

ALERT

FinCEN Clarifies that BSA Rules Apply to Activities Involving Virtual Currencies

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As more companies undertake activities involving virtual currencies, such as Bitcoin, the question of whether those companies are subject to the requirements of the Bank Secrecy Act (BSA) has become more pressing. Today, the U.S. Department of Treasury's Financial Crimes Enforcement Network (FinCEN) released two administrative rulings addressing this issue. The first ruling, FIN-2014-R011, involved a company that allowed customers to exchange virtual for real currencies, and vice-versa. The second ruling, FIN-2014-R012, addressed an international payment system using both virtual and real currencies. In both cases, FinCEN determined that activities involving virtual currencies did subject the company to the requirements of the BSA.

Virtual Currency Exchange Platform

A company operating a virtual currency exchange platform asked FinCEN to clarify whether this activity rendered the company a "money transmitter" under the BSA. Customers of the company would use this platform to buy and sell convertible virtual currency for currency of legal tender. The platform would match offers to buy and sell without either customer knowing the other's identity. The company argued that this was analogous to a stock trading platform, and fell outside the definition of a "money transmitter."

FinCEN disagreed, explaining that a person is considered an exchanger, and therefore a money transmitter, if it accepts convertible virtual currency from one person and transmits it to another person in return for currency, funds, or other value. FinCEN noted that the company was in fact transmitting money to both the owner of the virtual currency and the owner of the real currency. Thus, processing

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Practice Areas

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the exchange of virtual for real currency rendered the company a money transmitter.

Virtual Currency Payment System

In the second case, a company intended to set up a convertible payment system using virtual currency. The company would receive payment from the buyer or debtor in currency of legal tender and then transfer the equivalent in Bitcoin to the seller/creditor, minus a transaction fee. Again, FinCEN concluded that the company would be a money transmitter, because it would be acting as an exchanger of virtual currency. FinCEN further found that neither the integral to the sale of goods/services exemption nor the payment processor exemption would apply, rendering the company subject to the BSA's AML requirements.

Implications

In both cases, FinCEN found that the transmission of money was integral to the transaction. This implies that FinCEN will look very closely at other types of services involving exchanges of virtual for real currencies, and will probably find that companies providing these services are also money transmitters. Both decisions highlight FinCEN's heightened interest in ensuring that entities transacting in virtual currencies comply with the BSA's requirements. This means that persons or companies engaging in the exchange of convertible virtual currencies must:

- register with FinCEN as a money transmitter;
- assess the money laundering risk involved in its transactions;
- implement an anti-money laundering program; and
- comply with the a range of recordkeeping, reporting, and transaction monitoring requirements.