provide the Department, upon request, immediate access to all facilities, books, records, documents, or other information maintained by the Licensee or its Affiliates, wherever located.

(c) Records of non-completed, outstanding, or inactive Virtual Currency accounts or transactions shall be maintained for at least five years after the time when any such Virtual Currency has been deemed, under the Abandoned Property Law, to be abandoned property.

## Section 200.13 Examinations

- (a) Each Licensee shall permit and assist the superintendent to examine the Licensee whenever in the superintendent's judgment such examination is necessary or advisable, but not less than once every two calendar years, including, without limitation, to determine:
- (1) the financial condition of the Licensee;
  - (2) the safety and soundness of the conduct of its business;
  - (3) the policies of its management;
  - (4) whether the Licensee has complied with the requirements of laws, rules, and regulations; and
  - (5) such other matters as the superintendent may determine, including, but not limited to, any activities of the Licensee outside the State of New York if in the opinion of the superintendent such activities may affect the Licensee's Virtual Currency Business Activity.
- (b) Each Licensee shall permit and assist the superintendent at any time to examine all of the Licensee's books, records, accounts, documents, and other information.
- (c) Each Licensee shall permit and assist the superintendent to make such special investigations as the superintendent shall deem necessary to determine whether a Licensee has violated any provision of the applicable laws, rules, or regulations and to the extent necessary shall permit and assist the superintendent to examine all relevant facilities, books, records, accounts, documents, and other information.
- (d) For the purpose of determining the financial condition of the Licensee, its safety and soundness practices, or whether it has complied with the requirements of laws, rules, and regulations, the Licensee shall permit and assist the superintendent, when in the superintendent's judgment it is necessary or advisable, to examine an Affiliate of the Licensee.

## Section 200.14 Reports and financial disclosures

(a) Each Licensee shall submit to the superintendent quarterly financial statements within 45 days following the close of the Licensee's fiscal quarter in the form, and containing such information, as the superintendent shall prescribe, including without limitation, the following information:

- (1) a statement of the financial condition of the Licensee, including a balance sheet, income statement, statement of comprehensive income, statement of change in ownership equity, cash flow statement, and statement of net liquid assets;
- (2) a statement demonstrating compliance with any financial requirements established under this Part;
- (3) financial projections and strategic business plans;
- (4) a list of all off-balance sheet items;
- (5) a chart of accounts, including a description of each account; and
- (6) a report of permissible investments by the Licensee as permitted under this Part.

(b) Each Licensee shall submit audited annual financial statements, together with an opinion and an attestation by an independent certified public accountant regarding the effectiveness of the Licensee's internal control structure. All such annual financial statements shall include:

- (1) a statement of management's responsibilities for preparing the Licensee's annual financial statements, establishing and maintaining adequate internal controls and procedures for financial reporting, and complying with all applicable laws, rules, and regulations;
- (2) an assessment by management of the Licensee's compliance with such applicable laws, rules, and regulations during the fiscal year covered by the financial statements; and
- (3) certification of the financial statements by an officer or director of the Licensee attesting to the truth and correctness of those statements.

- (c) Each Licensee shall notify the superintendent in writing of any criminal action or insolvency proceeding against the Licensee or any of its directors, Principal Stockholders, Principal Officers, and Principal Beneficiaries, as applicable, immediately after the commencement of any such action or proceeding.
- (d) Each Licensee shall notify the superintendent in writing of any proposed change to the methodology used to calculate the value of Virtual Currency in Fiat Currency that was submitted to the Department in accordance with Section 200.4 or this Subsection.
- (e) Each Licensee shall submit a report to the superintendent immediately upon the discovery of any violation or breach of law, rule, or regulation related to the conduct of activity licensed under this Part.
- (f) Each Licensee shall make additional special reports to the superintendent, at such times and in such form, as the superintendent may request.

## Section 200.15 Anti-money laundering program

(a) All values in United States dollars referenced in this Section must be calculated using the methodology to determine the value of Virtual Currency in Fiat Currency that was provided to the Department under this Part.

(b) Each Licensee shall conduct an initial risk assessment that will consider legal, compliance, financial, and reputational risks associated with the Licensee's activities, services, customers, counterparties, and geographic location and shall establish, maintain, and enforce an anti-money laundering program based thereon. The Licensee shall conduct additional assessments on an annual basis, or more frequently as risks change, and shall modify its anti-money laundering program as appropriate to reflect any such changes.

(c) The anti-money laundering program shall, at a minimum:

(1) provide for a system of internal controls, policies, and procedures designed to ensure ongoing compliance with all applicable anti-money laundering laws, rules, and regulations;

(2) provide for independent testing for compliance with, and the effectiveness of, the anti-money laundering program to be conducted by qualified internal personnel of the Licensee, who are not responsible for the design, installation, maintenance, or operation of the anti-money laundering program, or the policies and procedures that guide its operation, or a qualified external party, at least annually, the findings of which shall be summarized in a written report submitted to the superintendent;

(3) designate a qualified individual or individuals in compliance responsible for coordinating and monitoring day-to-day compliance with the anti-money laundering program; and

(4) provide ongoing training for appropriate personnel to ensure they have a fulsome understanding of anti-money laundering requirements and to enable them to identify transactions required to be reported and maintain records required to be kept in accordance with this Part.

(d) The anti-money laundering program shall include a written anti-money laundering policy reviewed and approved by the Licensee's board of directors or equivalent governing body.

(e) Each Licensee, as part of its anti-money laundering program, shall maintain records and make reports in the manner set forth below.

(1) Records of Virtual Currency transactions. Each Licensee shall maintain the following information for all Virtual Currency transactions involving the payment, receipt, exchange, conversion, purchase, sale, transfer, or transmission of Virtual Currency:

i) the identity and physical addresses of the party or parties to the transaction that are customers or accountholders of the Licensee and, to the extent practicable, any other parties to the transaction;

ii) the amount or value of the transaction, including in what denomination purchased, sold, or transferred;

iii) the method of payment;

iv) the date or dates on which the transaction was initiated and completed; and

v) a description of the transaction.

(2) Reports on transactions. When a Licensee is involved in a Virtual Currency to Virtual Currency transaction or series of Virtual Currency to Virtual Currency transactions that are not subject to currency transaction reporting requirements under federal law, including transactions for the payment, receipt, exchange, conversion, purchase, sale, transfer, or transmission of Virtual Currency, in an aggregate amount exceeding the United States dollar value of \$10,000 in one day, by one Person, the Licensee shall notify the Department, in a manner prescribed by the superintendent, within 24 hours.

(3) Monitoring for suspicious activity. Each Licensee shall monitor for transactions that might signify money laundering, tax evasion, or other illegal or criminal activity.

(i) Each Licensee shall file Suspicious Activity Reports (“SARs”) in accordance with applicable federal laws, rules, and regulations.

(ii) Each Licensee that is not subject to suspicious activity reporting requirements under federal law shall file with the superintendent, in a form prescribed by the superintendent, reports of transactions that indicate a possible violation of law or regulation within 30 days from the detection of the facts that constitute a need for filing. Continuing suspicious activity shall be reviewed on an ongoing basis and a suspicious activity report shall be filed within 120 days of the last filing describing continuing activity.

(f) No Licensee shall structure transactions, or assist in the structuring of transactions, to evade reporting requirements under this Part.

(g) No Licensee shall engage in, facilitate, or knowingly allow the transfer or transmission of Virtual Currency when such action will obfuscate or conceal the identity of an individual customer or counterparty. Nothing in this Section, however, shall be construed to require a Licensee to make available to the general public the fact or nature of the movement of Virtual Currency by individual customers or counterparties.

(h) Each Licensee shall also maintain, as part of its anti-money laundering program, a customer identification program.

(1) Identification and verification of account holders. When opening an account for, or establishing a service relationship with, a customer, each Licensee must, at a minimum, verify the customer’s identity, to the extent reasonable and practicable, maintain records of the information used to verify such identity, including name, physical address, and other identifying information, and check customers against the Specially Designated Nationals (“SDNs”) list maintained by the Office of Foreign Asset Control (“OFAC”), a part of the U.S. Treasury Department. Enhanced due diligence may be required based on additional factors, such as for high risk customers, high-volume accounts, or accounts on which a suspicious activity report has been filed.



(2) Enhanced due diligence for accounts involving foreign entities. Licensees that maintain accounts for non-U.S. Persons and non-U.S. Licensees must establish enhanced due diligence policies, procedures, and controls to detect money laundering, including assessing the risk presented by such accounts based on the nature of the foreign business, the type and purpose of the activity, and the anti-money laundering and supervisory regime of the foreign jurisdiction.

(3) Prohibition on accounts with foreign shell entities. Licensees are prohibited from maintaining relationships of any type in connection with their Virtual Currency Business Activity with entities that do not have a physical presence in any country.

(4) Identification required for large transactions. Each Licensee must require verification of the identity of any accountholder initiating a transaction with a value greater than \$3,000.

(i) Each Licensee shall demonstrate that it has risk-based policies, procedures, and practices to ensure, to the maximum extent practicable, compliance with applicable regulations issued by OFAC.

(j) Each Licensee shall have in place appropriate policies and procedures to block or reject specific or impermissible transactions that violate federal or state laws, rules, or regulations.

(k) The individual or individuals designated by the Licensee, pursuant to Paragraph 200.15(c)(3), shall be responsible for day-to-day operations of the anti-money laundering program and shall, at a minimum:

(1) Monitor changes in anti-money laundering laws, including updated OFAC and SDN lists, and update the program accordingly;

(2) Maintain all records required to be maintained under this Section;

(3) Review all filings required under this Section before submission;

(4) Escalate matters to the board of directors, senior management, or appropriate governing body and seek outside counsel, as appropriate;

(5) Provide periodic reporting, at least annually, to the board of directors, senior management, or appropriate governing body; and

(6) Ensure compliance with relevant training requirements.

## Section 200.16 Cyber security program

(a) Generally. Each Licensee shall establish and maintain an effective cyber security program to ensure the availability and functionality of the Licensee's electronic systems and to protect those systems and any sensitive data stored on those systems from unauthorized access, use, or tampering. The cyber security program shall be designed to perform the following five core cyber security functions:

(1) identify internal and external cyber risks by, at a minimum, identifying the information stored on the Licensee's systems, the sensitivity of such information, and how and by whom such information may be accessed;

(2) protect the Licensee's electronic systems, and the information stored on those systems, from unauthorized access, use, or other malicious acts through the use of defensive infrastructure and the implementation of policies and procedures;

(3) detect systems intrusions, data breaches, unauthorized access to systems or information, malware, and other Cyber Security Events;

(4) respond to detected Cyber Security Events to mitigate any negative effects; and

(5) recover from Cyber Security Events and restore normal operations and services.

(b) Policy. Each Licensee shall implement a written cyber security policy setting forth the Licensee's policies and procedures for the protection of its electronic systems and customer and counterparty data stored on those systems, which shall be reviewed and approved by the Licensee's board of directors or equivalent governing body at least annually. The cyber security policy must address the following areas:

(1) information security;

(2) data governance and classification;

(3) access controls;

(4) business continuity and disaster recovery planning and resources;

- (5) capacity and performance planning;
  - (6) systems operations and availability concerns;
  - (7) systems and network security;
  - (8) systems and application development and quality assurance;
  - (9) physical security and environmental controls;
  - (10) customer data privacy;
  - (11) vendor and third-party service provider management;
  - (12) monitoring and implementing changes to core protocols not directly controlled by the Licensee, as applicable; and
  - (13) incident response.
- (c) Chief Information Security Officer. Each Licensee shall designate a qualified employee to serve as the Licensee's Chief Information Security Officer ("CISO") responsible for overseeing and implementing the Licensee's cyber security program and enforcing its cyber security policy.
- (d) Reporting. Each Licensee shall submit to the Department a report, prepared by the CISO and presented to the Licensee's board of directors or equivalent governing body, at least annually, assessing the availability, functionality, and integrity of the Licensee's electronic systems, identifying relevant cyber risks to the Licensee, assessing the Licensee's cyber security program, and proposing steps for the redress of any inadequacies identified therein.
- (e) Audit. Each Licensee's cyber security program shall, at a minimum, include audit functions as set forth below.
- (1) Penetration testing. Each Licensee shall conduct penetration testing of its electronic systems, at least annually, and vulnerability assessment of those systems, at least quarterly.
  - (2) Audit trail. Each Licensee shall maintain audit trail systems that:

- (i) track and maintain data that allows for the complete and accurate reconstruction of all financial transactions and accounting;
  - (ii) protect the integrity of data stored and maintained as part of the audit trail from alteration or tampering;
  - (iii) protect the integrity of hardware from alteration or tampering, including by limiting electronic and physical access permissions to hardware and maintaining logs of physical access to hardware that allows for event reconstruction;
  - (iv) log system events including, at minimum, access and alterations made to the audit trail systems by the systems or by an authorized user, and all system administrator functions performed on the systems; and
  - (v) maintain records produced as part of the audit trail in accordance with the recordkeeping requirements set forth in this Part.
- (f) **Application Security.** Each Licensee's cyber security program shall, at minimum, include written procedures, guidelines, and standards reasonably designed to ensure the security of all applications utilized by the Licensee. All such procedures, guidelines, and standards shall be reviewed, assessed, and updated by the Licensee's CISO at least annually.
- (g) **Personnel and Intelligence.** Each Licensee shall:
- (1) employ cyber security personnel adequate to manage the Licensee's cyber security risks and to perform the core cyber security functions specified in Paragraph 200.16(a)(1)-(5);
  - (2) provide and require cyber security personnel to attend regular cyber security update and training sessions; and
  - (3) require key cyber security personnel to take steps to stay abreast of changing cyber security threats and countermeasures.

## Section 200.17 Business continuity and disaster recovery

(a) Each Licensee shall establish and maintain a written business continuity and disaster recovery (“BCDR”) plan reasonably designed to ensure the availability and functionality of the Licensee’s services in the event of an emergency or other disruption to the Licensee’s normal business activities. The BCDR plan, at minimum, shall:

- (1) identify documents, data, facilities, infrastructure, personnel, and competencies essential to the continued operations of the Licensee’s business;
  - (2) identify the supervisory personnel responsible for implementing each aspect of the BCDR plan;
  - (3) include a plan to communicate with essential Persons in the event of an emergency or other disruption to the operations of the Licensee, including employees, counterparties, regulatory authorities, data and communication providers, disaster recovery specialists, and any other Persons essential to the recovery of documentation and data and the resumption of operations;
  - (4) include procedures for the maintenance of back-up facilities, systems, and infrastructure as well as alternative staffing and other resources to enable the timely recovery of data and documentation and to resume operations as soon as reasonably possible following a disruption to normal business activities;
  - (5) include procedures for the back-up or copying, with sufficient frequency, of documents and data essential to the operations of the Licensee and storing of the information off site; and
  - (6) identify third parties that are necessary to the continued operations of the Licensee’s business.
- (b) Each Licensee shall distribute a copy of the BCDR plan, and any revisions thereto, to all relevant employees and shall maintain copies of the BCDR plan at one or more accessible off-site locations.
- (c) Each Licensee shall provide relevant training to all employees responsible for implementing the BCDR plan regarding their roles and responsibilities.

- (d) Each Licensee shall promptly notify the superintendent of any emergency or other disruption to its operations that may affect its ability to fulfill regulatory obligations or that may have a significant adverse effect on the Licensee, its counterparties, or the market.
- (e) The BCDR plan shall be tested at least annually by qualified, independent internal personnel or a qualified third party, and revised accordingly.

## Section 200.18 Advertising and marketing

- (a) Each Licensee engaged in Virtual Currency Business Activity shall not advertise its products, services, or activities in New York or to New York Residents without including the name of the Licensee and the legend that such Licensee is “Licensed to engage in Virtual Currency Business Activity by the New York State Department of Financial Services.”
- (b) Each Licensee shall maintain, for examination by the superintendent, all advertising and marketing materials for a period of at least seven years from the date of their creation, including but not limited to print media, internet media (including websites), radio and television advertising, road show materials, presentations, and brochures. Each Licensee shall maintain hard copy, website captures of material changes to internet advertising and marketing, and audio and video scripts of its advertising and marketing materials, as applicable.
- (c) In all advertising and marketing materials, each Licensee shall comply with all disclosure requirements under federal and state laws, rules, and regulations.
- (d) In all advertising and marketing materials, each Licensee and any person or entity acting on its behalf, shall not, directly or by implication, make any false, misleading, or deceptive representations or omissions.



## Section 200.19 Consumer protection

(a) Disclosure of material risks. As part of establishing a relationship with a customer, and prior to entering into an initial transaction for, on behalf of, or with such customer, each Licensee shall disclose in clear, conspicuous, and legible writing in the English language and in any other predominant language spoken by the customers of the Licensee, all material risks associated with its products, services, and activities and Virtual Currency generally, including at a minimum, the following:

- (1) Virtual Currency is not legal tender, is not backed by the government, and accounts and value balances are not subject to Federal Deposit Insurance Corporation or Securities Investor Protection Corporation protections;
- (2) legislative and regulatory changes or actions at the state, federal, or international level may adversely affect the use, transfer, exchange, and value of Virtual Currency;
- (3) transactions in Virtual Currency may be irreversible, and, accordingly, losses due to fraudulent or accidental transactions may not be recoverable;
- (4) some Virtual Currency transactions shall be deemed to be made when recorded on a public ledger, which is not necessarily the date or time that the customer initiates the transaction;
- (5) the value of Virtual Currency may be derived from the continued willingness of market participants to exchange Fiat Currency for Virtual Currency, which may result in the potential for permanent and total loss of value of a particular Virtual Currency should the market for that Virtual Currency disappear;
- (6) there is no assurance that a Person who accepts a Virtual Currency as payment today will continue to do so in the future;
- (7) the volatility and unpredictability of the price of Virtual Currency relative to Fiat Currency may result in significant loss over a short period of time;
- (8) the nature of Virtual Currency may lead to an increased risk of fraud or cyber attack;

(9) the nature of Virtual Currency means that any technological difficulties experienced by the Licensee may prevent the access or use of a customer's Virtual Currency; and

(10) any bond or trust account maintained by the Licensee for the benefit of its customers may not be sufficient to cover all losses incurred by customers.

(b) Disclosure of general terms and conditions. When opening an account for a new customer, and prior to entering into an initial transaction for, on behalf of, or with such customer, each Licensee shall disclose in clear, conspicuous, and legible writing in the English language and in any other predominant language spoken by the customers of the Licensee, all relevant terms and conditions associated with its products, services, and activities and Virtual Currency generally, including at a minimum, the following, as applicable:

(1) the customer's liability for unauthorized Virtual Currency transactions;

(2) the customer's right to stop payment of a preauthorized Virtual Currency transfer and the procedure to initiate such a stop-payment order;

(3) under what circumstances the Licensee will, absent a court or government order, disclose information concerning the customer's account to third parties;

(4) the customer's right to receive periodic account statements and valuations from the Licensee;

(5) the customer's right to receive a receipt, trade ticket, or other evidence of a transaction;

(6) the customer's right to prior notice of a change in the Licensee's rules or policies; and

(7) such other disclosures as are customarily given in connection with the opening of customer accounts.

(c) Disclosures of the terms of transactions. Prior to each transaction in Virtual Currency, for, on behalf of, or with a customer, each Licensee shall furnish to each such customer a written disclosure in clear, conspicuous, and legible writing in the English language and in any other predominant language spoken by the customers of the Licensee, containing the terms and conditions of the transaction, which shall include, at a minimum, to the extent applicable:

- (1) the amount of the transaction;
  - (2) any fees, expenses, and charges borne by the customer, including applicable exchange rates;
  - (3) the type and nature of the Virtual Currency transaction;
  - (4) a warning that once executed the transaction may not be undone, if applicable; and
  - (5) such other disclosures as are customarily given in connection with a transaction of this nature.
- (d) Acknowledgement of disclosures. Each Licensee shall ensure that all disclosures required in this Section are acknowledged as received by customers.
- (e) Receipts. Upon completion of any transaction, each Licensee shall provide to a customer a receipt containing the following information:
- (1) the name and contact information of the Licensee, including a telephone number established by the Licensee to answer questions and register complaints;
  - (2) the type, value, date, and precise time of the transaction;
  - (3) the fee charged;
  - (4) the exchange rate, if applicable;
  - (5) a statement of the liability of the Licensee for non-delivery or delayed delivery;
  - (6) a statement of the refund policy of the Licensee; and
  - (7) any additional information the superintendent may require.
- (f) Each Licensee shall make available to the Department, upon request, the form of the receipts it is required to provide to customers in accordance with Subsection 200.19(e).
- (g) Prevention of fraud. Licensees are prohibited from engaging in fraudulent activity. Additionally, each Licensee shall take reasonable steps to detect and prevent fraud, including by establishing and maintaining a written anti-fraud policy. The anti-fraud policy shall, at a minimum, include:
- (1) the identification and assessment of fraud-related risk areas;

- (2) procedures and controls to protect against identified risks;
- (3) allocation of responsibility for monitoring risks; and
- (4) procedures for the periodic evaluation and revision of the anti-fraud procedures, controls, and monitoring mechanisms.

## Section 200.20 Complaints

- (a) Each Licensee shall establish and maintain written policies and procedures to fairly and timely resolve complaints.
- (b) Each Licensee must provide, in a clear and conspicuous manner, on its website or websites, in all physical locations, and in any other location as the superintendent may prescribe, the following disclosures:
  - (1) the Licensee's mailing address, email address, and telephone number for the receipt of complaints;
  - (2) a statement that the complainant may also bring his or her complaint to the attention of the Department;
  - (3) the Department's mailing address, website, and telephone number; and
  - (4) such other information as the superintendent may require.
- (c) Each Licensee shall report to the superintendent any change in the Licensee's complaint policies or procedures within seven days.

#### Section 200.21 Transitional Period

A Person already engaged in Virtual Currency Business Activity must apply for a license in accordance with this Part within 45 days of the effective date of this regulation. In doing so, such applicant shall be deemed in compliance with the licensure requirements of this Part until it has been notified by the superintendent that its application has been denied, in which case it shall immediately cease operating in this state and doing business with New York State Residents. Any Person engaged in Virtual Currency Business Activity that fails to submit an application for a license within 45 days of the effective date of this regulation shall be deemed to be conducting unlicensed Virtual Currency Business Activity.

#### Section 200.22 Severability

If any provision of this Part or the application thereof to any Person or circumstance is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of this Part or the application thereof to other Persons or circumstances.