



FinCEN GUIDANCE

FIN-2019-G001

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Subject: Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies

The Financial Crimes Enforcement Network (FinCEN) is issuing this interpretive guidance to remind persons subject to the Bank Secrecy Act (BSA) how FinCEN regulations relating to money services businesses (MSBs) apply to certain business models¹ involving money transmission denominated in value that substitutes for currency, specifically, convertible virtual currencies (CVCs).²

This guidance does not establish any new regulatory expectations or requirements. Rather, it consolidates current FinCEN regulations, and related administrative rulings and guidance issued since 2011, and then applies these rules and interpretations to other common business models involving CVC engaging in the same underlying patterns of activity.

This guidance is intended to help financial institutions comply with their existing obligations under the BSA as they relate to current and emerging business models involving CVC by describing FinCEN's existing regulatory approach to the issues most frequently raised by industry, law enforcement, and other regulatory bodies within this evolving financial environment. In this regard, it covers only certain business models and necessarily does not address every potential combination of facts and circumstances. Thus, a person working with a business model not specifically included in this guidance may still have BSA obligations.

The overall structure of this guidance is as follows:

Section 1 defines certain key concepts within the context of the guidance. Although the titles or names assigned to these key concepts may coincide with terms customarily used by industry and share similar attributes, for purposes of the guidance their meaning is limited to the definition provided in the guidance.

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1. For a discussion of the concept of "business model" as used within this guidance, *see infra*, Section 1.1.
 2. For a discussion of the concepts of "value that substitutes for currency" and "convertible virtual currency" as used within this guidance, *see infra*, Sections 1.2. and 1.3.

Section 2 consolidates and explains current FinCEN regulations, previous administrative rulings, and guidance involving the regulation of money transmission under the BSA. By consolidating and summarizing rules and interpretation in a single Section, this guidance provides a resource to help financial institutions comply with their existing obligations under the BSA as they relate to current and emerging activities involving CVC.

Section 3 summarizes the development and content of FinCEN's 2013 guidance on the application of money transmission regulations to transactions denominated in CVC.³

Sections 4 and 5 describe FinCEN's existing regulatory approach to current and emerging business models using patterns of activity involving CVC. This approach illustrates how FinCEN fits existing interpretations about certain activities to other activities that at first may seem unrelated, but conform to the same combination of key facts and circumstances.

Finally, Section 6 contains a list of resources to which interested parties may refer for further explanation about the content of the guidance, or to assist in evaluating facts and circumstances not expressly covered in this guidance.

1. Key Concepts

The following subsections describe how FinCEN frames certain key concepts for purposes of this guidance.

1.1. Business Model

Whether a person is a money transmitter under FinCEN's regulations is a matter of facts and circumstances.⁴ Within the context of this guidance, "business model" refers to the subset of key facts and circumstances relevant to FinCEN's determination of (a) whether the specific person meets the definition of a particular type of financial institution and (b) what regulatory obligations are associated with the specific activities performed within the business model.

This guidance may refer to a pattern of activity as a business model using a title or name ("label") that may coincide with a label used by industry to designate a general type of product or service. The label, however, will not determine the regulatory application. Rather, this guidance applies to any business model that fits the same key facts and circumstances described in the guidance, regardless of its label. Conversely, the regulatory interpretations in this guidance will not apply to a business model using the same label, but involving different key facts and circumstances.

3. [FIN-2013-G001](#), "Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies," Mar. 18, 2013 ("2013 VC Guidance").

4. 31 CFR § 1010.100(ff)(5)(ii).

In addition, differences in similar business models may lead to different regulatory applications. The regulatory interpretations contained in this guidance may extend only to other business models consisting of the *same* key facts and circumstances as the business models described herein. Therefore, a particular regulatory interpretation may not apply to a person if their business model contains fewer, additional, or different features than those described in this guidance.

Lastly, a person who is engaged in more than one type of business model at the same time may be subject to more than one type of regulatory obligation or exemption. For example, a developer or seller of either a software application or a new CVC platform may be exempt from BSA obligations associated with *creating* or *selling* the application or CVC platform, but may still have BSA obligations as a money transmitter if the seller or developer also uses the new application to engage as a business in accepting and transmitting currency, funds, or value that substitutes for currency, or uses the new platform to engage as a business in accepting and transmitting the new CVC. Likewise, an exemption may apply to a person performing a certain role in the development or sale of a software application, while a different person using the same application to accept and transmit currency, funds, or value that substitutes for currency would be still subject to BSA obligations.

1.2. Value that Substitutes for Currency

1.2.1. Definitions

In 2011, FinCEN issued a final rule (“2011 MSB Final Rule”)⁵ defining a money services business 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,” operating directly, or through an agent, agency, branch, or office, who functions as, among other things, a “money transmitter.”⁶

FinCEN’s regulations define the term “money transmitter” to include a “person that provides money transmission services,” or “any other person engaged in the transfer of funds.”⁷ A “transmittor,” on the other hand, is “[t]he sender of the first transmittal order in a transmittal of funds. The term transmittor includes an originator, except where the transmittor’s financial institution is a financial institution or foreign financial agency other than a bank or foreign bank.”⁸ In other words, a *transmittor* initiates a transaction that the money *transmitter* actually executes.

5. Bank Secrecy Act Regulations - Definitions and Other Regulations Relating to Money Services Businesses, 76 FR 43585 (July 21, 2011).

6. 31 CFR § 1010.100(ff).

7. 31 CFR § 1010.100(ff)(5).

8. 31 CFR § 1010.100(ff).

The term “money transmission services” is defined to mean *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.*⁹ The term “other value that substitutes for currency” encompasses situations in which the transmission does not involve currency,¹⁰ or funds, but instead involves something that the parties to a transaction recognize has value that is equivalent to or can substitute for currency.

FinCEN’s regulation does not limit or qualify the scope of the term “value that substitutes for currency.” It can be created either (a) specifically for the purpose of being used as a currency substitute or (b) originally for another purpose but then repurposed to be used as a currency substitute by an administrator (in centralized payment systems) or an unincorporated organization, such as a software agency (in decentralized payment systems).¹¹ In either case, the persons involved in the creation and subsequent distribution of the value (either for the original purpose or for another purpose) may be subject to additional regulatory frameworks (other than the BSA) that govern licensing and chartering obligations, safety and soundness regulations, minimum capital and reserve requirements, general and financial consumer and investor protection, etc. When subject to these other regulatory frameworks, the person may be exempted from MSB status but be covered as a different type of financial institution under FinCEN regulations.

1.2.2. Application of BSA regulations to persons exempt from MSB status engaged in transactions denominated in any type of value that substitutes for currency

The term “money services business” does not include: (a) a bank or foreign bank; (b) a person registered with, and functionally regulated or examined by, the U.S. Securities and Exchange Commission (SEC) or the U.S. Commodity Futures Trading Commission (CFTC), or a foreign financial agency that engages in financial activities that, if conducted in the United States, would require the foreign financial agency to be registered with the SEC or CFTC; or, (c) a natural person who engages in certain identified MSB activity (i.e., dealing in foreign exchange, check cashing, issuing or selling traveler’s checks or money orders, providing prepaid access, or money

9. 31 CFR § 1010.100(ff)(5)(i)(A) (emphasis added).

10. 31 CFR § 1010.100(m) (defining 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. Currency includes U.S. silver certificates, U.S. notes and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country.”)

11. See 2013 VC Guidance, at 4-5 (discussing centralized and decentralized payment systems).

transmission) but does so on an infrequent basis and not for gain or profit.¹² Banks and persons registered with, and functionally regulated or examined by, the SEC or the CFTC, that engage in transactions denominated in value that substitutes for currency will be subject to BSA regulations according to the applicable section of 31 CFR Chapter X.¹³

1.2.3. Application of BSA regulations to persons not exempt from MSB status engaged in transactions denominated in any type of value that substitutes for currency

A person not exempt from MSB status under 31 CFR § 1010.100(ff)(8) may be a money transmitter when the person engages in transactions covered by FinCEN’s definition of money transmission, regardless of the technology employed for the transmittal of value or the type of asset the person uses as value that substitutes for currency, or whether such asset is physical or virtual. In general, persons not covered by 1010.100(ff)(8)(ii) who issue securities and futures, or purchase and sell securities, commodities, and futures, are outside the scope of the BSA. However, such persons could be covered by BSA money transmission regulations under certain facts and circumstances, in accordance with (a) the regulatory definition of money transmitter, (b) any applicable exemption from the definition (*see* Section 2 below), and (c) regulatory interpretations such as those contained in FIN-2008-G008 and FIN-2015-R001:

- a) FIN-2008-G008, “Application of the Definition of Money Transmitter to Brokers and Dealers in Currency and other Commodities,” September 10, 2008, states 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. 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

12. 31 CFR § 1010.100(ff)(8). In the case of 1010.100(ff)(8)(ii), the exemption applies only if the person *itself* is registered with, and functionally regulated or examined by the SEC or CFTC; the exemption may not apply if it is, for example, the document instrumenting the offer or sale of an asset (and not the person offering or selling the asset) that which must be registered.

13. The appropriate definitions and specific regulations may be found as follows: banks (31 CFR §§ 1010.100(d) and 1020, respectively); brokers or dealers in securities (31 CFR §§ 1010.100(h) and 1023, respectively); futures commission merchants (31 CFR §§ 1010.100(x) and 1026, respectively); introducing brokers in commodities (31 CFR §§ 1010.100(bb) and 1026, respectively); and mutual funds (31 CFR §§ 1010.100(gg) and 1024, respectively).

commodity, and the broker or dealer becomes a money transmitter. This regulatory interpretation extends to persons intermediating in the purchase and sale of securities or futures.¹⁴

- b) FIN-2015-R001, “Application of FinCEN’s Regulations to Persons Issuing Physical or Digital Negotiable Certificates of Ownership of Precious Metals,” August 14, 2015, applies a similar interpretation to digital certificates evidencing the ownership of a certain amount of a commodity. This regulatory interpretation also extends to physical or digital certificates of ownership of securities or futures contracts.

In the regulatory interpretations above, money transmission could involve either (a) the movement of currency of legal tender to or from accounts originally set up to buy or sell commodities (or securities, or futures); or (b) the issuance and subsequent acceptance and transmission of a digital token that evidenced ownership of a certain amount of a commodity, security, or futures contract. At the time of the rulings mentioned above, the commodity, security, or futures contract *itself* was not used to engage in money transmission primarily because such contracts were fractioned in relatively large individual amounts not suitable for money transmission. However, if assets that other regulatory frameworks define as commodities, securities, or futures contracts were to be specifically issued or later repurposed to serve as a currency substitute, then the asset itself could be a type of value that substitutes for currency, the transfer of which could constitute money transmission.

Therefore, as explained above, money transmission may occur when a person (or an agent, or a mechanical or software agency owned or operated by such person) not exempt from MSB status:

- a) uses any representation of currency of legal tender (paper money, coins, Federal Reserve Bank notes, United States notes, funds credited to an account) associated with the purchase or sale of commodities, securities, or futures contracts to engage in money transmission;

14. See also 2011 MSB Final Rule, 76 FR at 43594 (stating “[P]ersons that sell goods or provide services other than money transmission services, and only transmit funds as an integral part of that sale of goods or provision of services, are not money transmitters. For example, brokering the sale of securities, commodity contracts, or similar instruments is not money transmission notwithstanding the fact that the person brokering the sale may move funds back and forth between the buyer and seller to effect the transaction.”). The 2011 MSB Final Rule updated, streamlined, and clarified MSB regulations based on FinCEN’s large body of guidance and administrative rulings previously issued. 2011 MSB Final Rule, 76 FR at 43586. Such previous guidance or administrative rulings, which FinCEN has not withdrawn, remain instructive and are cited herein to assist in understanding FinCEN’s current interpretation of its MSB regulations.

- b) issues physical or digital tokens evidencing ownership of commodities, securities, or futures contracts that serve as value that substitutes for currency in money transmission transactions; or
- c) issues or employs commodities, securities, or futures contracts by themselves as value that substitutes for currency in money transmission transactions.

1.3. Convertible Virtual Currency (CVC)

The term “virtual currency” refers to a medium of exchange that can operate like currency but does not have all the attributes of “real” currency, as defined in 31 CFR § 1010.100(m), including legal tender status.¹⁵ CVC is a type of virtual currency that either has an equivalent value as currency, or acts as a substitute for currency, and is therefore a type of “value that substitutes for currency.”

As mentioned above, the label applied to any particular type of CVC (such as “digital currency,” “cryptocurrency,” “cryptoasset,” “digital asset,” etc.) is not dispositive of its regulatory treatment under the BSA. Similarly, as money transmission involves the acceptance and transmission of value that substitutes for currency *by any means*, transactions denominated in CVC will be subject to FinCEN regulations regardless of whether the CVC is represented by a physical or digital token, whether the type of ledger used to record the transactions is centralized or distributed, or the type of technology utilized for the transmission of value.

2. General Application of BSA Regulations to Money Transmission

Under the BSA, the term “person” means “[a]n 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.”¹⁶

In general, whether a person qualifies as an MSB subject to BSA regulation depends on the person’s *activities* and not its formal business status. Thus, whether a person is an MSB will *not* depend on whether the person: (a) is a natural person or legal entity; (b) is licensed as a business by any state; (c) has employees or other natural persons acting as agents; (d) operates at a brick-and-mortar branch, or through mechanical or software agents or agencies; or (e) is a for profit or nonprofit service.¹⁷

15. 2013 VC Guidance, at 1; *see also, infra*, section 3.

16. 31 CFR § 1010.100(mm).

17. FinCEN clarified these points in the Preamble to the 2011 MSB Final Rule, 76 FR, at 43587.

At the same time, a person still qualifies as a money transmitter if that person’s activities include receiving one form of value (currency, funds, prepaid value, value that substitutes for currency – such as CVC, etc.) from one person and transmitting either the same or a different form of value to another person or location, by any means.¹⁸ Similarly, a money transmitter may accept and transmit value in either order. That is, a person is still a money transmitter under FinCEN regulations if the person transmits value first, and only later accepts corresponding value for this transfer.¹⁹

Likewise, a person may be a money transmitter when operating either on a transactional basis or on an account basis.²⁰ A transactional basis includes one-off transactions where there is no expectation that the money transmitter will establish an ongoing relationship with the transactor, and the money transmitter retains the currency, funds, or other value that substitutes for currency, only for the time required to effect the transmission. By contrast, an account basis includes circumstances where the transactor is an established customer of the money transmitter, as defined in 31 CFR § 1010.100(p), and the money transmitter may maintain an account for the transactor to store funds or value that substitutes for currency, from which the transactor can instruct the money transmitter to transfer them in whole or in part.

Finally, a person will qualify as a money transmitter if that person accepts value with the intent of transmitting it only under certain conditions. For example, if a person operates a platform that facilitates the conditional exchange of value between two parties—such as the exchange of CVC against currency only when an agreed upon exchange rate and amount is met—such person will be engaged in money transmission every time the conditions (such as the exchange rate and amount) are met and the person completes the reciprocal transfers.²¹

18. 2011 MSB Final Rule, 76 FR, at 43592.

19. *Ibid.*

20. Amendment to the Bank Secrecy Act Regulations Relating to Recordkeeping for Funds Transfers and Transmittals of Funds by Financial Institutions, 60 FR 220, Jan. 3, 1995 (stating “An established customer is defined as a person with an account with a financial institution or a person with respect to which the financial institution has obtained and maintains on file the name and address, as well as the customer’s taxpayer identification number or, if none, alien identification number or passport number and country of issuance, and to which the financial institution provides financial services relying on that information.... Such relationships with nonbank financial institutions may include, but are not limited to, accounts with broker/dealers and ongoing contractual relationships between providers of money transmitting services and business customers.”)

21. See [FIN-2014-R011](#), “Request for Administrative Ruling on the Application of FinCEN’s Regulations to a Virtual Currency Trading Platform,” Oct. 27, 2014.

As discussed above, whether a person is a money transmitter depends on the facts and circumstances of a given case. FinCEN regulations, however, specify certain activities are excluded from the definition of “money transmitter.” Specifically, a person is not a money transmitter if that person only:

- a) provides the delivery, communication, or network access services used by a money transmitter to support money transmission services;
- b) acts as a payment processor to facilitate the purchase of, or payment of a bill for, a good or service through a clearance and settlement system by agreement with the creditor or seller;
- c) operates a clearance and settlement system or otherwise acts as an intermediary solely between BSA regulated institutions;
- d) physically transports currency, other monetary instruments, other commercial paper, or other value that substitutes for currency as a person primarily engaged in such business, such as an armored car, from one person to the same person at another location or to an account belonging to the same person at a financial institution, provided that the person engaged in physical transportation has no more than a custodial interest in the currency, other monetary instruments, other commercial paper, or other value at any time during the transportation;
- e) provides prepaid access, as defined in 31 CFR § 1010.100(ff)(4); or
- f) accepts and transmits 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.²²

FinCEN interprets these exemptions strictly. Therefore, a person may not take advantage of a particular exemption if the activity it engages in does not conform fully to an exemption.²³

2.1. BSA Obligations of Money Transmitters

The BSA regulatory framework begins with the expectation that financial institutions will operate under a culture of compliance supported by senior leadership, including owners, boards of directors, and senior executives. This culture of compliance will dictate the basic norms of behavior, knowledge, and transparency under which the management team, employees, and service providers will be held accountable.²⁴

22. 31 CFR § 1010.100(ff)(5)(ii)(A)-(F).

23. See [FIN-2014-R010](#), “Administrative Ruling on the Application of FinCEN Regulations to Currency Transporters, Including Armored Car Services, and Exceptive Relief,” Sept. 24, 2014.

24. See [FIN-2014-A007](#), “Advisory to U.S. Financial institutions on Promoting a Culture of Compliance,” Aug. 11, 2014.

The BSA and its implementing regulations require MSBs to develop, implement, and maintain an effective written anti-money laundering program (“AML program”) that is reasonably designed to prevent the MSB from being used to facilitate money laundering and the financing of terrorist activities. The AML program must, at a minimum: (a) incorporate policies, procedures and internal controls reasonably designed to assure ongoing compliance (including verifying customer identification, filing reports, creating and retaining records, and responding to law enforcement requests); (b) designate an individual responsible to assure day-to-day compliance with the program and BSA requirements; (c) provide training for appropriate personnel, including training in the detection of suspicious transactions; and, (d) provide for independent review to monitor and maintain an adequate program.²⁵ The AML program must be approved by the owner of the financial institution, or by the owner’s representative (in the case of a corporation, such representative is the Board of Directors).

To assure that an AML compliance program is reasonably designed to meet the requirements of the BSA, MSBs should structure their programs to be risk-based. MSBs should assess their individual exposure to the risk of money laundering, terrorism finance, and financial crime based on the composition of customer base, the geographies served, and the financial products and services offered. MSBs must properly manage customer relationships and effectively mitigate risks by implementing controls commensurate with those risks.²⁶

A well-developed risk assessment is part of sound risk management and assists MSBs in identifying and providing a comprehensive analysis of their individual risk profile. As part of its risk assessment, an MSB should determine both the identity and the profile of its customers and MSBs must know enough about their customers to be able to determine the risk level they represent to the institution.

As an MSB, any non-exempt person engaged in money transmission must register with FinCEN within 180 days of starting to engage in money transmission.²⁷ Money transmitters must also comply with the recordkeeping, reporting, and transaction monitoring obligations set forth in Parts 1010 and 1022 of 31 CFR Chapter X.²⁸

25. 31 U.S.C. § 5318(g)(1); 31 CFR. § 1022.320(a)(2).

26. 31 CFR § 1022.210(b).

27. 31 CFR § 1022.380.

28. 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).

To the extent that any of the money transmitter’s transactions constitute a “transmittal of funds”²⁹ under FinCEN’s regulations, then the money transmitter must also comply with the “Funds Transfer Rule”³⁰ and the “Funds Travel Rule.”³¹ Additionally, as an MSB, the money transmitter must register with FinCEN within 180 days of starting to engage in money transmission.³²

FinCEN regulations define a “transmittal of funds”³³ as a series of transmittal orders, and define a “transmittal order”³⁴ as an instruction to pay, among other things “a fixed or determinable amount of money....”³⁵ FinCEN has stated that transmittal of funds are not limited to wire transfers or electronic transfers. Examples provided in guidance are credits and debits to correspondent accounts, and using a check as a transmittal order within a transmittal of funds, in which case the check and any accompanying instructions are the transmittal order effecting the transmittal of funds.³⁶

Because a transmittal order involving CVC is an instruction to pay “a determinable amount of money,” transactions involving CVC qualify as transmittals of funds, and thus may fall within the Funds Travel Rule.³⁷ Under the Funds Travel Rule, a transmittal of funds of \$3,000 or more (or its equivalent in CVC) may trigger certain requirements on a money transmitter acting as either the financial institution for the transmitter or recipient, or as an intermediary financial institution.

The money transmitter must obtain or provide the required regulatory information either before or at the time of the transmittal of value, regardless of how a money transmitter sets up their system for clearing and settling transactions, including those involving CVC.³⁸ In meeting this obligation, the parties to the transmittal of funds are not required to use the same system or protocol for both the actual transmission of value and the reception or transmission of the required regulatory information. As long as the obligated person provides the required regulatory information either

29. 31 CFR § 1010.100(ddd).

30. See 31 CFR § 1010.410(e).

31. See 31 CFR § 1010.410(f).

32. 31 CFR § 1022.380.

33. 31 CFR § 1010.100(ddd).

34. 31 CFR § 1010.100(eee).

35. *Ibid.*

36. See [FIN-1997-A007](#), “FinCEN FAQs on Funds “Travel” Regulations,” January 1997; re-issued as [FIN-2010-G004](#), “Funds “Travel” Regulations: Questions & Answers, Question 13,” Nov. 9, 2010.

37. “Funds Travel Rule,” see 31 CFR § 1010.410(f).

38. In general, a person that chooses to set up a transaction system that makes it difficult to comply with existing regulations may not invoke such difficulty as a justification for non-compliance or as a reason for preferential treatment.

before or at the time of the transmittal of value, if a given transmission protocol is unable to accommodate such information, the obligated person may provide such information in a message different from the transmittal order itself.³⁹

Persons interested in determining whether a certain new activity or variation on an existing activity may subject them to FinCEN’s regulatory requirements, or that find that FinCEN published regulation or guidance does not clearly reflect their business model, have several options for obtaining preliminary, general guidance, or definitive regulatory interpretation.⁴⁰

3. Application of BSA Regulations to Money Transmission Involving CVC

The 2011 MSB Final Rule made clear that persons accepting and transmitting value that substitutes for currency, such as virtual currency, are money transmitters. Persons accepting and transmitting CVC are required (like any money transmitter) to register with FinCEN as an MSB and comply with AML program, recordkeeping, monitoring, and reporting requirements (including the filing of SARs and CTRs). These requirements apply equally to domestic and foreign-located CVC money transmitters doing business in whole or in substantial part within the United States, even if the foreign-located entity has no physical presence in the United States.

After the issuance of the 2011 MSB Final Rule, FinCEN received questions from industry on whether the new rule applied to transactions denominated in all types of virtual currency, including, for example, virtual currency that could only be used inside video games. Some persons involved in transactions denominated in CVC sought to register with FinCEN as either currency exchangers or prepaid access providers or sellers, rather than as money transmitters. FinCEN also received questions from persons purchasing CVCs to pay for goods or services, or planning to accept CVCs in payment of goods and services sold, concerned about their potential BSA obligations.

To address these and other issues, on March 18, 2013, FinCEN issued interpretive guidance on the application of FinCEN’s regulations to transactions involving the acceptance of currency or funds and the transmission of CVC (“2013 VC Guidance”).⁴¹ The 2013 VC Guidance described what CVC is for purposes of FinCEN regulations,

39. See 31 CFR § 1010.410(f).

40. See *infra*, Section 6 – Available Resources; see also MSB Examination Materials, available at <https://www.fincen.gov/msb-examination-materials>

41. See [FIN-2013-G001](#), “Application of FinCEN’s Regulations to Persons Administering, Exchanging, or Using Virtual Currencies,” Mar. 18, 2013.

and reminded the public that persons not exempted from MSB status that accept and transmit either real currency or anything of value that substitutes for currency, including virtual currency, are covered by the definition of money transmitter.⁴²

The 2013 VC Guidance also identified the participants to generic CVC arrangements, including an “exchanger,” “administrator,” and “user,” and further clarified that exchangers and administrators generally qualify as money transmitters under the BSA, while users do not. An *exchanger* is a person engaged as a business in the exchange of virtual currency for real currency, funds, or other virtual currency, while 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.⁴³ A *user* is “a person that obtains virtual currency to purchase goods or services” on the user’s own behalf.⁴⁴

The 2013 VC Guidance explained that the method of obtaining virtual currency (e.g., “earning,” “harvesting,” “mining,” “creating,” “auto-generating,” “manufacturing,” or “purchasing”) does not control whether a person qualifies as a “user,” an “administrator” or an “exchanger.”⁴⁵ In addition, it confirmed that exchangers are subject to the same obligations under FinCEN regulations regardless of whether the exchangers are directly brokering the transactions between two or more persons, or whether the exchangers are parties to the transactions using their own reserves, in either CVC or real currency.⁴⁶ The 2013 VC Guidance also discussed the appropriate regulatory treatment of administrators and exchangers under three common scenarios: brokers and dealers of e-currencies and e-precious metals; centralized CVCs; and decentralized CVCs.⁴⁷

The 2013 VC Guidance also clarified that FinCEN interprets the term “another location” broadly. The definition of money transmitter includes a person that accepts and transmits value that substitutes for currency from one person to another person or to “another location.” For example, transmission to another location occurs when an exchanger selling CVC accepts real currency or its equivalent from a person and

42. See, *supra*, Section 1.3.

43. See 2013 VC Guidance, at 2.

44. *Ibid.*

45. See also [FIN-2014-R001](#), “Application of FinCEN’s Regulations to Virtual Currency Mining Operations,” Jan. 30, 2014 (clarifying that a *user* is a person that obtains virtual currency to purchase goods or services on the user’s own behalf).

46. See [FIN-2014-R012](#), “Request for Administrative Ruling on the Application of FinCEN’s Regulations to a Virtual Currency Payment System,” Oct. 27, 2014. See also, [FIN-2014-R011](#), “Request for Administrative Ruling on the Application of FinCEN’s Regulations to a Virtual Currency Trading Platform,” Oct. 27, 2014.

47. See 2013 VC Guidance, at 4-5 (discussing centralized and decentralized payment systems).

transmits the CVC equivalent of the real currency to the person’s CVC account with the exchanger. This circumstance constitutes transmission to another location because it involves a transmission from the person’s account at one location (e.g., a user’s real currency account at a bank) to the person’s CVC account with the exchanger.⁴⁸

4. Guidance on Application of BSA Regulations to Common Business Models Involving the Transmission of CVC

This guidance sets forth examples of how FinCEN’s money transmission regulations apply to several common business models involving transactions in CVC.⁴⁹ The description of each business model does not intend to reflect an industry standard or cover all varieties of products or services generally referred by the same label, but only highlight the key facts and circumstances of a specific product or service on which FinCEN based its regulatory interpretation.

4.1. Natural Persons Providing CVC Money Transmission (P2P Exchangers)

FinCEN’s definition of an MSB includes both natural and legal persons engaged as a business in covered activities, “whether or not on a regular basis or as an organized business concern.”⁵⁰ Peer-to-Peer (P2P) exchangers are (typically) natural persons engaged in the business of buying and selling CVCs. P2P exchangers generally advertise and market their services through classified advertisements, specifically designed platform websites, online forums, other social media, and word of mouth. P2P exchangers facilitate transfers from one type of CVC to a different type of CVC, as well as exchanges between CVC and other types of value (such as monetary instruments or payment products denominated in real currency). P2P exchangers may provide their services online or may arrange to meet prospective customers in person to purchase or sell CVC. Generally, once there is confirmation that the buyer has delivered or deposited the requested currency or CVC, the P2P exchanger will electronically provide the buyer with the requested CVC or other value.

48. See 2013 VC Guidance, at 4.

49. Although when describing a business model this guidance may use a label by which the general type of product or service may be commonly known, the interpretation provided herein applies only to the business model the guidance describes, and may not apply to any other variety or combination of factors that falls under the same generic label. For example, when in Section 4.4, FinCEN discusses how its regulations apply to certain money transmission in CVC executed within the context of ICOs, this interpretation applies exclusively to those transactions described in the guidance and may not apply to any other transactions may also be referred to as ICOs but follow a different business model.

50. 31 CFR § 1010.100(ff).

A natural person operating as a P2P exchanger that engages in money transmission services involving real currency or CVCs must comply with BSA regulations as a money transmitter acting as principal. This is so regardless of the regularity or formality of such transactions or the location from which the person is operating. However, a natural person engaging in such activity on an infrequent basis *and* not for profit or gain would be exempt from the scope of money transmission.⁵¹

As a money transmitter, P2P exchangers are required to comply with the BSA obligations that apply to money transmitters, including registering with FinCEN as an MSB and complying with AML program, recordkeeping, and reporting requirements (including filing SARs and CTRs).⁵²

4.2. CVC Wallets

CVC wallets are interfaces for storing and transferring CVCs. There are different wallet types that vary according to the technology employed, where and how the value is stored, and who controls access to the value. Current examples of different types of CVC wallets that vary by technology employed are mobile wallets, software wallets, and hardware wallets. Wallets may store value locally, or store a private key that will control access to value stored on an external server. Wallets may also use multiple private keys stored in multiple locations. Wallets where user funds are controlled by third parties are called “hosted wallets” whereas wallets where users control the funds are called “unhosted wallets.”

The regulatory interpretation of the BSA obligations of persons that act as intermediaries between the owner of the value and the value itself is not technology-dependent. The regulatory treatment of such intermediaries depends on four criteria: (a) who owns the value; (b) where the value is stored; (c) whether the owner interacts directly with the payment system where the CVC runs; and, (d) whether the person acting as intermediary has total independent control over the value. The regulatory treatment of each type of CVC wallet based on these factors is described in the next subsection.

4.2.1. Hosted and Unhosted Wallet Providers

Hosted wallet providers are account-based money transmitters that receive, store, and transmit CVCs on behalf of their accountholders, generally interacting with them through websites or mobile applications. In this business model, the money transmitter is the host, the account is the wallet, and the accountholder is the wallet

51. 31 CFR § 1010.100(ff)(8)(iii).

52. For the regulatory treatment of those persons investing in CVCs, see [FIN-2014-R002](#), “Application of FinCEN’s Regulations to Virtual Currency Software Development and Certain Investment Activity,” Jan. 30, 2014.

owner. In addition, (a) the value belongs to the owner; (b) the value may be stored in a wallet or represented as an entry in the accounts of the host; (c) the owner interacts directly with the host, and not with the payment system; and (d) the host has total independent control over the value (although it is contractually obligated to access the value only on instructions from the owner).

The regulatory framework applicable to the host, including the due diligence or enhanced due diligence procedures the host must follow regarding the wallet owner, varies depending on: (a) whether the wallet owner is a non-financial institution (in this context, a user, according to the 2013 VC Guidance), agent, or foreign or domestic counterparty; and (b) the type of transactions channeled through the hosted wallet, and their U.S. dollar equivalent.

When the wallet owner is a user, the host must follow the procedures for identifying, verifying and monitoring both the user’s identity and profile, consistent with the host’s AML program. When the wallet owner is an agent of the host, the host must comply with regulations and internal policies, procedures and controls governing a principal MSB’s obligation to monitor the activities of its agent.⁵³ When the wallet owner is a financial institution other than an agent, the host must comply with the regulatory requirements applicable to correspondent accounts (or their MSB equivalents).⁵⁴

Similarly, the regulatory requirements that apply to the transactions that host channels from or for the wallet owner will depend on the nature of the transaction. For example, where the transactions fall under the definition of “transmittal of funds,” the host must comply with the Funds Travel Rule based on the host’s position in the transmission chain (either as a transmitter’s, intermediary, or recipient’s financial institution), regardless of whether the regulatory information may be included in the transmittal order itself or must be transmitted separately.⁵⁵

Unhosted wallets are software hosted on a person’s computer, phone, or other device that allow the person to store and conduct transactions in CVC. Unhosted wallets do not require an additional third party to conduct transactions. In the case of unhosted, single-signature wallets, (a) the value (by definition) is the property of the owner and is stored in a wallet, while (b) the owner interacts with the payment system directly and has total independent control over the value. In so far as the person conducting a transaction through the unhosted wallet is doing so to purchase goods or services on the user’s own behalf, they are not a money transmitter.

53. See [FIN-2016-G001](#), “Guidance on Existing AML Program Rule Compliance Obligations for MSB Principals with Respect to Agent Monitoring,” Mar. 11, 2016.

54. See 31 CFR § 1010.610, “Due diligence programs for correspondent accounts for foreign financial institutions.” See also “Guidance - (Interpretive Release 2004-1) Anti-Money Laundering Program - Requirements for Money Services Businesses with Respect to Foreign Agents or Foreign Counterparties,” Dec. 14, 2004.

55. See 31 CFR § 1010.410(f).

4.2.2. Multiple-signature wallet providers

Multiple-signature wallet providers are entities that facilitate the creation of wallets specifically for CVC that, for enhanced security, require more than one private key for the wallet owner(s) to effect transactions. Typically, multiple-signature wallet providers maintain in their possession one key for additional validation, while the wallet owner maintains the other private key locally. When a wallet owner wishes to effect a transaction from the owner's multiple-signature wallet, the wallet owner will generally submit to the provider a request signed with the wallet owner's private key, and once the provider verifies this request, the provider validates and executes the transaction using the second key it houses. With respect to an un-hosted multiple-signature wallet, (a) the value belongs to the owner and is stored in the wallet; (b) the owner interacts with the wallet software and/or payment system to initiate a transaction, supplying part of the credentials required to access the value; and (c) the person participating in the transaction to provide additional validation at the request of the owner does not have total independent control over the value.

If the multiple-signature wallet provider restricts its role to creating un-hosted wallets that require adding a second authorization key to the wallet owner's private key in order to validate and complete transactions, the provider is not a money transmitter because it does not accept and transmit value.⁵⁶ On the other hand, if the person combines the services of a multiple-signature wallet provider and a hosted wallet provider, that person will then qualify as a money transmitter. Likewise, if the value is represented as an entry in the accounts of the provider, the owner does not interact with the payment system directly, or the provider maintains total independent control of the value, the provider will also qualify as a money transmitter, regardless of the label the person applies to itself or its activities.

4.3. CVC Money Transmission Services Provided Through Electronic Terminals (CVC Kiosks)

CVC kiosks (commonly called "CVC automated teller machines (ATMs)" or "CVC vending machines") are electronic terminals that act as mechanical agencies of the owner-operator, to enable the owner-operator to facilitate the exchange of CVC for currency or other CVC. These kiosks may connect directly to a separate CVC exchanger, which performs the actual CVC transmission, or they may draw upon the CVC in the possession of the owner-operator of the electronic terminal.

An owner-operator of a CVC kiosk who uses an electronic terminal to accept currency from a customer and transmit the equivalent value in CVC (or vice versa) qualifies as a money transmitter both for transactions receiving and dispensing real

56. 31 CFR § 1010.100(ff)(5)(ii)(A).

currency or CVC. FinCEN issued guidance clarifying that owners/operators of ATMs that link an account holder with his or her account at a regulated depository institution solely to verify balances and dispense currency do not meet the definition of a money transmitter.⁵⁷ The guidance addressing BSA coverage of private ATMs does not apply to the owner-operator of a CVC kiosk because CVC kiosks do not link account holders to their respective accounts at a regulated depository institution. Accordingly, owners-operators of CVC kiosks that accept and transmit value must comply with FinCEN regulations governing money transmitters.

4.4. CVC Money Transmission Services Provided Through Decentralized Applications (DApps)

Decentralized (distributed) application (DApp) is a term that refers to software programs that operate on a P2P network of computers running a blockchain platform (a type of distributed public ledger that allows the development of secondary blockchains), designed such that they are not controlled by a single person or group of persons (that is, they do not have an identifiable administrator). An owner/operator of a DApp may deploy it to perform a wide variety of functions, including acting as an unincorporated organization, such as a software agency to provide financial services.⁵⁸ Generally, a DApp user must pay a fee to the DApp (for the ultimate benefit of the owner/operator) in order to run the software. The fee is commonly paid in CVC.

The same regulatory interpretation that applies to mechanical agencies such as CVC kiosks applies to DApps that accept and transmit value, regardless of whether they operate for profit. Accordingly, when DApps perform money transmission, the definition of money transmitter will apply to the DApp, the owners/operators of the DApp, or both.

4.5. Anonymity-Enhanced CVC Transactions

Anonymity-enhanced CVC transactions are transactions either (a) denominated in regular types of CVC, but structured to conceal information otherwise generally available through the CVC's native distributed public ledger; or (b) denominated in types of CVC specifically engineered to prevent their tracing through distributed public ledgers (also called privacy coins).

57. See [FIN-2007-G006](#), "Application of the Definitions of Money Services Business to Certain Owner-Operators of Automated Teller Machines Offering Limited Services," Dec. 3, 2007.

58. For an example of a DApp, see SEC's Release No. 81207 / July 25, 2017, "Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO," available at <https://www.sec.gov/litigation/investreport/34-81207.pdf>.

A money transmitter that operates in anonymity-enhanced CVCs for its own account or for the accounts of others (regardless of the frequency) is subject to the same regulatory obligations as when operating in currency, funds, or non-anonymized CVCs. In other words, a money transmitter cannot avoid its regulatory obligations because it chooses to provide money transmission services using anonymity-enhanced CVC. The regulatory framework that applies to a person participating in anonymity-enhanced CVC transactions depends on the specific role performed by the person, as set forth below in Section 4.5.1.

4.5.1. Providers of anonymizing services for CVCs

Providers of anonymizing services, commonly referred to as “mixers” or “tumblers,” are either persons that accept CVCs and retransmit them in a manner designed to prevent others from tracing the transmission back to its source (anonymizing services provider), or suppliers of software a transmitter would use for the same purpose (anonymizing software provider).

4.5.1(a) Anonymizing services provider

An anonymizing services provider is a money transmitter under FinCEN regulations. The added feature of concealing the source of the transaction does not change that person’s status under the BSA.

FinCEN previously issued a regulatory interpretation that concluded that persons who accept and transmit value in a way ostensibly designed to protect the privacy of the transmitter are providers of secure money transmission services and are not eligible for the integral exemption.⁵⁹ In order to be exempt from status as a money transmitter under the integral exemption, the person’s business must be different from money transmission itself, and the money transmission activity must be necessary for the business to operate. The subject of this previous regulatory interpretation accepted and transmitted funds in a way designed to protect a consumer’s personal and financial information from a merchant, when the consumer purchased goods or services through the Internet. FinCEN determined that the added feature of protecting consumers’ information did not constitute an activity separate from the funds transmission itself, because the need to protect the consumers’ personal and financial information only arose in connection with the transmission of funds. FinCEN concluded that the company was engaged in the business of offering secure money transmission, rather than security for which money transmission is integrally required. Accordingly, the company qualified as a money transmitter subject to BSA obligations.

59. See [FIN-2008-R007](#), “Whether a Certain Operation Protecting On-line Personal Financial Information is a Money Transmitter,” Jun. 11, 2008. For a different business model, see [FIN-2014-R006](#), “Whether a Company that Provides Online Real-Time Deposit, Settlement, and Payment Services for Banks, Businesses and Consumers is a Money Transmitter,” Apr. 29, 2014.

The same analysis applies to anonymizing services providers: their business consists exclusively of providing secured money transmission. Therefore, a person (acting by itself, through employees or agents, or by using mechanical or software agencies) who provides anonymizing services by accepting value from a customer and transmitting the same or another type of value to the recipient, in a way designed to mask the identity of the transmitter, is a money transmitter under FinCEN regulations.

4.5.1(b) Anonymizing software provider

An anonymizing software provider is not a money transmitter. FinCEN regulations exempt from the definition of money transmitter those persons providing “the delivery, communication, or network access services used by a money transmitter to support money transmission services.”⁶⁰ This is because suppliers of tools (communications, hardware, or software) that may be utilized in money transmission, like anonymizing software, are engaged in trade and not money transmission.

By contrast, a person that utilizes the software to anonymize the person’s own transactions will be either a user or a money transmitter, depending on the purpose of each transaction. For example, a user would employ the software when paying for goods or services on its own behalf, while a money transmitter would use it to engage as a business in the acceptance and transmission of value as a transmitter’s or intermediary’s financial institution.

Lastly, FinCEN issued guidance stating that originating or intermediary financial institutions that replace the proper identity of a transmitter or recipient in the transmittal order with a pseudonym or reference that may not be decoded by the receiving financial institution (i.e., substituting the full name of the transmitter with a numeric code) are not complying with their obligations under the Funds Travel Rule.⁶¹

4.5.2. Providers of anonymity-enhanced CVCs

A person that creates or sells anonymity-enhanced CVCs designed to prevent their tracing through publicly visible ledgers would be a money transmitter under FinCEN regulations depending on the type of payment system and the person’s activity.⁶² For example:

- (a) a person operating as the administrator of a *centralized* CVC payment system will become a money transmitter the moment that person issues anonymity-enhanced CVC against the receipt of another type of value;⁶³

60. 31 CFR § 1010.100(ff)(5)(ii).

61. See [FIN-2010-G004](#), “Funds “Travel” Regulations: Questions & Answers,” at Question 16, Nov. 09, 2010.

62. See, *supra*, Section 1.1.

63. A payment system may change from centralized to decentralized (see Section 5.2). This operational change does not alter the obligations of the person acting as administrator of the system, while the system worked on a centralized basis.

- (b) a person that uses anonymity-enhanced CVCs to pay for goods or services on his or her own behalf would not be a money transmitter under the BSA. However, if the person uses the CVC to accept and transmit value from one person to another person or location, the person will fall under the definition of money transmitter, if not otherwise exempted.
- (c) a person that develops a *decentralized* CVC payment system will become a money transmitter if that person also engages as a business in the acceptance and transmission of value denominated in the CVC it developed (even if the CVC value was mined at an earlier date). The person would not be a money transmitter if that person uses the CVC it mined to pay for goods and services on his or her own behalf.⁶⁴

4.5.3. Money Transmitters that accept or transmit anonymity-enhanced CVCs

Many money transmitters involved in CVC transactions comply with their BSA obligations, in part, by incorporating procedures into their AML Programs that allow them to track and monitor the transaction history of a CVC through publicly visible ledgers.

As mentioned above, FinCEN has issued guidance stating that transmitter's or intermediary's financial institutions that replace the proper identity of a transmitter or recipient in the transmittal order with a pseudonym or reference that may not be decoded by the receiving financial institution (i.e., substituting the full name of the transmitter with a numeric code) are not complying with their obligations under the Funds Travel Rule.⁶⁵ A money transmitter must follow its AML risk assessment policies and procedures to determine under which circumstances the money transmitter will accept or transmit value already denominated in anonymity-enhanced CVCs. When knowingly accepting anonymity-enhanced CVCs (or regular CVC that has been anonymized), money transmitters engaged in CVC transactions subject to the Funds Travel Rule must not only track a CVC through the different transactions, but must also implement procedures to obtain the identity of the transmitter or recipient of the value.

4.6. Payment Processing Services Involving CVC Money Transmission

CVC payment processors are financial intermediaries that enable traditional merchants to accept CVC from customers in exchange for goods and services sold. CVC payment processors sometimes integrate with a merchant's point of sale or

64. See 2013 VC Guidance, at 4-5 (discussing centralized and decentralized payment systems).

65. See, *supra*, at 19 n. 59.

online shopping cart solution so that the value of goods being purchased is quoted in CVC. The CVC payment processor may collect the CVC from the customer and then transmit currency or funds to the merchant, or vice versa.

CVC payment processors fall within the definition of a money transmitter and are not eligible for the payment processor exemption because they do not satisfy all the required conditions for the exemption. Under the payment processor exemption, a person is exempt from the definition of “money transmitter” when that person only “[a]cts as a payment processor to facilitate the purchase of, or payment of a bill for, a good or service through a clearance and settlement system by agreement with the creditor or seller.”⁶⁶ To be eligible for the payment processor exemption, a person must:

- (a) facilitate the purchase of goods or services, or the payment of bills for goods or services (not just the money transmission itself);
- (b) operate through clearance and settlement systems that admit only BSA-regulated financial institutions;
- (c) provide its service pursuant to a formal agreement; and
- (d) enter a formal agreement with, at a minimum, the seller or creditor that provided the goods or services and also receives the funds.⁶⁷

A person providing payment processing services through CVC money transmission generally is unable to satisfy the second condition because such money transmitters do not operate, either in whole or in part, through clearing and settlement systems that only admit BSA-regulated financial institutions as members. This condition is critical, because BSA-regulated financial institutions have greater visibility into the complete pattern of activities of the buyer or debtor, on the one hand, and the seller or creditor, on the other hand. Having BSA-regulated financial institutions at either end of the clearance and settlement of transactions reduces the need to impose additional obligations on the payment processor.⁶⁸ This same

66. 31 CFR § 1010.100(ff)(5)(ii)(B). For a discussion on the conditions applicable to the payment processor exemption from money transmission, see, e.g., [FIN-2013-R002](#), “Administrative Ruling on Whether a Company that Offers a Payment Mechanism Based on Payable-Through Drafts to its Commercial Customers is a Money Transmitter,” Nov. 13, 2013. See also, [FIN-2014-R009](#), “Application of Money Services Business Regulations to a Company Acting as an Independent Sales Organization and Payment Processor,” Aug. 27, 2014.

67. See [FIN-2014-R012](#), “Request for Administrative Ruling on the Application of FinCEN’s Regulations to a Virtual Currency Payment System,” Oct. 27, 2014.

68. *Id.* The CVC payment processor in that ruling received real currency payments from the buyer through a clearing and settlement system that only admits BSA-regulated financial institutions as members (specifically, a credit card network), but made payment of the Bitcoin equivalent to the merchant, 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.

visibility simply does not exist when a CVC payment processor operates through a clearance and settlement system involving non-BSA regulated entities unless the CVC payment processor complies with the reporting obligations of a money transmitter.

Accordingly, in general, persons providing payment processing services in CVC will be money transmitters under the BSA, regardless of whether they accept and transmit the same type of CVC, or they accept one type of value (such as currency or funds) and transmit another (such as CVC).⁶⁹

4.7. CVC Money Transmission Performed by Internet Casinos

Internet casinos are virtual platforms created for betting on the possible outcome of events related to a number of gaming models (e.g., traditional casinos), but accepting deposits and bets and issuing payouts denominated in CVC. Internet casinos may also include entities known as predictive markets, information markets, decision markets, idea futures, and event derivatives.

FinCEN regulations define a casino, gambling casino or card club, as a person duly licensed or authorized to do business as such in the United States, whether under the laws of a State or a Territory or Insular Possession of the United States, or under the Indian Gaming Regulatory Act or other Federal, State, or tribal law or arrangement affecting tribal land, having gross annual gaming revenue in excess of \$1 million, whether denominated in CVC or other value.⁷⁰ Any person engaged in the business of gambling that is not covered by the regulatory definition of casino, gambling casino, or card club, but accepts and transmits value denominated in CVC, may still be regulated under the BSA as a money transmitter. Indeed, even when the original transmission or the payout are done on a conditional basis (that is, only if a certain event occurs), money transmission under BSA regulations still occurs at the moment the condition is satisfied and the acceptance or transmission takes place.⁷¹

5. Specific Business Models Involving CVC Transactions that May be Exempt From the Definition of Money Transmission

5.1. CVC Trading Platforms and Decentralized Exchanges

CVC P2P trading platforms are websites that enable buyers and sellers of CVC to find each other. Sometimes, trading platforms also facilitate trades as an intermediary.

69. A CVC payment processor will be eligible for the payment processor exemption only when it meets all criteria as described above. *See also, supra*, at 21 n. 64.

70. 31 CFR § 1010.100(t)(5) and (6).

71. Casinos, as defined above, have their own set of BSA/AML obligations (*see* 31 CFR Part 1010 –General Provisions – and Part 1021 –Rules for Casinos and Card Clubs). While not specifically exempted from MSB status, when a person falls under FinCEN’s definitions for both casino and MSB, in general the regulatory obligations of a casino satisfy the obligations of an MSB, with the exception of registration.

Under FinCEN regulations, a person is exempt from money transmitter status if the person only provides the delivery, communication, or network access services used by a money transmitter to support money transmission services.⁷² Consistent with this exemption, if a CVC trading platform only provides 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 (either through individual wallets or other wallets not hosted by the trading platform), the trading platform does not qualify as a money transmitter under FinCEN regulations.⁷³ By contrast, if, when transactions are matched, a trading platform purchases the CVC from the seller and sells it to the buyer, then the trading platform is acting as a CVC exchanger, and thus falls within the definition of money transmitter and its accompanying BSA obligations.⁷⁴

5.2. CVC Money Transmission Performed in the Context of Raising Funding for Development or Other Projects—Initial Coin Offerings

Initial coin offerings (ICOs) are generally a means to raise funds for new projects from early backers. Whether an ICO is subject to BSA obligations is a matter of facts and circumstances. This guidance will address, as an example, the BSA obligations of two common business models involving ICOs: (a) ICOs conducting a preferential sale of CVC to a select group of buyers (sometimes referred to as investors); and (b) ICOs raising funds by offering digital debt or equity instruments among a group of lenders or investors to finance a future project (which in turn may consist of the creation of a new CVC). This discussion does not attempt to address every possible ICO business model.⁷⁵

In the first business model, the ICO consists of a group sale of CVC to a distinct set of preferred buyers. The exchange of CVC for another type of value may be instantaneous or deferred to a later date. The CVC and its application or platform may be already operational or it may be the seller’s purpose to use the value received from the sale, in whole or in part, to develop such CVC, application, or platform. In some cases, after the initial centralized offering, any future creation of the CVC may

72. 31 CFR § 1010.100(ff)(5)(ii)(A).

73. The obligations of the hosted wallet provider that utilizes the forum as a money transmitter under the BSA remain as described, *supra*, Section 3.2.

74. See [FIN-2014-R011](#), “Request for Administrative Ruling on the Application of FinCEN’s Regulations to a Virtual Currency Trading Platform,” Oct. 27, 2014.

75. Nor does it affect the obligations of any of the participants described herein under other regulatory frameworks. For example, federal securities law may apply to the issuance of CVC as securities regardless of other intended purposes of the CVC. See, e.g., “Framework for ‘Investment Contract’ Analysis of Digital Assets,” Securities and Exchange Commission, April 3, 2019, available at <https://www.sec.gov/corpfin/framework-investment-contract-analysis-digital-assets>. “Report of Investigation Pursuant to Section 21(a) of the Securities Exchange Act of 1934: The DAO,” Securities and Exchange Commission, July 25, 2017, available at <https://www.sec.gov/litigation/investreport/34-81207.pdf>.

occur through mining using a decentralized model. In any of these scenarios, the seller of the CVC is a money transmitter, acting in the role of administrator, because at the time of the initial offering the seller is the only person authorized to issue and redeem (permanently retire from circulation) the new units of CVC.⁷⁶ The status of the seller as a money transmitter is not impacted by the coordinated or simultaneous sales; the timing of acceptance of one type of value and transmission of the other type (i.e., whether the exchange happens instantaneously or at a later date); or by the fact that the payment system may migrate from one operational status to another at any point in its lifetime (for example, changing from a centralized, administrator-controlled system at origin to a decentralized, protocol-driven system after the initial sale).

In the second business model, the ICO raises funds for new projects by selling an equity stake or a debt instrument to early backers, or hedges a previous investment in CVC through a derivative, such as a futures contract. The funded project generally involves the creation of DApps,⁷⁷ new CVCs (as well as the applications or platforms on which the CVCs will run), or new hedging instruments. ICOs are accomplished using distributed ledger platforms, in which investors receive a digital token as proof of investment. Depending on the purpose of the funded project and the seller’s obligations to the investor, when the project is concluded the investor may: (a) receive new CVC in exchange for the token; (b) exchange the token for a DApp coin, which is a digital token that unlocks the use of DApps that provide various services; (c) use the original token itself as a new CVC or DApp coin; or (d) receive some other type of return on the original equity investment or debt instrument.⁷⁸ How BSA regulations apply to each of these scenarios will vary, as set forth below in Sections 5.2.1. to 5.2.3.

5.2.1. Status of Fundraising or Hedging Activity — Overview

Involvement of banks or persons registered with, and functionally regulated or examined by the SEC or CFTC

The applicable AML regulations governing persons involved in an ICO through selling an equity stake or a debt instrument to early backers or through hedging a previous investment will depend on whether such persons are MSBs or exempt from MSB status under FinCEN regulations or rulings. Persons may be exempt from MSB status in two situations. First, FinCEN regulations expressly exempt from the

76. Whether by contractual agreement or business strategy an administrator declines to exercise such authorities is not relevant to the person’s status as a money transmitter.

77. As discussed, *supra*, Section 4.4, DApps refer to software programs that run on distributed computing platforms—that is, platforms built across dispersed networks of computers designed to accomplish a shared objective.

78. A transaction where a person accepts currency, funds, or value that substitutes for currency in exchange for a new CVC at a preferential rate for a group of initial purchasers, before making the CVC available to the rest of the public, is simply engaging in money transmission, regardless of any specific label (such as “early investors”) applied to the initial purchasers.

definition of an MSB, among other things, (a) a bank or foreign bank; or (b) a person registered with, and functionally regulated or examined by, the SEC or CFTC, or a foreign financial agency that engages in financial activities that, if conducted in the United States, would require the foreign financial agency to be registered with the SEC or CFTC.⁷⁹ Therefore, a person involved in ICO fundraising activity as issuer, intermediary, or investor that is a bank, foreign bank, or a person registered with, and functionally regulated or examined by the SEC or CFTC will not be an MSB under FinCEN regulations. The person's AML obligations will flow from FinCEN regulations governing those types of financial institutions.⁸⁰

Second, FinCEN regulations exempt persons from the definition of money transmitter under certain identified facts and circumstances, the most relevant of which is when the acceptance and transmission of value is only integral to the sale of goods or services different from money transmission.⁸¹ Thus, if the person involved in the fundraising activity as an issuer, intermediary, or investor is not a bank, foreign bank, or a person registered with, and functionally regulated or examined by the SEC or CFTC, then any money transmission connected to the fundraising activity performed by the person generally will fall under the integral exemption,⁸² unless the asset is issued to serve as value that substitutes for currency.⁸³

Purchase and re-sale of digital tokens

The investor may hold the digital token or derivative until the underlying project is complete, or the investor may sell the digital token or derivative during the project's development. A re-sale can occur through a P2P transaction, or through a financial intermediary or secondary market. In general, the re-sale of the token or derivative does not create any BSA obligations for the initial investor. However, if a regulatory framework other than the BSA requires a person that either (a) purchases the token or derivative, or (b) intermediates in transactions in a primary or secondary market, to register as a broker or dealer in securities, futures commission merchant, or introducing broker in commodities, then the person will have the BSA obligations related to its status under these other regulatory frameworks.⁸⁴

79. 31 CFR § 1010.100(ff)(8). *See also, supra*, Section 1.2.2.

80. *See, supra*, at 5 n. 13.

81. *See, supra*, at 2 n. 4; 31 CFR § 1010.100(ff)(5)(F); [FIN-2008-G008](#) "Application of the Definition of Money Transmitter to Brokers and Dealers in Currency and other Commodities," Sept. 10, 2008.

82. For additional discussion of the scope of the integral exemption, *see* [FIN-2008-R004](#) "Whether a Foreign Exchange Consultant is a Currency Dealer or Exchanger or Money Transmitter," May 9, 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," May 9, 2008.

83. *See, supra*, Section 1.2.3.

84. *See, supra*, Section 1.2.2.

5.2.2. Status of a DApp Developer

The development of a DApp financed through ICO fundraising activity consists of the production of goods or services, and therefore is outside the definition of money transmission. Thus, the developer of a DApp is not a money transmitter for the mere act of creating the application, even if the purpose of the DApp is to issue a CVC or otherwise facilitate financial activities denominated in CVC.⁸⁵ However, if the developer of the DApp uses or deploys it to engage in money transmission, then the developer will qualify as a money transmitter under the BSA.

5.2.3. Status of a DApp User conducting financial activities

Once the DApp is finalized and in production, FinCEN regulations may apply to persons who use the DApp to conduct certain financial activities. For example, if an investor or an owner/operator uses or deploys the DApp to engage in money transmission denominated in CVC, then the investor or the owner/operator generally qualifies as a money transmitter under the BSA. Likewise, as mentioned above, if the developer of the DApp uses or deploys the DApp to engage in money transmission, then the developer will also qualify as a money transmitter.

5.3. Status of Creators of CVC and Distributed Applications Conducting CVC Transactions

The creators of a CVC sometimes issue (or “pre-mine”) a certain number of CVC units in advance and then either distribute those units as payment for goods or services or repayment of obligations (such as amounts owed to project investors), or sell the units against currency, funds or another type of CVC once a market is established. To the extent that a person mines CVC and uses it solely to purchase goods or services on its own behalf, the person is not an MSB under FinCEN regulations, because these activities involve neither acceptance nor transmission of the CVC within the regulatory definition of money transmission services. However, if a person mines CVC and uses it to engage in money transmission, such person will be subject to FinCEN’s registration, reporting, monitoring, and recordkeeping regulations for MSBs, as is the case with all money transmitters.⁸⁶

85. See [FIN-2014-R007](#), “Application of Money Services Business Regulations to the Rental of Computer Systems for Mining Virtual Currency,” Apr. 29, 2014.

86. See [FIN-2014-R001](#), “Application of FinCEN’s Regulations to Virtual Currency Mining Operations,” Jan. 30, 2014.

5.4. CVC Money Transmission Performed by Mining Pools and Cloud Miners

In certain cases, persons (pool members) combine their computer processing resources to form a mining pool to enhance their chances of receiving a reward by being the first ones to verify the authenticity of a block of transactions denominated in CVC. A block reward would entitle them to receive consistent payouts, which are fees paid by the parties to a transaction for the service of authenticating its individual CVC transmission. Mining pools may be managed by a controlling person (centralized mining pools) or they may operate on a P2P basis (decentralized mining pools). In some centralized models, the person acting as the leader of the pool claims the total amount of CVC mined or received as fees from participants to the authenticated transactions. The leader then distributes this amount to the pool members in subsequent transfers, presumably in proportion to the computer processing provided, minus its own fee for managing the pool. In other centralized models, such as cloud mining, persons (contract purchasers) may purchase “mining contracts” from a seller of computer processing (the cloud miner) that grants these purchasers permission to use the cloud miner’s computers to mine CVCs on the purchaser’s behalf.

When the leader of the pool, the cloud miner, or the unincorporated organization or software agency acting on behalf of its owner/administrator transfer CVC to the pool members or contract purchasers to distribute the amount earned, this distribution does not qualify as money transmission under the BSA, as these transfers are integral to the provision of services (the authentication of blocks of transactions through the combined efforts of a group of providers, or through the equipment of the cloud miner). However, if the leader, the cloud miner, or the software agency combine their managing and renting services with the service of hosting CVC wallets on behalf of the pool members or contract purchasers, the leader, cloud miner, unincorporated organization or software agency, or the owner-administrator will fall under FinCEN’s definition of money transmitter for engaging in account-based money transmission.

6. Available Resources

FinCEN expects that persons introducing innovative products or services to a highly regulated activity, such as money transmission, will ensure that the innovation complies with the regulatory framework applicable to such activity before the innovation is taken to market. Persons interested in determining whether a certain new activity or variation on an existing activity may subject them to FinCEN’s regulatory requirements have several options for obtaining preliminary, general guidance or definitive regulatory interpretation.

Financial institutions with questions about this guidance, other guidance, administrative rulings or other matters related to compliance with the BSA and its implementing regulations may contact FinCEN's Resource Center Helpline at (800) 949-2732 or FRC@fincen.gov.

Persons requiring general information about the risk assessment, risk mitigation, recordkeeping, reporting, and transaction monitoring requirements applicable to money services businesses may consult the [outreach material](#), including examiners' expectations about compliance contained in the [Bank Secrecy Act / Anti-Money Laundering Examination Manual for Money Services Businesses](#) (Dec. 2008).

For examples of previous interpretations on the application of FinCEN regulations to specific sets of facts and circumstances, interested persons may review the collection of [guidance](#) and [administrative rulings](#).

Finally, in circumstances where neither the general and interpretive material available at FinCEN's public website, nor the information provided by FinCEN's Resource Center staff is sufficient to address the particulars of a situation, interested persons or their legal representatives may request FinCEN to provide individual guidance or an administrative ruling, by following the [Requirements for Requesting an Administrative Ruling](#).⁸⁷

87. See also 31 CFR §§ 1010.710 - 1010.717.

FINCEN GUIDANCE

For convenience, the following chart contains a list of guidance and administrative rulings referencing CVC:

Number	Title
<u>FIN-2013-G001</u>	Guidance on the Application of FinCEN’s Regulations to Persons Administering, Exchanging, or Using Virtual Currencies (Mar. 18, 2013) <u>https://www.fincen.gov/sites/default/files/shared/FIN-2013-G001.pdf</u>
<u>FIN-2014-R001</u>	Application of FinCEN’s Regulations to Virtual Currency Mining Operations (Jan. 30, 2014) <u>https://www.fincen.gov/sites/default/files/shared/FIN-2014-R001.pdf</u>
<u>FIN-2014-R002</u>	Application of FinCEN’s Regulations to Virtual Currency Software Development and Certain Investment Activity (Jan. 30, 2014) <u>https://www.fincen.gov/sites/default/files/shared/FIN-2014-R002.pdf</u>
<u>FIN-2014-R007</u>	Application of Money Services Business regulations to the rental of Computer Systems for Mining Virtual Currency (Apr. 29, 2014) <u>https://www.fincen.gov/sites/default/files/administrative_ruling/FIN-2014-R007.pdf</u>
<u>FIN-2014-R011</u>	Request for Administrative Ruling on the Application of FinCEN’s Regulations to a Virtual Currency Trading Platform (Oct. 27, 2014) <u>https://www.fincen.gov/sites/default/files/administrative_ruling/FIN-2014-R011.pdf</u>
<u>FIN-2014-R012</u>	Request for Administrative Ruling on the Application of FinCEN’s Regulations to a Virtual Currency Payment System (Oct. 27, 2014) <u>https://www.fincen.gov/sites/default/files/administrative_ruling/FIN-2014-R012.pdf</u>
<u>FIN-2015-R001</u>	Application of FinCEN’s Regulations to Persons Issuing Physical or Digital Negotiable Certificates of Ownership of Precious Metals (Aug. 14, 2015) <u>https://www.fincen.gov/sites/default/files/administrative_ruling/FIN-2015-R001.pdf</u>