



## Department of the Treasury Financial Crimes Enforcement Network

### **FIN-2014-R001**

**Issued: January 30, 2014**

**Subject: Application of FinCEN's Regulations to Virtual Currency Mining Operations**

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Dear [ ]:

This responds to your letter of June 1, 2013, seeking an administrative ruling from the Financial Crimes Enforcement Network ("FinCEN") on behalf of [the Company], about [the Company]'s possible status as a money services business ("MSB") under the Bank Secrecy Act ("BSA"). Specifically, you ask whether certain ways of disposing of the Bitcoins mined by [the Company] would make [the Company] a money transmitter under the BSA.

You state that [the Company] mines Bitcoins. You further state that the Bitcoins that [the Company] has mined have not yet been used or transferred, but that [the Company] may decide to use this virtual currency to purchase goods or services, convert the virtual currency into currency of legal tender and use the currency to purchase goods and services, or transfer the virtual currency to the owner of the company. You ask in your letter whether any of these transactions would make [the Company] a money transmitter under the BSA.

On July 21, 2011, FinCEN published a Final Rule amending definitions and other regulations relating to MSBs (the "Rule").<sup>1</sup> The amended regulations define an MSB as "a person wherever located doing business, whether or not on a regular basis or as an organized business concern, wholly or in substantial part within the United States, in one or more of the capacities listed in paragraphs (ff)(1) through (ff)(6) of this section. This includes but is not limited to maintenance of any agent, agency, branch, or office within the United States."<sup>2</sup>

BSA regulations, as amended, define the term "money transmitter" to include a person that provides money transmission services, or any other person engaged in the transfer of funds. The term "money transmission services" means the acceptance of currency, funds, or other value that substitutes for currency from one person *and* the transmission of currency, funds, or other value that substitutes for currency to another location or person by any means.<sup>3</sup> The regulations also stipulate that whether a person is a money transmitter is a matter of facts and circumstances, and identifies circumstances under which a person's activities would not make such person a money transmitter.<sup>4</sup>

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<sup>1</sup> Bank Secrecy Act Regulations – Definitions and Other Regulations Relating to Money Services Businesses, 76 FR 43585 (July 21, 2011).

<sup>2</sup> 31 CFR § 1010.100(ff).

<sup>3</sup> 31 CFR § 1010.100(ff)(5)(i)(A) and (B).

<sup>4</sup> 31 CFR § 1010.100(ff)(5)(ii).

On March 18, 2013, FinCEN issued guidance on the application of FinCEN's regulations to transactions in virtual currencies (the "guidance").<sup>5</sup> FinCEN's regulations define currency (also referred to as "real" currency) as "the coin and paper money of the United States or of any other country that [i] is designated as legal tender and that [ii] circulates and [iii] is customarily used and accepted as a medium of exchange in the country of issuance."<sup>6</sup> In contrast to real currency, "virtual" currency is a medium of exchange that operates like a currency in some environments, but does not have all the attributes of real currency. In particular, virtual currency does not have legal tender status in any jurisdiction. The guidance addresses "convertible" virtual currency. This type of virtual currency either has an equivalent value in real currency, or acts as a substitute for real currency.

For purposes of the guidance, FinCEN refers to the participants in generic virtual currency arrangements, using the terms "exchanger," "administrator," and "user." An *exchanger* is a person engaged as a business in the exchange of virtual currency for real currency, funds, or other virtual currency. 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. A *user* is a person that obtains virtual currency to purchase goods or services on the user's own behalf.

The guidance makes clear that an administrator or exchanger of convertible virtual currencies that (1) accepts and transmits a convertible virtual currency or (2) buys or sells convertible virtual currency in exchange for currency of legal tender or another convertible virtual currency for any reason (including when intermediating between a user and a seller of goods or services the user is purchasing on the user's behalf) is a money transmitter under FinCEN's regulations, unless a limitation to or exemption from the definition applies to the person.<sup>7</sup> The guidance also makes clear that "a user who obtains convertible virtual currency and uses it to purchase real or virtual goods or services is **not** an MSB under FinCEN's regulations." FinCEN understands your letter to amount to a request to elaborate on this last statement in the specific context of a user that obtains the convertible virtual currency Bitcoin by mining.

How a user obtains a virtual currency may be described using any number of other terms, such as "earning," "harvesting," "mining," "creating," "auto-generating," "manufacturing," or "purchasing," depending on the details of the specific virtual currency model involved. The label applied to a particular process of obtaining a virtual currency is not material to the legal characterization under the BSA of the process or of the person engaging in the process to send that virtual currency or its equivalent value to any other person or place. What is material to the conclusion that a person is not an MSB is not the mechanism by which a person obtains the convertible virtual currency, but what the person uses the convertible virtual currency for, and for whose benefit.

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<sup>5</sup> FIN-2013-G001, "Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies," March 18, 2013.

<sup>6</sup> 31 CFR § 1010.100(m).

<sup>7</sup> The definition of "money transmitter" in FinCEN's regulations defines six sets of circumstances – variously referred to as limitations or exemptions – under which a person is not a money transmitter, despite accepting and transmitting currency, funds, or value that substitutes for currency. 31 CFR § 1010.100(ff)(5)(ii)(A)-(F).

FinCEN understands that Bitcoin mining imposes no obligations on a Bitcoin user to send mined Bitcoin to any other person or place for the benefit of another. Instead, the user is free to use the mined virtual currency or its equivalent for the user's own purposes, such as to purchase real or virtual goods and services for the user's own use. To the extent that a user mines Bitcoin and uses the Bitcoin solely for the user's own purposes and not for the benefit of another, the user is *not* an MSB under FinCEN's regulations, because these activities involve neither "acceptance" nor "transmission" of the convertible virtual currency and are not the transmission of funds within the meaning of the Rule. This is the case whether the user mining and using the Bitcoin is an individual or a corporation, and whether the user is purchasing goods or services for the user's own use, paying debts previously incurred in the ordinary course of business, or (in the case of a corporate user) making distributions to shareholders. Activities that, in and of themselves, do not constitute accepting and transmitting currency, funds or the value of funds, are activities that do not fit within the definition of "money transmission services" and therefore are not subject to FinCEN's registration, reporting, and recordkeeping regulations for MSBs.<sup>8</sup>

From time to time, as your letter has indicated, it may be necessary for a user to convert Bitcoin that it has mined into a real currency or another convertible virtual currency, either because the seller of the goods or services the user wishes to purchase will not accept Bitcoin, or because the user wishes to diversify currency holdings in anticipation of future needs or for the user's own investment purposes. In undertaking such a conversion transaction, the user is not acting as an exchanger, notwithstanding the fact that the user is accepting a real currency or another convertible virtual currency and transmitting Bitcoin, so long as the user is undertaking the transaction solely for the user's own purposes and not as a business service performed for the benefit of another. A user's conversion of Bitcoin into a real currency or another convertible virtual currency, therefore, does not in and of itself make the user a money transmitter.<sup>9</sup>

FinCEN therefore concludes that, under the facts you have provided, [the Company] would be a user of Bitcoin, and not an MSB, to the extent that it uses Bitcoin it has mined: (a) to pay for the purchase of goods or services, pay debts it has previously incurred (including debts to its owner(s)), or make distributions to owners; or (b) to purchase real currency or another convertible virtual currency, so long as the real currency or other convertible virtual currency is used solely in order to make payments (as set forth above) or for [the Company]'s own investment purposes. Any transfers to third parties at the behest of sellers, creditors, owners, or counterparties involved in these transactions should be closely scrutinized, as they may constitute money transmission. (See footnotes 8 and 9 above.) And of course, should [the

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<sup>8</sup> However, a user wishing to purchase goods or services with Bitcoin it has mined, which pays the Bitcoin to a third party at the direction of a seller or creditor, may be engaged in money transmission. A number of older FinCEN administrative rulings, although not directly on point because they interpret an older version of the regulatory definition of MSBs, discuss situations involving persons that would have been exempted from MSB status, but for their payments to third parties not involved in the original transaction. See FIN-2008-R004 (Whether a Foreign Exchange Consultant is a Currency Dealer or Exchanger or Money Transmitter - 05/09/2008); 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 - 05/09/2008); FIN-2008-R002 (Whether a Foreign Exchange Dealer is a Currency Dealer or Exchanger or Money Transmitter - 05/09/2008).

<sup>9</sup> As noted in footnote 8 above, however, a user engaging in such a transaction, which pays the Bitcoin to a third party at the direction of the counterparty, may be engaged in money transmission.

Company] engage in any other activity constituting acceptance and transmission of either currency of legal tender or virtual currency, it may be engaged in money transmission activities that would be subject to the requirements of the BSA.

This ruling is provided in accordance with the procedures set forth at 31 CFR Part 1010 Subpart G. In arriving at the conclusions in this administrative ruling, we have relied upon the accuracy and completeness of the representations you made in your communications with us. Nothing precludes FinCEN from arriving at a different conclusion or from taking other action should circumstances change or should any of the information you have provided prove inaccurate or incomplete. We reserve the right, after redacting your name and address, and similar identifying information for your clients, to publish this letter as guidance to financial institutions in accordance with our regulations.<sup>10</sup> You have fourteen days from the date of this letter to identify any other information you believe should be redacted and the legal basis for redaction.

If you have questions about this ruling, please contact FinCEN's regulatory helpline at (703) 905-3591.

Sincerely,

//signed//

Jamal El-Hindi  
Associate Director  
Policy Division

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<sup>10</sup> 31 CFR §§ 1010.711-717.