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## On the Road to Legitimacy? Regulators Appear Ready to “Maximize the Good” of Virtual Currency

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Supporters of Bitcoin and other virtual currencies will be heartened by the generally positive discussions that took place at two Senate committee hearings earlier this week, in which both regulators and senators signaled that forthcoming regulation should not aim to stifle this emerging technology. Rather, panelists from government and industry generally, though not unanimously, expressed a desire for targeted regulations that aim to combat only the illicit uses of virtual currency, and senators seemed in no rush to take legislative action.

The two hearings, by the Senate Homeland Security and Governmental Affairs Committee on November 17 and the Senate Banking Committee on November 18, each focused on various federal regulators’ planned response to the quick rise of virtual currency, especially Bitcoin. US government officials dominated several of the panels, including Financial Crimes Enforcement Network (FinCEN) Director Jennifer Shasky Calvery (who appeared at both hearings), along with representatives from the Department of Justice, Secret Service, and state banking agencies. Their message was mostly consistent: virtual currencies such as Bitcoin raise concerns due to their somewhat anonymous nature, and they have been and remain vulnerable to illicit activity, but they also have legitimate, beneficial uses.

Rather than call for additional legislation, regulators stressed that they already had the tools to regulate virtual currencies effectively, pointing to the successful shutdowns of the online black market Silk Road, and illicit centralized virtual payments system [Liberty Reserve](#).

Instead of additional legislative measures, regulators called for a focus on international cooperation measures to eliminate any loopholes or safe havens in the international market. For example, one DOJ panelist noted that the UK's National Crime Agency had recently joined the Virtual Currency Emerging Threats Working Group (VCET), founded by the FBI in 2012.

Virtual currency industry representatives generally were eager to comply with existing federal regulation, particularly those instituted by FinCEN, in an effort to bring legitimacy and stability to the virtual currency industry. They were less eager, but still willing, to comply with state licensing requirements, noting that differing standards were often burdensome. Industry panelists even went so far as to request further guidance to help “de-chill” the current relationship between virtual businesses and brick-and-mortar banks. Together with the regulatory panelists, industry representatives appeared to form a loose consensus around limited, “smart” regulation, a view summed up by Homeland Security and Governmental Affairs Committee Chair Senator Tom Carper (D-Del.) as “Minimize the Bad, Maximize the Good.”

Despite generally positive treatment, this week's hearings revealed some looming regulatory risks for Bitcoin and other virtual currencies. *First*, FinCEN did not take a position on the nature of virtual currency itself—observing that it could be a commodity, a security, an Internet portal or simply a value storage device. Classifying virtual currency as anything other

than currency might impose significant restrictions on how these currencies are created and traded. *Second*, panelists and senators noted that taxation of virtual currency remains an unresolved issue that should be addressed promptly by the IRS, but the timing of IRS guidance was uncertain. And *third*, one panelist representing the larger financial services industry called for more comprehensive regulation of virtual currency, noting that regulators often actively involve themselves in innovative financial products such as prepaid cards or electronic payment systems, and virtual currency should be treated similarly.

Much regulatory uncertainty remains for Bitcoin and other virtual currencies, but this week's hearings went far in establishing a federal government view that these technologies represent innovation that should be given the opportunity to flourish, rather than simply a threat. The challenge lies in finding a balance between over-regulating and stifling business, and under-regulating and allowing criminals to use virtual currency in illicit schemes. As Director Shasky put it, "we need smart regulation."

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