



Date: 8/20/2021

To: Virtual Currency Industry Participants

From: Minnesota Department of Commerce – Financial Institutions Division

RE: Guidance on the Minnesota Money Transmitters Act and Virtual Currency

Whether a virtual currency exchange business engages in money transmission is fact dependent and the Department reviews applications for licensure on a case by case basis. Due to the increasing number of questions from the industry, the Minnesota Department of Commerce is publishing this guidance to address some of the questions about whether virtual currency exchange businesses must be licensed under the Minnesota Money Transmitters Act.

Under the Minnesota Money Transmitters Act (MMTA), any person, including both individuals and business entities, engaged in the business of money transmission must obtain a license from the Department of Commerce. Minn. Stat. § 53B.02. The business of “money transmission” is defined as “selling or issuing payment instruments 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.” Minn. Stat. § 53B.03, subd. 13. This guidance addresses the application of the MMTA’s licensing requirements to persons in the business of selling virtual currency, facilitating virtual currency exchanges, and operating virtual currency kiosks.

Virtual currency, also referred to as cryptocurrency, is an electronic medium of exchange that does not have all the attributes of real, fiat currency.¹ Virtual currencies are often decentralized, meaning they are not controlled by authorities including financial institutions or foreign or domestic

¹ [FinCEN Guidance, FIN-2019-G001, May 9, 2019](#)

governments. Virtual currencies may represent an equivalent value in fiat currency but are not legal tender and are not backed by fiat currency. Because virtual currencies' value in fiat currency fluctuates based on market demands, some virtual currencies may be converted to and from fiat currency through exchanges. Some better-known examples of such currency are Bitcoin, Ethereum, and Litecoin. Exchanges involving these convertible virtual currencies (CVCs) may subject an operator to MMTA licensing requirements.

Pursuant to the MMTA, a "payment instrument" includes "any electronic or written check, draft, money order, travelers check, or other electronic or written instrument or order for the transmission or payment of money, sold or issued to one or more persons, whether or not the instrument is negotiable." Minn. Stat. § 53B.03, subd. 15. Selling or exchanging virtual currency for other types of virtual currency generally does not constitute "selling or issuing payment instruments" because virtual currency is not a "payment instrument." Minn. Stat. § 53B.03, subd. 13. Importantly, only fiat currency – not virtual currency – is considered "money" for the purposes of the MMTA. Money transmitters must comply with the MMTA if they "receiv[e] money for transmission or transmi[t] money." Minn. Stat. § 53B.03, subd. 13. Therefore, whether the Department of Commerce will require a license for transmitters of virtual currency depends on whether and how fiat currency is involved in the transactions.

Exchanges likely requiring licensure

Certain virtual currency transactions involving fiat currency may subject operators to the licensing requirements of the MMTA. Persons operating businesses which receive a customer's fiat currency to facilitate an exchange for virtual currency by making that money available to a third-party seller of virtual currency are likely engaged in money transmission. Therefore, the following activities may subject an operator to licensing requirements under the MMTA:

- Facilitating transactions as an intermediary by receiving money for transmission from the customer and transmitting money to the seller of virtual currency when the terms of the sale have been satisfied;
- Facilitating transactions by first receiving a customer's fiat currency and then returning to the market to make a purchase of virtual currency in a separate transaction to fulfil the customer's purchase of virtual currency, and;
- Operating virtual currency kiosks which facilitate transactions between customers and third-party sellers as intermediaries using exchanges described above.

Exchanges likely not requiring licensure

Based on current Minnesota law, as discussed above, the following activities are less likely to require an operator to obtain a license pursuant to the MMTA:

- Transactions between two parties in which one uses fiat currency to purchase virtual currency immediately available from the seller;
- Transactions involving only virtual currencies, including those facilitated by an intermediary business if no fiat currency is present in the exchange;
- Receiving virtual currency in exchange for goods or services, and;
- Virtual currency kiosks which only allow exchanges between two parties in which the operator is selling out of its own stock of virtual currency.

Conclusion

This guidance does not constitute legal advice and has been published for the benefit of those persons engaged in the business of virtual currency exchange. This guidance is limited to the sole question of whether a business may require a money transmitter license under Minnesota law. The Department of Commerce continues to review license applications on a case by case basis, with a focus on the relationship between the virtual currency and fiat currency in the transaction. Virtual currency businesses engaged in money transmission must comply with the provisions of the Minnesota Money Transmitters Act under Minnesota Statutes chapter 53B.

Please note that any communication with the Department outside of a pending license application may be considered public information under the Minnesota Government Data Practices Act, Minnesota Statutes, chapter 13 (MGDPA). To the extent that any communication includes information that an industry participant considers to be nonpublic, please cite in advance to the relevant parts of the MGDPA in order to request that such information be considered nonpublic under Minnesota law.