



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

February 13, 2018

The Honorable Ron Wyden  
Ranking Member  
Committee on Finance  
United States Senate  
Washington, DC 20510

Dear Senator Wyden:

Thank you for your December 14, 2017 letter requesting information on the oversight and enforcement capabilities of the Financial Crime Enforcement Network (FinCEN) over virtual currency financial activities. I am pleased to have the opportunity to highlight some of the work FinCEN has done in this space to advance its crucial mission of administering the Bank Secrecy Act (BSA) and protecting the U.S. financial system from the potential illicit financing risks you highlight in your letter.

FinCEN shares your desire to promote the positive financial innovations associated with this technology, while protecting our financial system from criminals, hackers, sanctions-evaders, and hostile foreign actors. Together with other components of the Office of Terrorism and Financial Intelligence (TFI), FinCEN has worked diligently to ensure that anti-money laundering/combatting the financing of terrorism (AML/CFT) rules apply to virtual currency exchangers and administrators that are in the United States or do business in whole or in substantial part within the United States, but do not have a physical presence in this country.

Combating the abuse of existing and emerging payment systems by illicit financiers is a priority issue for FinCEN. We establish our regulatory, examination, and enforcement priorities based on numerous factors that help us assess potential harm, including, e.g., the nature and impact of the underlying crime; the size of the illicit financing flows; the scale of the financial product or service; and its vulnerability to abuse. To identify risks and illicit use of virtual currency and other emerging payments systems, including the abuse of virtual currency to facilitate cybercrime, black market sales of illicit products and services, and other high-tech crimes, FinCEN maintains a team of analysts to examine BSA filings from virtual currency money services businesses (MSB) and other emerging payments providers, including filings pertaining to digital coins, tokens, and Initial Coin Offerings (ICOs), to proactively identify trends and risks for money laundering, terrorist financing, and other financial crimes, and provide this information to U.S. law enforcement and other government agencies.

Virtual currency exchangers and administrators have been subject to the BSA's money transmitter requirements since 2011.<sup>1</sup> In 2013, FinCEN clarified this by issuing guidance that

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<sup>1</sup> Amendments to Bank Secrecy Act Regulations; Definitions and Other Regulations Relating to Money Services Businesses, 76 FR No. 140, (Jul. 21, 2011), <https://www.gpo.gov/fdsys/pkg/FR-2011-07-21/pdf/2011-18309.pdf>.



explicitly stated that virtual currency exchangers and administrators are money transmitters and must comply with the BSA and its implementing regulations.<sup>2</sup> These requirements include: registering with FinCEN as a MSB; preparing a written AML compliance program that is designed to mitigate risks (including money laundering risks) associated with the entity's specific business and customer mix, and to ensure compliance with other BSA requirements; filing BSA reports, including suspicious activity and currency transaction reports; keeping records for certain types of transactions at specific thresholds; and obtaining customer identification information sufficient to comply with the AML Program and recordkeeping requirements. In addition, a virtual currency money transmitter that is a U.S. person must, like all U.S. persons, comply with all Office of Foreign Assets Control financial sanctions obligations.

Regulated virtual currency businesses provide FinCEN with Suspicious Activity Reports that may include the identity of the account owner in their records. In cases where a bitcoin address is identified in the course of an investigation, blockchain analysis can often enable investigators to tie it to a virtual currency exchanger, hosted wallet, or other virtual currency money transmitter that may have the identity of the account owner. Blockchain network analytic tools can also tie a targeted bitcoin address to other potentially identifiable persons that have transacted with the particular bitcoin address and may have information that could potentially help identify beneficial owners. Like other investigative techniques, this process requires expenditure of investigative resources to try to follow bitcoin transactions through addresses to a real world identity, and can involve subpoenas for records at virtual currency businesses. FinCEN supports law enforcement and regulators' efforts to identify and trace bitcoin by providing information and analysis used to investigate criminal use of virtual currency.

In 2014, FinCEN, working with its delegated examiner, the Internal Revenue Service Small Business/Self-Employed Division, began to implement comprehensive, periodic examinations of exchangers and administrators. To date, these efforts have included the examination of about one-third of the approximately 100 virtual currency exchangers and administrators registered with FinCEN. In addition, FinCEN has also initiated investigations into the activities of some exchangers and administrators. As your letter notes, this has included enforcement actions against exchangers like Ripple Labs (2015) and BTC-e (2017), and against individuals that operate exchangers, such as Alexander Vinnik (2017). It has also included action under Section 311 of the USA PATRIOT Act against Liberty Reserve (2013), the administrator of a centralized virtual currency. FinCEN will continue its efforts to ensure that MSBs, including virtual currency exchangers and administrators, meet their AML/CFT obligations, and will continue to take appropriate action when they fail to do so.

There are significant challenges to investigating foreign virtual currency businesses, because most jurisdictions do not regulate and supervise virtual currency businesses, and therefore do not require them to maintain customer records. FinCEN works to identify foreign-located money transmitters that may be enabling financial crime, and evaluates them for potential enforcement actions when they violate U.S. law, as in the BTC-e matter. FinCEN and other Treasury components actively encourage other countries to regulate virtual currency activities, consistent

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<sup>2</sup> The BSA is codified at 12 U.S.C. §§ 1829b, 1951–1959 and 31 U.S.C. §§ 5311–5314, 5316–5332. Regulations implementing the Bank Secrecy Act currently appear at 31 C.F.R. Chapter X.



with the international AML/CFT standards, and to cooperate in investigations of the criminal exploitation of virtual currencies. We deliver this message bilaterally and through multilateral fora such as the Financial Action Task Force and the Egmont Group of Financial Intelligence Units.

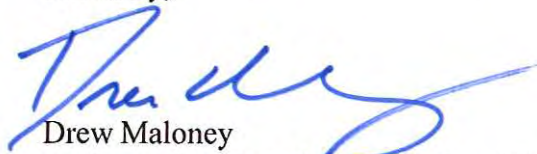
FinCEN is working closely with the Securities Exchange Commission (SEC) and the Commodities Futures Trading Commission (CFTC) to clarify and enforce the AML/CFT obligations of businesses engaged in Initial Coin Offering (ICO) activities that implicate the regulatory authorities of these agencies. The application of AML/CFT obligations to participants in ICOs will depend on the nature of the financial activity involved in any particular ICO. This is a matter of the facts and circumstances of each case.

Generally, under existing regulations and interpretations, a developer that sells convertible virtual currency, including in the form of ICO coins or tokens, in exchange for another type of value that substitutes for currency is a money transmitter and must comply with AML/CFT requirements that apply to this type of MSB.<sup>3</sup> An exchange that sells ICO coins or tokens, or exchanges them for other virtual currency, fiat currency, or other value that substitutes for currency, would typically also be a money transmitter.

However, ICO arrangements vary. To the extent that an ICO is structured in a way that it involves an offering or sale of securities or derivatives, certain participants in the ICO could fall under the authority of the SEC, which regulates brokers and dealers in securities, or under the authority of the CFTC, which regulates merchants and brokers in commodities. In such a case, the AML/CFT requirements imposed by SEC or CFTC regulations would apply to such ICO participants. Treasury expects businesses involved in ICOs to meet the BSA obligations that apply to them.

Thank you again for contacting FinCEN on this important matter. If you have any further questions or concerns, please feel free to contact me or Mrs. Kelly Whitney, FinCEN's Congressional Advisor, at (703) 839-4131 or [kelly.whitney@fincen.gov](mailto:kelly.whitney@fincen.gov).

Sincerely,



Drew Maloney  
Assistant Secretary for Legislative Affairs

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<sup>3</sup> See, FIN-2013-G001 (explaining that convertible virtual currency administrators and exchangers are money transmitters under the BSA), and FIN-2014-R001, Application of FinCEN's Regulations to Virtual Currency Mining Operations, January 30, 2014 (explaining that persons that create units of virtual currency, such as miners, and use them in the business of accepting and transmitting value are also money transmitters).