

QUESTIONS FOR PUBLIC COMMENT

1. Policy Implementation – Entities engaged in virtual currency activities might not be engaged in traditional money transmitter activities involving only fiat, government-backed currencies. Similarly, traditional money transmitters might not be engaged in virtual currency activities.

a. Within the umbrella of state money transmitter regimes, how can state regulators appropriately tailor licensing and supervision to each set of licensees?

(1). While some money transmitters may have business models exclusive of either fiat money transmission or virtual currency money transmission, licensing may not always require a different set of licensing rules or policies. There may be components of security that might be scrutinized in finer detail; however, the basic licensing components would stay the same.

(2). Supervision of virtual currency money transmitters will require development of an individualized examination module that would address weaknesses in virtual currency money transmission, including the type and efficacy of fragmentation of the private key, cold storage effectiveness, cyber risks, recordkeeping on both the public ledger and the company's own books (both the fiat currency transactions and virtual currency transactions).

b. In order to properly tailor licensing and regulatory regimes to virtual currency activities, should states consider a virtual currency-specific “amendment” or “endorsement” to a traditional money transmitter license?

States could certainly add such an amendment to a traditional money transmitter license; however, in those states that already have definitions broad enough to include licensure of virtual currency money transmitters, an amendment or endorsement may confuse the general public and applicants.

2. Licensing Process –

a. Though states largely have the same licensing requirements, there is not a common implementation process. Please comment on the functionality of the NMLS or other licensing systems.

The Department uses the NMLS for other licensee types, and money transmitter companies are free to use the NMLS as their method to apply for licensure. The NMLS enables applicants to use a uniform method of applying, and the notifications sent between the licensee applicant and the regulatory agency are efficient and effective.

b. Would a common application and guide to licensure enhance the efficiency of the licensing system?

Yes, a common application and guide to licensure will enhance the efficiency of the licensing system. However, the system will need to be easily tailored (as in the mortgage licensing system) to address each state's unique licensing requirements or jurisdictional requirements.

c. Obtaining required criminal background checks has been flagged as an administrative challenge in the licensing process. What procedures can states uniformly adopt to facilitate obtaining criminal background checks as part of the licensing process?

States already use the Federal Bureau of Investigation background checks or a state's own police record database. The inclusion of instructions to obtain electronic finger prints will help facilitate this process.

d. Credentialing business entity key personnel can be a hands-on process, but has proved indispensable for financial services licensing. Are there alternative means of credentialing that may facilitate the process?

This Department credentials business entity key personnel through background investigations.

3. Training and Education – Educating regulators about virtual currency business activities and business models is an important part of building a responsive and robust regulatory structure.

a. What education may be necessary for state regulators to aid in the licensing process?

Review of the IT components of virtual currency would be helpful to examiners and licensing personnel alike, so they know what to look for and review in the application process. A general and specific overview of virtual currency business models, and how different virtual currency systems work, would be extremely helpful to key personnel who oversee licensure.

b. What resources are available to explain technology and business models across the virtual currency industry?

Presentations by different federal and state agencies are two resources. Additionally, review of news articles regarding particular virtual currency companies and business model trends appear to help regulators navigate the complicated world of virtual currency. This department also used online videos and training to help educate examinations and licensing staff.

4. Technological Innovations – What changes and innovations have been seen and/or can be anticipated in the technological aspects of virtual currencies and the resulting marketplace?

Bitcoin ATM (vending) machines are increasing in popularity and number across this state. Retailers are now using virtual currency (bitcoin) as a payment method both in store and online. Virtual currency may begin to be used as salaries by employers (beginning in the internet industry).

5. Denomination of Capital, Permissible Investments, and Bond Coverage – Capital, permissible investments, and surety bond requirements exist to create financial security in the event of failed transactions or a failed business. For financial services companies dealing in virtual currencies, should these safety funds be denominated in the applicable virtual currency or in dollars?

Part of the volatility of virtual currency, like bitcoin, is that it is not government-recognized currency and increases or decreases rapidly based not only on market demand but on other factors, as well. It essentially is inconsistently valued. Therefore, surety bonds should be held in U.S. Dollars (fiat currency) to absolutely secure the particular licensee's activities in the event of any failed transactions or revocation or other administrative action.

6. Distressed or Failed Companies – Certain requirements in the Draft Framework are designed to provide regulators with tools for dealing with distressed or failed companies. Please comment on the practical issues and challenges facing regulators in the case of a distressed or failed company. What other tools should regulators have for resolving a failed virtual currency company, minimizing a consumer harm and market impact?

The company should have sufficient liquid assets (in addition to any surety bond) to cover any potential consumer harm and market impact. This may mean a continual review of each licensee's assets, liabilities and liquidity.

Regulators need to ensure they have sufficient statutory authority regarding bankruptcies and receiverships to handle failed or distressed companies in order to minimize consumer harm and market impact. Regulators need the authority to remove principals and company board members if needed to resolve any failing company so that consumer harm is minimized.

7. Consumer Protections – What consumer remedies should policy makers consider for virtual financial currency activities and transactions?

Currently, the Department does not require or mandate consumer restitution for unlicensed money transmitter activity. The Department does require money transmitter entities to make consumers whole when funds are lost in transmission through no fault of the consumer.

Therefore, the same policy should be required of virtual currency companies. The Department would not regulate the worth of the currency per se but rather the amount of the transaction.

- 8. State Insurance or Trust Funds – Some states have laws that create a trust or insurance fund for the benefit of instrument holders (i.e., holders of checks, money orders, drafts, etc.) in the event that a licensed money transmitter defaults on its obligations or is otherwise unable to make payment on the instrument. Is it appropriate to allow holders of instruments denominated in virtual currency access to such insurance or trust funds?**

The Department has no comment as it does not require such insurance or trust funds.

- 9. BSA/AML – Fraud and illicit activities monitoring are increasingly technology based and proprietary, especially for virtual currency companies. Are state and federal exam procedures current with regards to new methods of detecting BSA/AML activity?**

Our state requires compliance with federal BSA/AML laws and regulations. The exam procedures would be consistent with those exam modules for BSA/AML compliance.

- 10. Customer Identification – The Draft Framework includes maintaining records on the identification of virtual currency owners. Credentialing consumers for identification purposes can be accomplished to varying degrees, from basic account information to verified personal identification. What is the appropriate level of identification?**

The level of consumer identification may need to be more in virtual currency than that of traditional money transmission because many of the virtual currency business models rely on third-party exchanger business models, which promote anonymous transactions.

- 11. Regulatory Flexibility – The Draft Framework stresses regulatory flexibility to accommodate different activity levels and business models and to avoid inhibiting innovation.**

- a. Given the rapidly evolving nature of virtual currencies, what should be the nature of any necessary flexibility?**

Regulators should not maintain jurisdiction over virtual currency transactions that are not money transmissions. This maintains and promotes innovation without inhibiting the governmental jurisdiction over certain aspects of the technology itself.

- b. How can laws and regulations be written to strike a balance between setting clear rules of the road and providing regulatory flexibility?**

Some states already have enough flexibility in the definitions of money, money transmitter, monetary value, payment instrument and stored value to allow for flexibility in definitions

and jurisdiction. No one statute will be able to clearly define for every state a rule of the road that addresses such innovation in technology used as currency.

12. Reporting Requirements – Most states require money transmitter licensees to submit periodic reports of business activities.

a. For licensed virtual currency companies, what types of information and data should be included in periodic reports?

Periodic reports should include sufficient information that would allow a regulator to review and analyze trends in business for that company. Further, data sets should include as much information about the transaction as possible, from consumer identification (if available) to form of money transmission, amount, date, location and any information on the public ledger block chain.

b. What technology solutions exist to mitigate regulatory reporting requirements?

Automatic databases that can upload and download information and sort transactions can help such reporting requirements and make such reports available quicker to the particular regulator.

13. Technological Solutions to Improve Supervision – State exams and reporting requirements reflect an institution at a point in time. Conversely, operational standards and internal compliance audits increasingly offer the opportunity for real time data collection, interacting with transmission data to ensure adequate funding, anti-money laundering compliance, fraud protection, and consumer protection. What technology solutions can regulators and licensees deploy to close information gaps in a manner that makes the supervisory process more efficient and “real time?”

Screen shots and automatic uploads of daily transmissions to a secure site for each regulator or to a centralized repository on a daily or weekly or monthly basis may help make such reporting real time but it may not be efficient because it would create more information for regulators to analyze on a more continual basis.

- 14. Commercial Fund Transfer Liability – Article 4A of the Uniform Commercial Code establishes liability for wire transfers, relying on definitions strictly applicable to banks. Are provisions like those in Article 4A necessary for commercial transfers denominated in virtual currencies? If so, is the Article 4A construct an appropriate model to be adapted in a manner that is not bank-centric.**

Seemingly they would be applicable as the regulators would be treating certain virtual currency transactions as funds transfers (money transmission) and not sale of a product.

A funds transfer model (whether it be the UCC or any other specific statute or regulation) would be a good start to create and adapt a non-bank-centric money transmitter/funds transfer statutory scheme.

- 15. Merchant-Acquirer Activities – Companies processing credit card payments between a buyer's bank and a seller's bank (Merchant-Acquirers) have historically been presumably exempt from money services businesses statutes because of their nexus to the highly regulated banking system. A company processing virtual currency payments for merchants who accept virtual currency as payment for goods and/or services may exchange virtual currency to dollars, which can then be transferred to the merchant's bank account. Is this activity akin to the activities of traditional Merchant-Acquirers, or is it the exchange and subsequent transmission of value that is typically regulated by the states?**

Merchant payment-processing (whether in virtual currency or fiat currency) is considered to be exempt by FinCEN and this Department. However, the subsequent exchange of such virtual currency to dollars would be a business model the Department would need to review to determine whether that subsequent transaction is merely a continuation of the merchant payment processor model or is considered tantamount to money transmission.

- 16. Cost – State regulators are cognizant of the costs associated with licensure and ongoing compliance. What processes can be implemented to reduce these costs, including any shares services or technology-based reporting?**

Regulators do support multi-state reporting efforts and even reports shared with other states help not only reduce the overall costs to licensees but to the Department, as well. The use of multi-state sharing agreement is a process regulators can regularly implement to reduce these costs, share and receive reports from other jurisdictions and use secure websites to exchange such information.

- 17. Escheatment – How should virtual currency be treated under state escheatment laws?**

The problem of escheatment with virtual currency lies not with the process itself but rather, the volatility thereof and the creation of the block chain. State treasurers would need to obtain wallets to enable receipt of such virtual currency or the state would need to implement a statutory scheme to require a company to first exchange the virtual currency into the dollar worth at the time and then escheat the fiat currency to the state treasurer.