

CSBS POLICY ON STATE VIRTUAL CURRENCY REGULATION
December 16, 2014

Policy Statement

The Conference of State Bank Supervisors (“CSBS”) formed the CSBS Emerging Payments Task Force (“Task Force”) to examine the intersection between state supervision and payments developments, and to identify areas for consistent regulatory approaches among states. This effort included an assessment of virtual currency activities and outreach with a broad range of stakeholders. After engagement with industry participants, state and federal regulators, and other stakeholders, CSBS recommends that activities involving third party control of virtual currency, including for the purposes of transmitting, exchanging, holding, or otherwise controlling virtual currency, should be subject to state licensure and supervision.

For the purposes of this Policy Statement, virtual currencies are digital representations of value that can be a medium of exchange, a unit of account, and/or a store of value. Virtual currencies include, but are not limited to digital currencies and crypto-currencies such as Bitcoin. Virtual currencies have legitimate purposes and can be purchased, sold, and exchanged for goods or services or with other types of virtual currencies or with sovereign-issued legal tender such as the U.S. dollar. Virtual currencies may be centralized or de-centralized, convertible or non-convertible.

State regulators have determined that certain virtual currency activities raise concerns in the areas of consumer protection, marketplace stability, and law enforcement.

Consumer Protection. While virtual currencies and virtual currency business activities continue to evolve, many virtual currency services are clearly focused on consumer financial services. Such virtual currency service providers are in a position of trust with the consumer, which creates a public interest to ensure activities are performed as advertised with appropriate minimum standards to minimize risk to consumers.

Market Stability. Emerging virtual currency-based financial services are, in part, a response to consumer demands and consumer needs that may not be well met by existing payment systems. At the same time, virtual currency activities are not conducted in a vacuum; these activities connect to a variety of payment systems and market participants.

State regulators recognize the public interest in allowing these technologies to develop in a purposeful manner, providing clarity and certainty for implementation, and ensuring the stability of the larger financial marketplace. State banking and financial regulators have a responsibility for the overall health and strength of financial markets



within their states. This responsibility includes articulating the rules of the road for businesses seeking to deploy new financial services that may not readily fit within existing statutory, regulatory, and/or supervisory regimes.

Law Enforcement. CSBS and its members agree it is imperative that financial services technologies are safe for consumers and transparent to law enforcement.

Unfortunately, virtual currency, like other payments methods, has been a means for conducting illegal activity.¹ To support virtual currency innovation, regulation must be applied to ensure that new products promote commerce without subverting law enforcement and anti-money laundering objectives.

Licensing and supervision serve as a mechanism for protecting consumers, ensuring system stability, safeguarding market development, and assisting law enforcement.

Activities-Based Regulation

In the area of virtual currencies, state regulators are focused on a regulatory structure based on the activities performed by one party on behalf of another. This approach is intentionally technology-neutral and centers on licensable activities. For financial services, these activities-based regulations already exist in most state laws, generally covering the transmitting, exchanging, and/or holding of value on behalf of another. Such financial transactions or services place the activity provider in a position of trust. This position of trust is the basis for most financial services laws and regulations, and should be applied regardless of the medium of value.

Covered Activities

In the case of virtual currencies, licensing and supervision requirements should apply to entities engaged in the following virtual currency activities on behalf of another:

- Transmission
- Exchanging:
 - Sovereign currency for virtual currency or virtual currency for sovereign currency
 - Virtual currency for virtual currency
- Services that facilitate the third-party exchange, storage, and/or transmission of virtual currency (e.g. wallets, vaults, kiosks, merchant-acquirers, and payment processors).

¹ See, e.g. Virtual Currencies, Emerging Regulatory, Law Enforcement, and Consumer Protection Challenges, Government Accountability Office report to the Committee on Homeland Security and Governmental Affairs, U.S. Senate, GAO-14-496 (May 2014). Available at <http://www.gao.gov/assets/670/663677.pdf>.



Policy Implementation

States can apply activities-based regulations to virtual currency service providers through various means, including with laws and/or regulations written explicitly for virtual currency activities, or by interpreting or amending existing laws and regulations – for example, banking or other financial services laws – to include virtual currency in existing licensing schemes.

States choosing to apply existing activity-based laws to virtual currency activities may have to determine, as a threshold issue, that certain virtual currency activities may trigger elements of money transmitter licensing requirements. For example, the Uniform Money Services Act (“UMSA”) defines “money transmission” as “selling or issuing payment instruments, stored value, or receiving money or monetary value for transmission.”² In certain circumstances, this definition may provide some guidance. The terms “money” or “currency” typically implicate government backing and widespread adoption. “Monetary value” means “a medium of exchange, whether or not redeemable in money.”³ The term expands on the traditional concepts of money or currency to include units of value – including virtual currencies – that are not “money” in the traditional sense but that serve as a medium of exchange.

While state approaches to effecting regulation of virtual currency activities may differ, CSBS and its members recognize the value of consistency and clarity for regulators and regulated entities alike. CSBS and its members are committed to supporting state efforts at consistent and uniform regulation including through model regulatory requirements and the drafting of uniform regulatory and/or statutory provisions.

Exclusions

Virtual currency activities outside of the covered activities described above are not covered by the policy statement or by the regulatory requirements discussed in this document. In particular, this policy statement is not intended to cover the merchants and consumers who use virtual currencies solely for the purchase or sale of goods or services. Further, the policy statement is not intended to cover activities that are not financial in nature but utilize technologies similar to those used by digital currency. For example, a cryptography-based distributed ledger system for non-financial recordkeeping would be outside the scope of this policy.

² Section 102(14), Uniform Money Services Act (“UMSA”), National Conference of Commissioners on Uniform State Laws (Last Revised 2004) (*emphasis added*). Available at http://www.uniformlaws.org/shared/docs/money%20services/umsa_final04.pdf. The Uniform Money Services Act was drafted to account for “the advent of the Internet,” noting that “it is possible to exchange value that is not ‘money’ in the traditional sense.” Prefatory Note D, UMSA.

³ Section 102(11), UMSA.