
Virtual Currency and AML Regulation: Who's In and Who's Out?

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On March 18, 2013, the US Treasury Department's FinCEN issued guidance clarifying the applicability of Bank Secrecy Act regulations to virtual currencies. Virtual currencies are an expanding form of financial activity and are generally a form of digital money, issued and controlled by their developers, and used and accepted among the members of a specific virtual community. They can substitute for real currency, but they do not have all the same properties as real currency. The guidance covers "users," "administrators," and "exchangers" of virtual currency.

A "user" of virtual currency is a person that obtains virtual currency to purchase goods or services and a "user" **is not** a Money Services Business (MSB) under FinCEN's regulations. However, an "administrator" or "exchanger" of virtual currency **is** an MSB (specifically, a money transmitter) under FinCEN's regulations. The guidance defines an "exchanger" as a person engaged as a business in the exchange of virtual currency for real currency, funds or other virtual currency. An "administrator" is a person engaged as a business in issuing (putting into circulation) a virtual currency, and who has the authority to redeem (to withdraw from circulation) such virtual currency. As MSBs, they must register with FinCEN and carry out their anti-money laundering (AML) program and reporting obligations.

FinCEN further clarified that an "administrator" or "exchanger" is not a provider or seller of prepaid access, or a dealer in foreign exchange under its regulations.

Currency vs. Virtual Currency

FinCEN's regulations define currency (also referred to as "real" currency) as the coin and paper money of the United States or of any other country that:

- is designated as legal tender;
- circulates; and
- is customarily used and accepted as a medium of exchange in the country of issuance.

In contrast to real currency, virtual currency is a medium of exchange that operates like a currency in

some environments, but does not have all the attributes of real currency. In particular, virtual currency does not have legal tender status in any jurisdiction. This guidance addresses "convertible" virtual currency, which has an equivalent value in real currency, or acts as a substitute for real currency. FinCEN describes and assesses three types of convertible virtual currency that have emerged in recent years:

- e-currency/e-precious metals;
- centralized virtual currencies; and
- de-centralized virtual currencies.

WilmerHale has extensive experience in AML compliance and enforcement, including new payment methods. We have substantial experience helping institutions address ongoing governmental compliance expectations as well as enforcement issues. Please contact us with any questions you may have on FinCEN's new guidance. The full text is available [here](#).