



Financial Services & Products ADVISORY ■

MARCH 14, 2019

There's Nothing Virtual About Pennsylvania's Definition of Money

The Pennsylvania Department of Banking and Securities issued [guidance](#) earlier this year that makes clear that virtual currencies are not “money” for purposes of Pennsylvania’s Money Transmitter Act (MTA). Further, the licensing requirement contained in Section 2 of the MTA does not apply to operators of many virtual-currency exchange platforms, as well as many virtual-currency kiosks, ATMs, and vending machines.¹ The department issued the guidance to allow virtual-currency exchange operators to determine for themselves whether or not their business activities require licensure under the MTA because the department does not intend to respond to requests for guidance on the applicability of the commonwealth’s money transmission licensing requirements to virtual-currency businesses on a case-by-case basis.

As a threshold matter, the guidance discusses whether or not virtual currencies, “including Bitcoin,” fit within the definition of “money” under the MTA. The MTA defines money as “currency or legal tender or any other product that is generally recognized as a medium of exchange,” and other areas of Pennsylvania law define money as “[l]awful money of the United States” and “[a] medium of exchange currently authorized or adopted by a domestic or foreign government.” As a result, the department concluded that only fiat currency, or currency issued by the U.S. government, constitutes money under the MTA and that virtual currencies do not fit within the scope of that term.

The guidance goes on to consider the applicability of the licensing requirement in Section 2 of the MTA to entities engaging in virtual-currency transactions. In the guidance, the department expressly stated that the licensing requirement applies only to those who “engage in the business of transmitting money ... for a fee or other consideration with or on behalf of an individual.” The department confirmed that this includes only those entities that transfer fiat currency with or on behalf of an individual to a third party for a fee, so the virtual-currency aspect of an exchange operator’s business will not, on its own, subject it to licensure under the MTA.

The department also analyzed what it means to “transmit” money and concluded that many virtual-currency exchange operators merely facilitate transactions involving the exchange of fiat currency for virtual currency, rather than engage in money transmission by “directly handling” fiat currency. As a result, the guidance

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explained that, even if a virtual-currency exchange operator conducts transactions involving fiat currency, the department does not interpret the typical business activities of operators of virtual-currency exchange platforms to require them to be licensed under the MTA.

Operators of virtual-currency businesses in Pennsylvania benefit from the guidance under both Pennsylvania law and federal law. It is a federal crime under 18 U.S.C. § 1960 to operate as an unlicensed money transmitter business, which is defined in part as a business “operated without an appropriate money transmitting license in a State where such operation is punishable as a misdemeanor or a felony under State law, whether or not the defendant knew that the operation was required to be licensed or that the operation was so punishable.” Thus, the guidance provides such entities with a level of comfort that they are not engaging in unlicensed activity in Pennsylvania that may turn into federal violations under 18 U.S.C. § 1960.

Although the guidance provides reasonable clarity for the department’s position, industry participants should note that the treatment of virtual-currency exchange platforms, kiosks, ATMs, vending machines, and other persons engaging in virtual-currency transactions under other state money transmission licensing regimes is often confusing and fractured. We believe that this patchwork state-by-state regulatory landscape will continue for some time. Each state regulator will determine, in its own time, if virtual-currency transactions in its state will require licensure as a money transmitter. Accordingly, before operating a virtual-currency exchange business in any state, a company should consult with counsel to determine if each state’s laws, regulations, and formal and informal regulator guidance require it to be licensed as a money transmitter in that state.

¹ “No person shall engage in the business of transmitting money by means of a transmittal instrument for a fee or other consideration with or on behalf of an individual without first having obtained a license from the [department].” See 7 P.S. § 6102.

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Blake Estes
212.210.9415
blake.estes@alston.com

Lisa Lanham
212.210.9527
lisa.lanham@alston.com

ALSTON & BIRD

WWW.ALSTON.COM

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ATLANTA: One Atlantic Center ■ 1201 West Peachtree Street ■ Atlanta, Georgia, USA, 30309-3424 ■ 404.881.7000 ■ Fax: 404.881.7777
BEIJING: Hanwei Plaza West Wing ■ Suite 21B2 ■ No. 7 Guanghua Road ■ Chaoyang District ■ Beijing, 100004 CN ■ +86 10 8592 7500
BRUSSELS: Level 20 Bastion Tower ■ Place du Champ de Mars ■ B-1050 Brussels, BE ■ +32 2 550 3700 ■ Fax: +32 2 550 3719
CHARLOTTE: Bank of America Plaza ■ 101 South Tryon Street ■ Suite 4000 ■ Charlotte, North Carolina, USA, 28280-4000 ■ 704.444.1000 ■ Fax: 704.444.1111
DALLAS: Chase Tower ■ 2200 Ross Ave. ■ Suite 2300 ■ Dallas, Texas, USA, 75201 ■ 214.922.3400 ■ Fax: 214.922.3899
LOS ANGELES: 333 South Hope Street ■ 16th Floor ■ Los Angeles, California, USA, 90071-3004 ■ 213.576.1000 ■ Fax: 213.576.1100
NEW YORK: 90 Park Avenue ■ 15th Floor ■ New York, New York, USA, 10016-1387 ■ 212.210.9400 ■ Fax: 212.210.9444
RALEIGH: 555 Fayetteville Street ■ Suite 600 ■ Raleigh, NC 27601-3034 ■ 919.862.2200 ■ Fax: 919.862-2200
SAN FRANCISCO: 560 Mission Street ■ Suite 2100 ■ San Francisco, California, USA, 94105-0912 ■ 415.243.1000 ■ Fax: 415.243.1001
SILICON VALLEY: 1950 University Avenue ■ 5th Floor ■ East Palo Alto, California, USA, 94303-2282 ■ 650-838-2000 ■ Fax: 650.838.2001
WASHINGTON, DC: The Atlantic Building ■ 950 F Street, NW ■ Washington, DC, USA, 20004-1404 ■ 202.239.3300 ■ Fax: 202.239.3333