COLORADO
Department of Regulatory Agencies
Division of Banking

Interim Regulatory Guidance
Cryptocurrency and the Colorado Money Transmitters Act
Issued: *September 20, 2018*

I. Purpose

This guidance outlines the Division of Banking's interpretation of the Colorado Money Transmitters Act (the "Act") as it relates to whether a person[1]or organization engaged in the business of buying, selling and/or facilitating the transfer of cryptocurrency within the state is required to be licensed as a money transmitter under Colorado law. Further, this document clarifies the definition of "money transmission" under the Act, and provides guidance as to the types of cryptocurrency transactions that fall within the scope of that definition.

This guidance does not amend the Act and is subject to change and/or withdrawal by the State Bank Commissioner or the State Banking Board. In addition, the Colorado guidance does not address applicable regulations, rules, or other guidance promulgated by the Financial Crimes Enforcement Network or other state regulators. Further, the Division cannot provide legal or business advice.

II. Background

A. Colorado Money Transmitters Act

The Act is a licensing statute, requiring persons engaged in the business of money transmission to obtain a license from the State Banking Board[2].

The Act has been interpreted in accordance with the stated legislative directive, as follows:

> *It is declared to be the policy of this state that checks, drafts, money orders, or other instruments for the transmission or payment of credit or money are widely used by the people of this state as a process of settling accounts or debts and that sellers and issuers of the instruments receive, in the aggregate, large sums of money from the people of this state and it is therefore imperative that the integrity, experience, and financial responsibility and reliability of those engaged in the various types of businesses dealing in such instruments be above reproach. In order that the people of this state may be safeguarded from default in the payment of these instruments, it is necessary that proper*

[1] A "person" means any natural person, firm, association, partnership, registered limited liability partnership, syndicate, joint stock company, unincorporated company or association, limited liability company, common law trust, or any corporation organized under the laws of the United States or of any state or territory of the United States or of any foreign country. § 11-110-103(14), C.R.S.

[2] § 11-110-105, C.R.S.

regulatory authority be established through the banking board. Any person who sells or issues such instruments without complying with the provisions of Article 110 endangers the public interest[3].

The Act seeks to protect consumers from defaults in the payments made through the transmission of money by requiring money transmitters to either post a surety bond or escrow securities[4]. The Act also sets forth application criteria for persons seeking licensure[5].

Further, the Act defines "money transmission" to mean:

> *The sale or issuance of exchange or engaging in the business of receiving money for transmission or transmitting money within the United States or to locations abroad by any and all means including but not limited to payment instrument, wire, facsimile, or electronic transfer*[6].

This definition identifies two actions that would constitute the practice of money transmission: (1) the sale or issuance of exchange, or (2) engaging in the business of receiving money for transmission or transmitting money within the United States or to locations abroad by any and all means. Thus, engaging in either of those actions would require a person to be licensed under the Act by the State Banking Board.

B. Cryptocurrencies

Cryptocurrencies, also referred to as virtual currencies, represent a means by which to electronically exchange value peer-to-peer. Cryptocurrency is a digital asset that is not recognized as legal tender; however, it may be used as a medium of exchange, a unit of account or a store of value, depending on its level of technological sophistication. Well-known cryptocurrencies such as Bitcoin, have been used as a medium of exchange based on widespread trading on secondary markets.

Markets for cryptocurrencies can be divided into two main categories: centralized and decentralized exchanges. Broadly speaking, the primary difference is that the former requires the user to surrender control of his or her cryptocurrency to a third party in order to place trades on the third party's platform, while the latter does not. At present, the exchanges with the highest average daily trading volume are centralized.

Generally, an exchange that offers fiat[7]-to crypto trading allows its users the ability to link their bank accounts in order to fund their exchange accounts with fiat currency via automated clearing house or wire transfer, which they can then use to purchase cryptocurrencies. Likewise,

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[3] § 11-110-102, C.R.S.

[4] § 11-110-108, C.R.S.

[5] § 11-110-107, C.R.S.

[6] § 11-110-103(11), C.R.S.

[7] For purposes of this guidance, fiat currency references legal tender issued and backed by a government

a user wishing to liquidate his or her cryptocurrency holdings may sell them in exchange for fiat currency. In this way, these exchanges serve as digital on-ramps and off-ramps that allow users to move between fiat currency on the one hand and cryptocurrencies on the other.

Each of these exchanges allow for users to transfer cryptocurrency to any cryptocurrency wallet address within or outside of a particular trading exchange. Needing only the wallet address, a user can electronically transfer the cryptocurrency to another wallet.

III. Actions Requiring Licensure under the Act

A. Sale or Issuance of Exchange under the Act

The first action that would require licensure under the Act is the sale or issuance of "exchange."

The term "exchange" means any check, draft, money order, or other instrument for the transmission or payment of money or credit. It does not mean money or currency of any nation[8]. The terms check,[9] draft,[10] and money order[11] are well defined in statute, and constitute traditional instruments for the transmission or payment of money.

The term "other instrument for the transmission or payment of money or credit" is interpreted to include instruments with similar qualities as checks, drafts, and money orders. Those instruments would be limited to negotiable instruments ordering the payment of a fixed amount of money, payable to bearer or order on demand, or at a definite time.

With respect to a person in the business of buying, selling or facilitating the transfer of cryptocurrencies for transmission or payment, a license would not be required since the person is not engaged in the sale or issuance of a negotiable instrument, and therefore not engaged in money transmission.

B. Receiving Money for Transmission or Transmitting Money Within the United States or to Locations Abroad under the Act

The second action for which licensure under the Act would be required is:

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[8] § 11-110-103(5), C.R.S.

[9] A "check" means (i) a draft, other than a documentary draft, payable on demand and drawn on a bank, (ii) a cashier's check or teller's check, or (iii) a demand draft. An instrument may be a check even though it is described on its face by another term, such as "money order." § 4-3-104((f), C.R.S.

[10] A "draft" is a negotiable instrument that is an unconditional written order signed by the drawer directing another person to pay a certain sum of money on demand or at a definite time to a third person. § 4-3-104(a) and (e), C.R.S.

[11] A "money order" is a negotiable draft issued by an authorized entity to a purchaser, in lieu of a check, to be used to pay a debt or otherwise transmit funds upon the credit of the issuer. *Black's Law Dictionary,* 9th Ed. (2011).

> *engaging in the business of receiving money for transmission or transmitting money within the United States or to locations abroad by any and all means including but not limited to payment instrument, wire, facsimile, or electronic transfer*[12].

If a person is engaged in the business of transmitting money from one consumer to another within an exchange through the medium of cryptocurrency, that act would constitute money transmission and would be subject to licensure under the Colorado law.

IV. Conclusion

The Money Transmitters Act aims to regulate the transmission of money, meaning legal tender, and as noted, cryptocurrencies are not recognized as legal tender.

The direct transmission of cryptocurrency between two consumers is not subject to licensure under the Act.

With respect to transactions that involve a third party, the complete absence of fiat currency from a transmission from one consumer to another is not money transmission.

Conversely, the presence of fiat currency during a transmission *may* be subject to licensure under the Act.

State licensure would be required when:

- A person is engaged in the business of selling and buying cryptocurrencies for fiat currency; and
- A Colorado customer can transfer cryptocurrency to another customer within the exchange; and
- The exchange has the ability to transfer fiat currency through the medium of cryptocurrency.

If the person's business model has the ability to transfer fiat currency through the medium of cryptocurrency, the Division of Banking should be contacted at (303) 894-7575. The Division will individually analyze the entire course of a transmission to determine if licensure is required under the Money Transmitters Act, which is required before money transmission is conducted.

[12] § 11-110-103(11), C.R.S.