

Money Transmitter Act Guidance for Virtual Currency Businesses

The Pennsylvania Department of Banking and Securities (“DoBS”) has received multiple inquiries from entities engaged in various forms of virtual currency exchanges. As the DoBS will not be responding to these requests for guidance on a case-by-case basis, the DoBS is providing the following guidance on the applicability of the Money Transmission Business Licensing Law, otherwise known as the Money Transmitter Act (“MTA”), to virtual currency exchanges.

What Constitutes “Money” Under the MTA?

The MTA defines “money” as “currency or legal tender or any other product that is generally recognized as a medium of exchange.” Additionally, Pennsylvania law has defined money as “[l]awful money of the United States” and “[a] medium of exchange currently authorized or adopted by a domestic or foreign government.” See 1 Pa. C.S. §1991; see also 13 Pa. C.S. §1201(b)(24). Thus, only fiat currency, or currency issued by the United States government, is “money” in Pennsylvania. Virtual currency, including Bitcoin, is not considered “money” under the MTA. To date, no jurisdiction in the United States has designated virtual currency as legal tender.

When Is a Money Transmitter License Required Under the MTA?

Section 2 of the MTA provides that “[n]o person shall engage in the business of transmitting money by means of a transmittal instrument for a fee or other consideration with or on behalf of an individual without first having obtained a license from the [DoBS].” 7 P.S. §6102. A “person” as defined in the MTA “includes an individual or an organization...” Id. at 6101(1). Although the “business of transmitting” is not defined in the MTA, the plain meaning of the word “transmit” is to “send or transfer from one person or place to another.” See BLACK’S LAW DICTIONARY, 1499 (6th ed. 1990); 1 Pa. C.S. §1903(a). Thus, in order to “transmit” money under the MTA, fiat currency must be transferred with or on behalf of an individual to a 3rd party, and the money transmitter must charge a fee for the transmission.

Virtual Currency Trading Platforms

Several of the entities requesting guidance on the applicability of the MTA are web-based virtual currency exchange platforms (“Platforms”). Typically, these Platforms facilitate the purchase or sale of virtual currencies in exchange for fiat currency or other virtual currencies, and many Platforms permit buyers and sellers of virtual currencies to make offers to buy and/or sell virtual currencies from other users. These Platforms never directly handle fiat currency; any fiat currency paid by or to a user is maintained in a bank account in the Platform’s name at a depository institution.

Under the MTA, these Platforms are not money transmitters. The Platforms, while never directly handling fiat currency, transact virtual currency settlements for the users and facilitate the change in ownership of virtual currencies for the users. There is no transferring money from a user to another user or 3rd party, and the Platform is not engaged in the business of providing payment services or money transfer services.

Virtual Currency Kiosks, ATMs, and Vending Machines

Similarly, entities operating virtual currency kiosks, ATMs, and vending machines (“Kiosks”) have also sought direction from the DoBS as to whether these entities would be “money transmitters” under the MTA. Some Kiosks are one-way systems which, for a transaction fee, dispense virtual currency in exchange for fiat currency, while others are two-way systems which, for a transaction fee, exchange

both fiat currency for virtual currency and virtual currency for fiat currency. In both the one-way and two-way Kiosk systems, there is no transfer of money to any third party. The user of the Kiosk merely exchanges fiat currency for virtual currency and vice versa, and there is no money transmission. Thus, the entities operating the Kiosks would not be money transmitters under the MTA.