

June 14, 2019

# Cryptocurrency Regulation

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## FinCEN Issues Updated Convertible Virtual Currency Guidance

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### SUMMARY

On May 9, 2019, FinCEN, the Financial Crimes Enforcement Network, issued interpretive guidance addressing the applicability of the Bank Secrecy Act and its implementing regulations to persons engaged in certain activities involving convertible virtual currencies.<sup>1</sup> The Guidance marks FinCEN's first significant foray into virtual currency regulation in over five years and reflects an effort by FinCEN to more clearly outline its jurisdiction in the arena of virtual currency regulation. Much of the Guidance summarizes pertinent aspects of existing FinCEN regulations, guidance, and administrative rulings. Notably, however, the document also goes further to articulate, for the first time in interpretive guidance, FinCEN's views on how that framework applies to over a dozen now-common business models involving convertible virtual currencies. Although the Guidance provides welcome insight into FinCEN's views on the obligations of certain persons operating within those models, the analyses are not applied to any specific set of facts and circumstances. Moreover, the guidance is only guidance, and it is not a formal rule or regulation. For these reasons, the guidance's applicability to "*any* business model that fits the same key facts and circumstances described in the guidance,"<sup>2</sup> while significant in theory, will still leave some uncertainty for those seeking to interpret and apply the guidance in a real world context. Nevertheless, the guidance may provide some assistance in assessing existing and emerging virtual currency activities to identify possible FinCEN jurisdiction and in identifying risks associated with certain customers operating in the virtual currency space.

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### BACKGROUND

In many contexts, "money" is usually defined to mean legal tender or fiat currency issued by a governmental entity—U.S. dollars, for example—but it has a much broader meaning under FinCEN's regulations.<sup>3</sup> For instance, in prior interpretive guidance, FinCEN has concluded that convertible virtual currency is "other value that substitutes for currency,"<sup>4</sup> and as such, would generally be treated as if it

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were money for purposes of enforcing the Bank Secrecy Act (the “BSA”).<sup>5</sup> Indeed, FinCEN’s regulations define “money transmission services” as “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>6</sup> Subject to several exceptions, a person providing such services is a “money transmitter” under FinCEN’s regulations.<sup>7</sup> Accordingly, whether a person is a “money transmitter” is determined by the person’s activities—its provision of “money transmission services,” as broadly defined—and *not* the label assigned to the value (e.g., convertible virtual currency (“CVC”), digital currency, cryptocurrency, cryptoasset, digital asset, certificates of ownership), the form it takes (e.g., physical or virtual), the person’s legal status (e.g., as an individual or a business, as a for-profit or a non-profit, or as licensed or unlicensed), or the means or order of acceptance and transmission.

FinCEN’s regulations require money transmitters, regardless of the type of value involved, to develop, implement, and maintain an effective, risk-based anti-money laundering program (“AML program”). Such an AML program, must, at a minimum:

- incorporate policies, procedures and internal controls reasonably designed to assure ongoing compliance with the BSA, including verifying customer identification, filing reports, creating and retaining records, and responding to law enforcement requests;
- designate an individual responsible for assuring day-to-day compliance with the program and BSA requirements;
- provide training for appropriate personnel, including training in the detection of suspicious transactions; and
- provide for independent review to monitor and maintain the adequacy of the program.<sup>8</sup>

Money transmitters generally also have registration, monitoring, record-keeping and reporting obligations under FinCEN’s regulations,<sup>9</sup> and they are expected to perform risk assessments and operate under a culture of compliance that dictates basic behavioral norms and provides for accountability.<sup>10</sup>

In 2013, FinCEN first released detailed interpretative guidance expressly applying these regulations to persons creating, obtaining, distributing, exchanging, accepting or transmitting virtual currencies (the “2013 VC Guidance”).<sup>11</sup> Although FinCEN subsequently released administrative rulings applying the framework expounded under the 2013 VC Guidance to virtual currency mining operations,<sup>12</sup> virtual currency software development and certain investment activity,<sup>13</sup> the rental of computer systems for mining virtual currency,<sup>14</sup> virtual currency trading platforms,<sup>15</sup> virtual currency payment systems,<sup>16</sup> and persons issuing physical or digital negotiable certificates of ownership of precious metals,<sup>17</sup> the Guidance marks FinCEN’s first significant foray into virtual currency regulation since the 2013 VC Guidance.

## ANALYSIS OF FINCEN'S NEW GUIDANCE

The Guidance essentially consists of two parts. The first part summarizes pertinent aspects of existing FinCEN regulations, guidance, and administrative rulings relevant to money transmission in the context of CVC. Because this first part does not change the existing framework in any meaningful way, we do not address it in detail in this memorandum. The second part articulates FinCEN's views, generally for the first time in interpretive guidance, on how that framework might apply to over a dozen now-common business models involving CVC. In the Guidance, FinCEN distributes those business models into two categories: (1) models that involve the transmission of CVC and (2) models that may be exempt from the definition of money transmission. In several instances, however, models allocated by FinCEN to the first category may, depending on the facts and circumstances, also fit within the second category and vice versa. For this reason, we categorize the models according to their position in the lifecycle of cryptocurrency transactions, first discussing models that relate primarily to creating or obtaining new CVC, turning next to models that relate primarily to storing or otherwise maintaining CVC (including certain related services), and concluding with models that relate primarily to exchanging and transferring CVC.<sup>18</sup> Regardless of the approach, and as the Guidance makes clear, whether a particular person is a money transmitter will always be determined by the specific facts and circumstances.

### A. MODELS RELATED PRIMARILY TO CREATING OR OBTAINING NEW CVC

The Guidance addresses, in varying degrees of detail, three means of creating or otherwise obtaining new CVC: (1) as an administrator, meaning a person engaged as a business in issuing a CVC and who has the authority to redeem the CVC, (2) through initial coin offerings ("ICOs"), and (3) by "mining." Although, as the Guidance makes clear, the specific facts and circumstances will always determine whether a particular person is a money transmitter, administrators of centralized CVCs and sellers in ICO group sales to a distinct set of preferred buyers generally *are* money transmitters while administrators of decentralized CVCs, issuers, intermediaries, and investors in ICOs, and CVC miners generally *are not* money transmitters.

#### 1. Administrators and Creators of CVC

Under the Guidance, administrators and other creators of CVCs, including of anonymity-enhanced CVCs, may be money transmitters, depending on their activities.<sup>19</sup> An administrator of a centralized CVC payment system is a money transmitter the moment the person issues the CVC in return for other value; this is true even if the system eventually becomes decentralized. In contrast, a developer of a decentralized CVC payment system is not a money transmitter, unless the person also engages as a business in the acceptance and transmission of value denominated in such CVC. Similarly, a person who develops a CVC and uses it to pay for goods or services on the person's own behalf generally is not a money transmitter unless the person uses the CVC to accept and transmit value from one person to another person or location.<sup>20</sup> Notably, FinCEN did not address whether the Guidance is meant to

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supplement, amend, or otherwise supersede the comments made in FinCEN's February 2018 letter to Senator Ron Wyden (the "Wyden Letter").<sup>21</sup> As a reminder, that letter had observed that virtual currency exchangers and administrators are money transmitters.<sup>22</sup>

### 2. Initial Coin Offerings

Initial coin offerings ("ICOs") are generally a means to raise funds for new projects from early backers. ICOs may take a variety of forms, but the Guidance addresses two: ICOs that raise funds through sales of CVC to a select or "preferential" group of buyers and ICOs that raise funds by offering digital debt or equity instruments to early backers, typically evidenced by a digital token.

In the case of preferred CVC sales, the seller is the only person authorized to issue and redeem the new units of CVC and, as such, is operating as an administrator and is a money transmitter under FinCEN's regulations.<sup>23</sup> According to the Guidance, this is true regardless of the timing of acceptance of one type of value and transmission of the other type of value, or the fact that any CVC platform developed using the value from the ICO will change operational status (e.g., migrate from a centralized system to a decentralized system) over time.<sup>24</sup>

Generally, a person involved in an ICO as an issuer, intermediary, or investor will not be a money transmitter under FinCEN's regulations so long as the asset is not found to serve as value that substitutes for currency,<sup>25</sup> because the acceptance and transmission of value is only integral to the sale of goods or services different from money transmission. However, if the person is a bank, a foreign bank, or a person registered with, and functionally regulated or examined by, the Securities and Exchange Commission or Commodities Futures Trading Commission, it would be subject to FinCEN's regulations governing those types of financial institutions, and these regulations could affect the virtual currency activities undertaken by these entities.<sup>26</sup>

### 3. Miners, Mining Pools and Cloud Mining

"Mining" is another way in which a person can cause the issuance of CVC. At its most basic level, a "miner" is a person who uses computer processing resources to validate CVC transactions and, in so doing, can earn more CVC as an award or incentive. Under the most common blockchain network models, the CVC earned by a miner may be a combination of CVC newly created and issued by the network, and CVC debited as a fee from the transaction in question. Under the Guidance, a person who mines CVC and uses it solely to purchase goods on the person's own behalf is not a money transmitter.<sup>27</sup> In contrast, a person who mines CVC and uses it to accept and transmit value is a money transmitter.<sup>28</sup> Sometimes a number of people ("pool members") combine computer processing resources to form a mining pool, which improves their chances of receiving the rewards (e.g., CVC) associated with being first to verify the authenticity of a block of CVC transactions. Mining pools may operate on a centralized basis with, for example, a controlling person/leader distributing fees to pool members or, in the case of cloud mining, an individual or entity purchasing a mining contract from a seller of computing processing ("cloud

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miner”) that permits the purchaser to use the cloud miner’s computer to mine CVC. Mining pools may also operate on a decentralized basis, for example using peer-to-peer (“P2P”) software. According to the Guidance, the transfer of CVC to pool members or contract purchasers is not money transmission because the acceptance and transmission of value is integral to the provision of services different from money transmission.<sup>29</sup> If, however, those different services are combined with the service of hosting CVC wallets for pool members or contract purchasers, the controlling person/leader, cloud miner, or software provider will be a money transmitter under FinCEN’s regulations.<sup>30</sup>

### **B. MODELS RELATED PRIMARILY TO STORING, MAINTAINING AND TRANSACTING IN CVC**

A person who owns CVC generally stores or maintains it in some fashion, and, depending on the CVC, various services may be available to the owner or to others wishing to transact with the owner. The Guidance addresses four means of storing, maintaining, or transacting in CVC: (1) CVC wallets, (2) anonymizing services, (3) payment processing services, and (4) financial services provided by decentralized applications (“DApps”).<sup>31</sup> Again, although the specific facts and circumstances will always determine whether a particular person is a money transmitter, under the Guidance, hosted wallet providers, anonymizing service providers, and CVC payment processors generally *are* money transmitters while unhosted wallet providers, anonymizing software providers, and DApp developers generally *are not* money transmitters.

#### **1. CVC Wallets**

CVC wallets generally can be divided into two forms: hosted wallets, which are maintained by a host or wallet provider who receives, stores, and transmits CVC on behalf of accountholders, and unhosted wallets, which are software housed on a personal device that allows a person to store and conduct transactions in CVC. In either case, third parties, such as the wallet host or a signature provider,<sup>32</sup> may act as intermediaries between the CVC (or “value”) owner and the CVC itself. According to FinCEN, whether such an intermediary is a money transmitter depends on four factors:

- who owns the value;
- where the value is stored;
- whether the owner interacts directly with the payment system where the CVC runs; and
- whether the person acting as intermediary has total independent control over the value.<sup>33</sup>

The Guidance implies that an intermediary is a money transmitter if the value is represented as an entry in the accounts of the intermediary, the owner does not interact with the payment system directly, or the intermediary maintains total independent control over the value. If an intermediary is a money transmitter, its obligations under the BSA vary depending on the status of the wallet owner.<sup>34</sup>

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### a. Hosted Wallets

In the case of a typical hosted wallet, the value may be represented as an entry in the host's accounts, the owner interacts directly with the host and not the payment system, and the host has total independent control over the value (although it is obligated to access the value only on instructions from the owner), leading FinCEN to conclude that hosted wallet providers generally act as money transmitters.

### b. Unhosted Wallets

In the case of a typical unhosted wallet, the value is stored in a wallet, the owner interacts with the payment system directly and either has total independent control or partial control (if another signature is required) over the value. As long as the unhosted wallet provider's role is limited to creating unhosted wallets, FinCEN does not deem the provider a money transmitter. Further, a person conducting a transaction through an unhosted wallet to purchase goods or services on the person's own behalf also is not a money transmitter.<sup>35</sup>

### c. "Multi-Signature" Wallets

Some wallet providers offer a wallet designed to enhance security by requiring more than one private key for the owner of the wallet to effect a transaction using the currency stored in the wallet. The wallet owner may initiate a transaction by signing the request with the owner's own private key and submitting a request to the wallet provider to add its signature to the transaction request. The wallet provider is not able to execute a transaction independently. In this case, the Guidance indicates that the multi-signature wallet provider will not be a money transmitter for purposes of FinCEN's regulations unless it combines this validation function with a hosted wallet function, maintains an account in which the CVC is presented, intermediates between the owner and the payment system, or exercises independent control over the value.<sup>36</sup>

## 2. Anonymizing Services

Some CVC's are "anonymity-enhanced," meaning that they are denominated in a regular CVC but structured to conceal information or prevent tracing of transactions involving the CVC through public sources. Under the Guidance, an anonymizing services provider that accepts CVC and then retransmits the CVC in a manner designed to prevent others from tracing the transmission back to its source is a money transmitter because anonymizing is not an activity separate from the transmission of value.<sup>37</sup> In contrast, a mere supplier of software that allows a person to anonymize the person's own transaction is not a money transmitter because the seller is engaged in trade—the selling of anonymizing software—and not money transmission.<sup>38</sup> The person *using* the anonymizing software also is not a money transmitter if the person uses the software to pay for goods or services on the person's own behalf, but *is* a money transmitter if engaged as a business in the acceptance and transmission of value.<sup>39</sup>

### 3. Payment Processing Services

CVC payment processors allow everyday businesses to accept CVC as forms of payment by customers, generally by collecting CVC from the customer and transmitting the currency or other value (including the same CVC, other virtual currencies or fiat currencies) to the business, or vice versa.<sup>40</sup> FinCEN's regulations contain an exemption from the definition of "money transmitter" for "payment processors" who handle payments for goods and services.<sup>41</sup> However, according to FinCEN, CVC payment processors are not eligible for this exemption because they do not operate solely through clearing and settlement systems that admit only BSA-regulated financial institutions as members.<sup>42</sup>

### 4. Decentralized Applications

According to the Guidance, programmers develop "decentralized applications" or "distributed applications" (a "DApp" or "DApps"), which are software programs that operate on a network of computers operating a blockchain platform. DApp developers are often paid in virtual currency for the use of their DApps. Under the Guidance, a DApp developer is not a money transmitter merely by virtue of developing the DApp, even if the purpose of the DApp is to issue a CVC or facilitate financial activities involving CVC. However, if the developer uses or deploys the DApp to engage in money transmission—to accept and transmit value—the developer is a money transmitter. Likewise, a DApp investor or owner/operator that uses the DApp to accept and transmit value is a money transmitter. The Guidance does not directly address other DApp users.<sup>43</sup>

## C. MODELS RELATED PRIMARILY TO BUYING, SELLING, AND EXCHANGING CVC

There are a variety of ways to buy, sell, or exchange CVC. The Guidance considers four means: (1) P2P exchanges, (2) CVC exchanges, (3) CVC kiosks, and (4) CVC re-sales and hedging activity. Once again, although the specific facts and circumstances will always determine whether a particular person is a money transmitter, P2P exchangers and CVC kiosks generally *are* money transmitters while CVC exchanges that merely allow buyers and sellers of CVC to find one another and initial investors who re-sell tokens or derivatives generally *are not* money transmitters.

### 1. Natural Persons

Natural persons who engage, on an individual basis, in the business of buying and selling CVCs in order to facilitate transfers from one type of CVC to a different type of CVC for the benefit of another individual or entity are typically known as "peer-to-peer" or P2P exchangers. Under the Guidance, a natural person operating as a P2P exchanger generally is a money transmitter unless the services are engaged in *only* on an infrequent basis *and* not for profit or gain.<sup>44</sup> A P2P exchanger that cannot meet those two criteria is a money transmitter regardless of the location, regularity or formality of the transactions.<sup>45</sup> An individual that buys or sells CVC "exclusively as investments for its own account," however, would not be considered a money transmitter.<sup>46</sup>

## 2. CVC Exchanges

P2P exchangers and others seeking to buy, sell, or exchange CVCs generally use CVC exchanges, or trading platforms, to facilitate the exchanges.<sup>47</sup> A CVC trading platform that provides only a forum where buyers and sellers of CVC post their bids and offers (with or without automatic matching of counterparties), and the parties themselves settle any matched transactions through an outside venue (e.g., wallets not hosted by the trading platform) is not a money transmitter under FinCEN's regulations.<sup>48</sup> In contrast, a trading platform that buys CVC and then sells it to a counterparty, or vice versa, is a money transmitter.<sup>49</sup>

## 3. CVC Kiosks

CVC kiosks, or crypto ATMs, enable an owner-operator to facilitate the exchange, on behalf of someone else, currency for CVC, CVC for currency, or one type of CVC for another. According to the Guidance, an owner/operator of a CVC kiosk that accepts and transmits value—whether CVC, currency, or both—qualifies as a money transmitter.<sup>50</sup> FinCEN's previously-issued guidance concluding that the owner/operator of an ATM that links an accountholder with his or her account at a regulated depository institution solely to verify balances and dispense currency is not a money transmitter does not apply to CVC kiosks because, according to FinCEN, there is no similar link to an account at a regulated depository institution.<sup>51</sup> The Guidance does not address FinCEN's views on the treatment that would be accorded to CVC kiosks linked to regulated depository institutions.

## 4. Re-Sales and Hedging Activity

An investment in CVC, such as a debt or equity investment evidenced by a token, may be re-sold or may be hedged through a derivative. Under the Guidance, an initial investor in an ICO may sell the token or derivative and does not become a money transmitter by virtue of the re-sale; however, a person that purchases the token or derivative or that intermediates the re-sale may be required to register as a broker or dealer in securities, as a futures commission merchant, or as an introducing broker, depending on the facts and circumstances of the underlying asset and activity.<sup>52</sup> If registration is required, the person is subject to FinCEN's regulations governing those types of financial institutions.

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## IMPLICATIONS

Although the Guidance does not appear to include any major changes to FinCEN policy concerning activities involving CVC, it provides the most publicly available detail to date on how FinCEN will evaluate several now-common business models involving CVC. While it is notable that FinCEN intends to apply the Guidance to “any business model that fits the same key facts and circumstances described in the [G]uidance,”<sup>53</sup> the absence of factual and circumstantial detail, coupled with the fact that the Guidance lacks the force of a formal rule or regulation adopted pursuant to the Administrative Procedures Act, will leave boundaries on the ultimate utility of the Guidance. Regardless, persons, including financial institutions, engaging, or contemplating engaging, in CVC-related activities should carefully review the

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Guidance as it may not only assist them in assessing existing and emerging CVC activities for possible FinCEN jurisdiction but also in identifying risks associated with certain customers operating in the CVC space.

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ENDNOTES

- 1 FIN-2019-G001, Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies (May 9, 2019), *available at* <https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf>.
- 2 Guidance at 2 (emphasis added).
- 3 FinCEN's regulations define "currency" as what is typically thought of as fiat currency. See 31 C.F.R. § 1010.100(m). Although the regulations do not define "money," *per se*, the broader meaning is implicit in the definitions of "money transmitter" and "money transmission services." 31 C.F.R. § 1010.100(ff)(5)(i)(A).
- 4 FIN-2013-G001, Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies (March 18, 2013) at 3, *available at* <https://www.fincen.gov/sites/default/files/shared/FIN-2013-G001.pdf>
- 5 See generally 2013 VC Guidance.
- 6 31 C.F.R. § 1010.100(ff)(5)(i)(A) (emphasis added).
- 7 Money transmitters are one type of money services business ("MSB"). See 31 C.F.R. § 1010.100(ff) FinCEN's regulations exempt certain persons—generally functionally regulated entities—from MSB status.
- 8 Guidance at 10; 31 U.S.C. § 5318(g)(1); 31 CFR. § 1022.320(a)(2).
- 9 See FinCEN, Bank Secrecy Act Requirements: A Quick Reference Guide For Money Services Business, *available at* [https://www.fincen.gov/sites/default/files/shared/bsa\\_quickrefguide.pdf](https://www.fincen.gov/sites/default/files/shared/bsa_quickrefguide.pdf). As noted in the Guidance, additional requirements may apply if the transaction qualifies as a "transmittal of funds."
- 10 Guidance at 9-10.
- 11 2013 VC Guidance.
- 12 FIN-2014-R001, Application of FinCEN's Regulations to Virtual Currency Mining Operations (Jan. 30, 2014), *available at* <https://www.fincen.gov/sites/default/files/shared/FIN-2014-R001.pdf>.
- 13 FIN-2014-R002, Application of FinCEN's Regulations to Virtual Currency Software Development and Certain Investment Activity (Jan. 30, 2014), *available at* <https://www.fincen.gov/sites/default/files/shared/FIN-2014-R002.pdf>
- 14 FIN-2014-R007, Application of Money Services Business regulations to the rental of Computer Systems for Mining Virtual Currency (Apr. 29, 2014), *available at* <https://www.fincen.gov/sites/default/files/shared/FIN-2014-R007.pdf>
- 15 FIN-2014-R011, Request for Administrative Ruling on the Application of FinCEN's Regulations to a Virtual Currency Trading Platform (Oct. 27, 2014), *available at* [https://www.fincen.gov/sites/default/files/administrative\\_ruling/FIN-2014-R011.pdf](https://www.fincen.gov/sites/default/files/administrative_ruling/FIN-2014-R011.pdf).
- 16 FIN-2014-R012, Request for Administrative Ruling on the Application of FinCEN's Regulations to a Virtual Currency Payment System (Oct. 27, 2014), *available at* [https://www.fincen.gov/sites/default/files/administrative\\_ruling/FIN-2014-R012.pdf](https://www.fincen.gov/sites/default/files/administrative_ruling/FIN-2014-R012.pdf).
- 17 FIN-2015-R001, Application of FinCEN's Regulations to Persons Issuing Physical or Digital Negotiable Certificates of Ownership of Precious Metals (Aug. 14, 2015), *available at* [https://www.fincen.gov/sites/default/files/administrative\\_ruling/FIN-2015-R001.pdf](https://www.fincen.gov/sites/default/files/administrative_ruling/FIN-2015-R001.pdf).
- 18 The Guidance also briefly addresses internet casinos. Internet casinos are virtual platforms created for betting on the possible outcome of events; they may accept deposits and bets and issue payouts denominated in CVC. An internet casino that is *not* a "casino," "gambling casino,"

## ENDNOTES (CONTINUED)

- or “card club” within the meaning of FinCEN’s regulations, but that accepts and transmits value, including value denominated in CVC, may be a “money transmitter” under FinCEN’s regulations, even if the original transmission or payout are done on a conditional basis. An internet casino that is a “casino,” “gambling casino,” or “card club” within the meaning of FinCEN’s regulations must comply with FinCEN’s regulations governing casinos and card clubs. And, although casinos and card clubs are not exempt from MSB status, the Guidance states that, with the exception of registration, satisfying FinCEN’s casino and card club regulations will satisfy FinCEN’s MSB regulations. See Guidance at 23.
- 19 Guidance at 20-21.
- 20 *Id.*
- 21 Letter from Drew Maloney, Asst. Secretary for Legislative Affairs, Dept. of the Treasury to Sen. Ron Wyden (Feb. 13, 2018) (the “Wyden Letter”), available at <https://coincenter.org/files/2018-03/fincen-ico-letter-march-2018-coin-center.pdf>.
- 22 *Id.* at 2.
- 23 Guidance at 24-25.
- 24 *Id.*
- 25 31 CFR 1010.100(ff)(5)(F); Guidance at 6-7, 26.
- 26 31 CFR 1010.100(ff)(8).
- 27 Guidance at 27.
- 28 *Id.* at 28.
- 29 *Id.*
- 30 *Id.*
- 31 DApps are software programs that run on a distributed computing system, such that they are not controlled by a single person or group of persons. Typically, a DApp is developed by a developer and then deployed by an owner/operator. A DApp user pays a fee to the DApp (for the benefit of the owner/operator) to run the software. Guidance at 18.
- 32 Wallets may require the owner’s signature/credential (“single-signature”) or multiple signatures/credentials (“multiple-signature”) to effect a transaction. See Guidance at 16-17.
- 33 Guidance at 15.
- 34 If the owner is a non-financial institution, the host must identify, verify and monitor the owner’s identify and profile consistent with the host’s AML program. If the owner is an agent of the host, the host must monitor the agent consistent with a principal MSB’s obligation to monitor the activities of its agent. If the owner is a non-agent financial institution, the host must comply with regulatory requirements applicable to correspondent accounts. The host may also be subject to additional BSA-related obligations depending on the nature of the transaction. For example, additional requirements may apply if the transaction qualifies as a “transmittal of funds.” Guidance at 16.
- 35 *Id.* at 16.
- 36 See Guidance at 17.
- 37 As such, the anonymizing services provider does not qualify for the exemption from “money transmitter” applicable to persons who accept and transmit funds only integral to the sale of goods or the provision of services, other than money transmission services, by the person who is accepting and transmitting the funds. 31 CFR 1010.100(ff)(5)(ii)(F). In reaching that conclusion, FinCEN relies on a prior ruling related to a financial privacy product. See FIN-2008-R007,

ENDNOTES (CONTINUED)

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- Whether a Certain Operation Protecting On-line Personal Financial Information is a Money Transmitter (June 11, 2008) [https://www.fincen.gov/sites/default/files/administrative\\_ruling/fin-2008-r007.pdf](https://www.fincen.gov/sites/default/files/administrative_ruling/fin-2008-r007.pdf)
- 38 Guidance at 19-20. A person who provides the delivery, communication, or network access services used by a money transmitter to provide money transmission services is exempt from the definition of “money transmitter.” 31 CFR 1010.100(ff)(5)(ii)(A).
- 39 Guidance at 21.
- 40 *Id.* at 21.
- 41 To be eligible for the exemption for payment processors, 31 CFR 1010.100(ff)(5)(ii)(B) requires that an entity satisfy four conditions: (1) 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); (2) the entity must operate through clearance and settlement systems that admit only BSA-regulated financial institutions; (3) the entity must provide the service pursuant to a formal agreement; and (4) the entity’s agreement must be at a minimum with the seller or creditor that provided the goods or services and receives the funds. FIN-2014-R012, *supra* n. 16 at 4; Guidance at 22 n. 67.
- 42 Guidance at 22-23.
- 43 *Id.* at 18.
- 44 Such persons qualify for the exemption in 31 CFR 1010.100(ff)(8)(iii).
- 45 Guidance at 15 (*citing* 31 CFR 1010.100(ff)(8)(iii)).
- 46 FIN-2014-R002, *supra* n. 13 at 4.
- 47 These trading platforms may be centralized (*i.e.*, operate much like a traditional brokerage run by an administrator) or decentralized (*i.e.*, there is no administrator and trades occur without third-party involvement). Decentralized exchanges allow P2P trading of CVC. Guidance at 20-21.
- 48 Guidance at 24.
- 49 *Id.*
- 50 *Id.* at 17-18.
- 51 *Id.*
- 52 *Id.* at 26.
- 53 *Id.* at 2 (emphasis added).

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