

Virtual Currency & Beyond

Acronyms, Abbreviations and Key Definitions

A

ACH — Automated clearing house.

Administrators — FinCEN’s VC Guidance defines this term to mean “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” and “[a]n administrator ... that (1) accepts and transmits a convertible virtual currency or (2) buys or sells convertible virtual currency for any reason is a money transmitter under FinCEN’s regulations, unless a limitation to or exemption from the definition applies to the person.”

AG — Federal or State Office of the Attorney General.

Altcoin — Cryptocurrencies that are alternatives to Bitcoin (examples include: Litecoin, Namecoin, Feathercoin, Dogecoin, Ripple)

AML — Anti-money laundering.

AML program — The BSA Regulations require each MSB to develop, implement, and maintain an effective written AML program that is reasonably designed to prevent the MSB from being used to facilitate money laundering and the financing of terrorist activities. 31 C.F.R. § 1022.210(a), (c). The AML program must “be commensurate with the risks posed by the location and size of, and the nature and volume of the financial services provided by, the

[MSB].” 31 C.F.R. § 1022.210(b). “At a minimum, the [AML] program shall: (1) Incorporate policies, procedures, and internal controls reasonably designed to assure compliance with [31 C.F.R. Ch. X]. (i) Policies, procedures, and internal controls developed and implemented under this section shall include provisions for complying with the requirements of [31 C.F.R. Ch. X] including, to the extent applicable to the money services business, requirements for: (A) Verifying customer identification; (B) Filing reports; (C) Creating and retaining records; and (D) Responding to law enforcement requests. (ii) Money services businesses that have automated data processing systems should integrate their compliance procedures with such systems. (iii) A person that is a money services business solely because it is an agent for another money services business as set forth in [31 C.F.R. § 1022.380(a)(2)], and the money services business for which it serves as agent, may by agreement allocate between them responsibility for development of policies, procedures, and internal controls required by this paragraph (d)(1). Each money services business shall remain solely responsible for implementation of the requirements set forth in this section, and nothing in [31 C.F.R. § 1022.210(d)(1)] relieves any money services business from its obligation to establish and maintain an effective anti-money laundering program. (2) designate a person to assure day to day compliance with the program and [31 C.F.R. Ch. X]. The responsibilities of such person shall include assuring that: (i) The money services business properly files reports, and creates and retains

records, in accordance with applicable requirements of [31 C.F.R. Ch. X]; (ii) The compliance program is updated as necessary to reflect current requirements of [31 C.F.R. Ch. X], and related guidance issued by the Department of the Treasury; and (iii) The money services business provides appropriate training and education in accordance with [31 C.F.R. § 1022.210(d)(3)]. (3) Provide education and/or training of appropriate personnel concerning their responsibilities under the program, including training in the detection of suspicious transactions to the extent that the money services business is required to report such transactions under [31 C.F.R. Ch. X]. (4) Provide for independent review to monitor and maintain an adequate program. The scope and frequency of the review shall be commensurate with the risk of the financial services provided by the money services business. Such review may be conducted by an officer or employee of the money services business so long as the reviewer is not the person designated in [31 C.F.R. § 1022.210(d)(2)].” 31 C.F.R. § 1022.210(d).

Any means — FinCEN’s regulations define this term to included, but not be limited to, “through a financial agency or institution; a Federal Reserve Bank or other facility of one or more Federal Reserve Banks, the Board of Governors of the Federal Reserve System, or both; an electronic funds transfer network; or an informal value transfer system.” 31 C.F.R. § 1010.100(ff)(5)(i)(A).

Attorney General — FinCEN’s regulations define this term to mean the Attorney General of the United States. 31 C.F.R. § 1010.100(c). Each state also has an attorney general.

B

Bank Secrecy Act — The Currency and Foreign Transactions Reporting Act, its amendments, and the other statutes relating to the subject matter of that Act, have come to be referred to as the Bank Secrecy Act. These statutes are codified at 12 U.S.C. 1829b, 12 U.S.C. 1951-1959, 18 U.S.C. 1956, 18 U.S.C. 1957, 18 U.S.C. 1960, and 31 U.S.C. 5311-5314 and 5316-5332 and notes thereto.

Bank Secrecy Act Advisory Group — This refers to the group comprised of high-level representatives from financial institutions, federal law enforcement agencies, regulatory authorities, and others from the private and public sectors that meet twice a year to discuss issues relating to the administration of the BSA and to make policy recommendations to the Secretary of the Treasury.

Bitcoin Exchange — An entity that facilitates the exchange of Bitcoin for U.S. dollars or other fiat currency, and visa versa. (examples include: Bitstamp, BTC, Coinbase, etc).

Blockchain — a public ledger of all transactions using the Bitcoin protocol

BSA — Bank Secrecy Act.

BSAAG — Bank Secrecy Act Advisory Group.

BSA Regulations — Bank Secrecy Act Regulations, 31 C.F.R. ch. X. These regulations implement the BSA.

C

CARD Act — This term refers to the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit Card Act) signed into law on May 22, 2009. Section 401 of the Card Act amends the EFTA and imposes certain restrictions on a person’s ability to impose dormancy, inactivity, or service fees with respect to gift certificates, store gift cards, and general-use prepaid cards. In addition, the Card Act generally prohibits the sale or issuance of such products if they are subject to an expiration date earlier than five years from the date of issuance of a gift certificate or the date on which funds were last loaded to a store gift card or general-use prepaid card.

Centralized VC — This term refers to VC that has a centralized repository and a single administrator. Liberty Reserve is an example of a centralized VC.

CFPB — U.S. Consumer Financial Protection Bureau.

CFR — U.S. Code of Federal Regulations.

CFTC — Commodity Futures Trading Commission.

Civil Penalty — The BSA Regulations governing civil penalties for violations of the BSA Regulations are set forth in 31 C.F.R. § 1010.820. By way of example only, the Secretary of the Treasury may assess civil penalties on any person and any of its directors, officers, or employees who willfully participate in any negligent or willful violation of any reporting, recordkeeping, or other requirements mandated by the BSA Regulations. *Id.*

Closed-loop prepaid card — This term refers to prepaid cards generally accepted or honored at a single merchant or a group of affiliated merchants (such as a chain of book stores or clothing retailers) as payment for goods or services. They are typically issued by a merchant, or by a card program sponsor or service provider working with a merchant, and not by a financial institution. For merchant-issuers, gift cards have largely replaced paper-based gift certificates as a more cost-effective and efficient means of facilitating gift-giving by consumers. Most closed-loop prepaid cards do not expire. All states' gift card laws apply to these cards.

Closed-loop prepaid access — FinCEN's regulations define this term to mean "[p]repaid access to funds or the value of funds that can be used only for goods or services in transactions involving a defined merchant or location (or set of locations), such as a specific retailer or retail chain, a college campus, or a subway system." 31 C.F.R. § 1010.100(kkk).

Commodity Futures Trading Commission — An independent U.S. federal agency established by the Commodity Futures Trading Commission Act of 1974. The Commodity Futures Trading Commission regulates the commodity futures and options markets. Its goals include the promotion of competitive and efficient futures markets and the protection of investors against manipulation, abusive trade practices and fraud.

Consumer Financial Protection Bureau — The CFPB is an independent federal agency that

holds primary responsibility for regulating consumer protection with regard to financial products and services in the U.S. It was created in 2011 after its conception was included as part of Dodd-Frank. Congress established the CFPB to protect consumers by carrying out federal consumer financial laws. Among other things, it writes rules, supervises companies, and enforces federal consumer financial protection laws, restricts unfair, deceptive, or abusive acts or practices, takes consumer complaint, promote financial educations, researches consumer behavior, monitors financial markets for new risks to consumers, and enforces laws that outlaw discrimination and other unfair treatment in consumer finance.

Convertible VC — Convertible virtual currency.

Convertible virtual currency — According to FinCEN's VC Guidance, this term refers to "virtual currency [that] either has an equivalent value in real currency, or acts as a substitute for real currency."

Criminal penalty — The BSA Regulations governing criminal penalties for violations of the BSA Regulations are set forth in 31 C.F.R. § 1010.840.

Cryptocurrency — This term refers to VC that relies on cryptographic software protocols to generate the currency and validate transactions. Bitcoin is also known as cryptocurrency.

CTR — Currency transaction report.

Currency — FinCEN's regulations define this term to mean "the coin and paper money of the United States or of any other country that [i] is designated as legal tender and that [ii] circulates and [iii] is customarily used and accepted as a medium of exchange in the country of issuance." 31 CFR § 1010.100(m). It also includes "official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country." *Id.*

Currency Transaction Report — This term refers to the report Federal law requires financial institutions to file for currency (cash or coin) transactions over \$10,000 conducted by, or on behalf of, one person, as well as multiple

currency transactions that aggregate to be over \$10,000 in a single day. See 31 C.F.R. § 103.22.

CyFin Initiative — This term refers to the initiative to bring industry, law enforcement, and academia together to share information addressing cyber threats aimed at the financial services industry.

D

Decentralized VC — This term refers to VC that has no central repository and no single administrator. Its value is electronically transmitted between parties without an intermediary. Bitcoin is an example of decentralized VC.

Delta Team — This term is also known as the BSAAG. The purpose of the Delta Team is for industry, regulators, and law enforcement to come together and examine the space between compliance risks and illicit financing risks with the goal of reducing the variance between the two. This team meets twice a year.

Department of Commerce — The DOC promotes job creation, economic growth, sustainable development and improved standards of living for all Americans by working in partnership with businesses, universities, communities and our nation's workers. To drive U.S. competitiveness in the global marketplace, the DOC works to strengthen the international economic position of the U.S. and facilitates global trade by opening up new markets for U.S. goods and services. The DOC promotes progressive business policies that help America's businesses and entrepreneurs and their communities grow and succeed. The DOC also provides management and monitoring of U.S.'s resources and assets to support both environmental and economic health.

Department of Homeland Security — The DHS is designed to consolidate U.S. defenses against terrorist attack and to better coordinate counterterrorism intelligence. The DHS is designed to absorb several federal agencies dealing with domestic defense, including the Coast Guard, the Border Patrol, the Customs Service, the Immigration and Naturalization

Service, the Secret Service, and the Transportation Security Administration (which was created after September 11 to oversee airline security). Its responsibilities include exploring ways to respond to terror attacks and working to better coordinate intelligence about terrorist threats. The DHS is also expected to implement much of the National Strategy for Homeland Security, the domestic security plan unveiled by President Bush in July 2002.

Department of Justice — The DOJ is the U.S. federal executive department responsible for the enforcement of the law and administration of justice, equivalent to the justice or interior ministries of other countries.

Department of the Treasury — The DOT is the executive agency responsible for promoting economic prosperity and ensuring the financial security of the U.S. The DOT is responsible for a wide range of activities such as advising the President on economic and financial issues, encouraging sustainable economic growth, and fostering improved governance in financial institutions. The DOT operates and maintains systems that are critical to the nation's financial infrastructure, such as the production of coin and currency, the disbursement of payments to the American public, revenue collection, and the borrowing of funds necessary to run the federal government. The DOT works with other federal agencies, foreign governments, and international financial institutions to encourage global economic growth, raise standards of living, and to the extent possible, predict and prevent economic and financial crises. The DOT also performs a critical and far-reaching role in enhancing national security by implementing economic sanctions against foreign threats to the U.S., identifying and targeting the financial support networks of national security threats, and improving the DOT safeguards of U.S. financial systems.

DHS — U.S. Department of Homeland Security.

DOC — U.S. Department of Commerce.

Dodd-Frank — The Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, H.R. 4173 (2010).

DOJ — U.S. Department of Justice.

DOT — U.S. Department of the Treasury.

E

EFTA — Electronic Funds Transfer Act, 15 U.S.C. §§ 1693 et seq.

Exchange — This term refers to an entity that facilitates the exchange of VC for U.S. dollars or other currency, and visa versa.

Exchangers — FinCEN’s VC Guidance defines this term to mean “a person engaged as a business in the exchange of virtual currency for real currency, funds, or other virtual currency” and “[a]n ... exchanger that (1) accepts and transmits a convertible virtual currency or (2) buys or sells convertible virtual currency for any reason is a money transmitter under FinCEN’s regulations, unless a limitation to or exemption from the definition applies to the person.”

F

FCC — U.S. Federal Commerce Commission.

FDIC — Federal Deposit Insurance Corporation.

Federal Commerce Commission — The FCC regulates interstate and international communications by radio, television, wire, satellite and cable in all 50 states, the District of Columbia and U.S. territories. An independent U.S. government agency overseen by Congress, the FCC is the U.S.’ primary authority for communications law, regulation and technological innovation. In its work facing economic opportunities and challenges associated with rapidly evolving advances in global communications, the agency capitalizes on its competencies in: (1) Promoting competition, innovation and investment in broadband services and facilities; (2) Supporting the nation’s economy by ensuring an appropriate competitive framework for the unfolding of the communications revolution; (3) Encouraging the highest and best use of spectrum domestically and internationally; (4) Revising media regulations so that new technologies flourish alongside diversity and

localism; and (5) Providing leadership in strengthening the defense of the nation’s communications infrastructure.

Federal Deposit Insurance Corporation — The FDIC preserves and promotes public confidence in the U.S. financial system by insuring deposits in banks and thrift institutions for up to \$250,000 per depositor, per insured bank, for each ownership category by identifying, monitoring and addressing risks to the deposit insurance funds; and by limiting the effect on the economy and the financial system when a bank or thrift institution fails.

Federal functional regulator — FinCEN’s regulations define this term to mean “(1) The Board of Governors of the Federal Reserve System; (2) The Office of the Comptroller of the Currency; (3) The Board of Directors of the Federal Deposit Insurance Corporation; (4) The Office of Thrift Supervision; (5) The National Credit Union Administration; (6) The Securities and Exchange Commission; or (7) The Commodity Futures Trading Commission.” 31 C.F.R. § 1010.100(r).

Federal Reserve Board — Board of Governors of the Federal Reserve System. The Federal Reserve Board is the main governing body of the Federal Reserve System. It is charged with overseeing the Federal Reserve Banks and with helping implement monetary policy of the U.S. Governors are appointed by the President of the United States and confirmed by the Senate for staggered 14-year terms.

Federal Trade Commission — The FTC is a bipartisan federal agency with a unique dual mission to protect consumers and promote competition. The FTC develops policy and research tools through hearings, workshops, and conferences. It collaborates with law enforcement partners across the country and around the world to advance our crucial consumer protection and competition missions. And beyond U.S. borders, it cooperates with international agencies and organizations to protect consumers in the global marketplace.

Fin-2014-R001 — FinCEN’s administrative ruling on the Application of FinCEN’s Regulations to

Virtual Currency Mining Operations, Fin-2014-R001 (Jan. 30, 2014).

Fin-2014-R002 — FinCEN’s administrative ruling on the Application of FinCEN’s Regulations to Virtual Currency Software Development and Certain Investment Activity, Fin-2014-R002 (Jan. 30, 2014).

Final Rule (CARD Act) — The Federal Reserve Board’s Final Rule amending Reg E and implementing statutory requirements set forth in the CARD Act. See 75 Fed. Reg. 16580 (March 23, 2010). **Financial Crimes Enforcement Network** — FinCEN’s mission is to safeguard the financial system from illicit use and combat money laundering and promote national security through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities. It carries out its mission by receiving and maintaining financial transactions data; analyzing and disseminating that data for law enforcement purposes; and building global cooperation with counterpart organizations in other countries and with international bodies. FinCEN exercises regulatory functions primarily under the BSA.

Financial Intelligence Group — FinCEN serves as the FIU for the U.S.

FinCEN — Financial Crimes Enforcement Network, a bureau of the Department of the Treasury.

FinCEN’s January 30, 2014 Guidance — Fin-2014-R001 and Fin-2014-R002.

FinCEN’s March 18, 2013 Guidance — FinCEN’s VC Guidance.

FinCEN’s Resource Center Helpline — 1-800-767-2825, and FRC@fincen.gov.

FinCEN’s VC Guidance — FinCEN publication entitled Application of FinCEN’s Regulations to Persons Administering, Exchanging, or Using Virtual Currencies, FIN-2013-G001 (March 18, 2013). See also http://fincen.gov/statutes_regs/guidance/pdf/FIN-2013-G001.pdf. FinCEN issued this guidance under its authority to administer the BSA. See Treasury Order 180-01 (Mar. 24, 2003). FinCEN

explained that “[t]his guidance explains the regulatory treatment under these definitions of persons engaged in virtual currency transactions.”

FIU — Financial Intelligence Group.

Forfeiture of currency or monetary instruments — The BSA Regulations governing forfeiture of currency or monetary instruments for violations of the BSA Regulations are set forth in 31 C.F.R. § 1010.830.

FR — U.S. Federal Register.

FTC — U.S. Federal Trade Commission.

G

Gamification — This is a business strategy which applies game design techniques to non-game experiences to drive user behavior. **Gamblification** — This term refers to the use of gambling like mechanics for non-gambling purposes.

H

I

Internal Revenue Service — This federal agency is responsible for tax collection and tax law enforcement.

IRS — U.S. Internal Revenue Service.

J

K

L

M

Mining — Process by which a person or group solves complex computational problems to create new bitcoins and the process by which Bitcoin transactions are added to the public ledger and confirmed.

Monetary instruments — FinCEN’s regulations define this term to include: “(i) Currency; (ii) Traveler’s checks in any form; (iii) All negotiable instruments (including personal checks, business checks, official bank checks, cashier’s checks, third-party checks, promissory notes (as that term is defined in the Uniform Commercial Code), and money orders) that are either in bearer form, endorsed without restriction, made out to a fictitious payee (for the purposes of §1010.340), or otherwise in such form that title thereto passes upon delivery; (iv) Incomplete instruments (including personal checks, business checks, official bank checks, cashier’s checks, third-party checks, promissory notes (as that term is defined in the Uniform Commercial Code), and money orders) signed but with the payee’s name omitted; and (v) Securities or stock in bearer form or otherwise in such form that title thereto passes upon delivery.” 31 C.F.R. § 1010.100(dd). It does not include “warehouse receipts or bills of lading.” *Id.*

Money transmitter — FinCEN’s regulations define this term as “a person that provides money transmission services, or any other person engaged in the transfer of funds.” 31 C.F.R. § 1010.100(ff)(5)(i). This term does not include: “The term “money transmitter” shall not include a person that only “(A) Provides the delivery, communication, or network access services used by a money transmitter to support money transmission services; (B) Acts as a payment processor to facilitate the purchase of, or payment of a bill for, a good or service through a clearance and settlement system by agreement with the creditor or seller; (C) Operates a clearance and settlement system or otherwise acts as an intermediary solely between BSA regulated institutions. This includes but is not limited to the Fedwire system, electronic funds transfer networks,

certain registered clearing agencies regulated by the [SEC], and derivatives clearing organizations, or other clearinghouse arrangements established by a financial agency or institution; (D) Physically transports currency, other monetary instruments, other commercial paper, or other value that substitutes for currency as a person primarily engaged in such business, such as an armored car, from one person to the same person at another location or to an account belonging to the same person at a financial institution, provided that the person engaged in physical transportation has no more than a custodial interest in the currency, other monetary instruments, other commercial paper, or other value at any point during the transportation; (E) Provides prepaid access; or (F) Accepts and transmits funds only integral to the sale of goods or the provision of services, other than money transmission services, by the person who is accepting and transmitting the funds.” 31 C.F.R. § 1010.100(ff)(5)(ii)(A)-(F).

Money transmission — Under many state money services laws, this term simply means engaging in the business of receiving money for transmission or transmitting money by any means. See, e.g., 205 Ill. Comp. Stat. § 657/5, N.Y. Banking Law, ch. 13-B, § 640(5).

Money transmission services — FinCEN’s regulations define this term as “the acceptance of currency, funds, or other value that substitutes for currency from one person and the transmission of currency, funds, or other value that substitutes for currency to another location or person by any means.” 31 C.F.R. § 1010.100(ff)(5)(i)(A).

Money Services Business — The MSB Rule defines an MSB as “a person wherever located doing business, whether or not on a regular basis or as an organized or licensed business concern, wholly or in substantial part within the United States, in one or more of the capacities listed in paragraphs (ff)(1) through (ff)(7) of [31 CFR § 1010.100(ff)]. This includes but is not limited to maintenance of any agent, agency, branch, or office within the United States.” 31 CFR § 1010.100(ff). This term does not include “(i) A bank or foreign bank; (ii) A person registered with, and functionally regulated or examined by, the SEC or the CFTC, or a foreign

financial agency that engages in financial activities that, if conducted in the United States, would require the foreign financial agency to be registered with the SEC or CFTC; or (iii) A natural person who engages in an activity identified in paragraphs (ff)(1) through (ff)(5) of this section on an infrequent basis and not for gain or profit.” 31 C.F.R. § 1010.100(ff)(8).

MtGox — A particular Bitcoin exchange that allowed users to trade Bitcoins for U.S. dollars and several other currencies.

MTL — Money transmitter laws and regulations. Forty-seven states and the District of Columbia generally impose licensing and other requirements under their money services laws on any entity that engages in money transmission or issues or sells payment instruments, unless the entity or activity qualifies for an exemption.

MSB — Money Services Business.

MSB Rule — Bank Secrecy Act Regulations – Definitions and Other Regulations Relating to Money Services Businesses, 76 Fed. Reg. 43585 (July 21, 2011).

N

National Bank Act — The National Banking Acts of 1863 and 1864 were two U.S. federal banking acts that established a system of national banks for banks, and created the U.S. National Banking System. They encouraged development of a national currency backed by bank holdings of U.S. Treasury securities and established the OCC as part of the DOT and authorized the OCC to examine and regulate nationally chartered banks. The legacy of the Act is its impact on the national banking system as it stands today and its support of a uniform U.S. banking policy. See 12 U.S.C. §§ 21 et seq.

National Credit Union Administration — The NCUA is the independent federal agency that regulates, charters and supervises federal credit unions. With the backing of the full faith and credit of the U.S. Government, the NCUA operates and manages the NCUSIF, insuring the deposits of more than 95 million account

holders in all federal credit unions and the overwhelming majority of state-chartered credit unions.

NBA — National Bank Act.

NCFTA — National Cyber Forensic Training Alliance.

NCUA — U.S. National Credit Union Administration.

NCUSIF — National Credit Union Share Insurance Fund.

O

Obtain VC — According to FinCEN’s VC Guidance, [h]ow a person engages in ‘obtaining’ a virtual currency may be described using any number of other terms, such as ‘earning,’ ‘harvesting,’ ‘mining,’ ‘creating,’ ‘auto-generating,’ ‘manufacturing,’ or ‘purchasing,’ depending on the details of the specific virtual currency model involved.”

OCC — U.S. Office of the Comptroller of the Currency.

OFAC — U.S. Office of Foreign Assets Control, a bureau of the Department of the Treasury.

Office of the Comptroller of the Currency — The OCC’s primary mission is to charter, regulate, and supervise all national banks and federal savings associations. It also supervises the federal branches and agencies of foreign banks. Its goal in supervising banks and federal savings associations is to ensure that they operate in a safe and sound manner and in compliance with laws requiring fair treatment of their customers and fair access to credit and financial products.

Office of Foreign Assets Control — The OFAC administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national

security, foreign policy or economy of the U.S. OFAC acts under Presidential national emergency powers, as well as authority granted by specific legislation, to impose controls on transactions and freeze assets under U.S. jurisdiction. Many of the sanctions are based on United Nations and other international mandates, are multilateral in scope, and involve close cooperation with allied governments.

Office of Thrift Supervision — The OTS was a U.S. States federal agency under the DOT that chartered, supervised, and regulated all federally chartered and state-chartered savings banks and savings and loans associations. It was created in 1989 as a renamed version of another federal agency. Like other U.S. federal bank regulators, it was paid by the banks it regulates. Reform proposals from Henry Paulson, President Barack Obama, and the U.S. Congress proposed to merge the OTS with the OCC. Section 312 of Dodd-Frank mandated merger of OTS with the OCC, the FDIC, the Federal Reserve Board, and the CFPB as of 21 July 2011. The OTS ceased to exist on October 19, 2011.

Open-loop prepaid card — This term refers to prepaid cards that typically carry a card network brand logo (such as Visa, MasterCard, American Express, or Discover). These cards can be used at a wide variety of merchants that accept or honor cards displaying that brand. They generally are issued by financial institutions. Due in part to higher compliance and consumer service costs, these cards are more likely to expire and to be subject to fees compared to closed-loop prepaid cards, including card issuance and transaction-based fees. Many state gift card laws do not apply to open-loop bank-issued prepaid cards.

OTS — Office of Thrift Supervision.

P

Payment instrument — Under many state's money services laws, this term simply means an instrument or order for the transmission or payment of money, including electronic payments. See, e.g., N.Y. Banking Law, ch. 13-B, § 640(5).

Person — FinCEN's regulations define this term to mean "an individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture, or other unincorporated organization or group, an Indian Tribe (as that term is defined in the Indian Gaming Regulatory Act), and all entities cognizable as legal personalities." 31 CFR § 1010.100(mm).

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Prepaid access — FinCEN's regulations define this term to mean "[a]ccess to funds or the value of funds that have been paid in advance and can be retrieved or transferred at some point in the future through an electronic device or vehicle, such as a card, code, electronic serial number, mobile identification number, or personal identification number." 31 C.F.R. § 1010.100(ww).

Prepaid Access Rule — Final Rule – Definitions and Other Regulations Relating to Prepaid Access, 76 Fed. Reg. 45403 (July 29, 2011) (to be codified at 31 C.F.R. parts 1010, 1022).

Prepaid program — FinCEN's regulations define this term to mean "an arrangement under which one or more persons acting together provide(s) prepaid access." 31 C.F.R. § 1010.100(ff)(4)(iii). "[A]n arrangement is not a prepaid program if: (A) It provides closed loop prepaid access to funds not to exceed \$2,000 maximum value that can be associated with a prepaid access device or vehicle on any day; (B) It provides prepaid access solely to funds provided by a Federal, State, local, Territory and Insular Possession, or Tribal government agency; (C) It provides prepaid access solely to funds from pre-tax flexible spending arrangements for health care and dependent care expenses, or from Health Reimbursement Arrangements (as defined in 26 U.S.C. 105(b) and 125) for health care expenses; or (D) (1) It provides prepaid access solely to: (i) Employment benefits, incentives, wages or salaries; or (ii) Funds not to exceed \$1,000 maximum value and from which no more than \$1,000 maximum value can be initially or subsequently loaded, used, or withdrawn on any

day through a device or vehicle; and (2) It does not permit: (i) Funds or value to be transmitted internationally; (ii) Transfers between or among users of prepaid access within a prepaid program; or (iii) Loading additional funds or the value of funds from non-depository sources.” 31 C.F.R. § 1010.100(ff)(4)(iii)(A)-(D).

Provider of prepaid access — FinCEN’s regulations define this term to mean “the participant within a prepaid program that agrees to serve as the principal conduit for access to information from its fellow program participants.” 31 C.F.R. § 1010.100(ff)(4).

Q

R

Real currency — According to FinCEN’s VC Guidance, this term refers to “the coin and paper money of the United States or of any other country that [i] is designated as legal tender and that [ii] circulates and [iii] is customarily used and accepted as a medium of exchange in the country of issuance.” 31 CFR § 1010.100(m).

Reg E — Regulation E.

Regulation E — This term refers to the Board of Governors of the Federal Reserve System’ regulations located at 12 C.F.R. part 205, regulations that implement the EFTA.

S

SAR — Suspicious activity report.

SEC — U.S. Securities Exchange Commission.

Securities Exchange Commission — The mission of the SEC is to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation.

Seller of prepaid access — FinCEN’s regulations define this term to mean “[a]ny person or business that receives funds or the

value of funds in exchange for an initial loading or subsequent loading of prepaid access if that person: (i) [s]ells prepaid access offered under a prepaid program that can be used before verification of customer identification under [Section] 1022.210(d)(1)(iv) [of the BSA Regulations] ; or (ii) [s]ells prepaid access (including closed loop prepaid access) to funds that exceed \$10,000 to any person during any one day, and has not implemented policies and procedures reasonably adapted to prevent such a sale.” 31 C.F.R. § 1010.100(ff)(7).

Social Media & Games Law Blog — This refers to Pillsbury’s legal blog for social media and game law-related topics (<http://www.socialgameslaw.com>).

Stored value — FinCEN’s regulations define this term to mean funds or monetary value represented in digital electronics format (whether or not specially encrypted) and stored or capable of storage on electronic media in such a way as to be retrievable and transferable electronically. 31 C.F.R. § 103.11(vv).

Suspicious Activity Report — A bank is required to file a SAR with the appropriate federal law enforcement agencies and the DOT, in accordance with the form’s instructions, by sending a completed SAR to FinCEN in the circumstances set forth in 12 C.F.R. § 353.3(a)(1)-(4). 12 C.F.R. § 353.3(a). Such circumstances include (1) insider abuse involving any amount; (2) transactions aggregating \$5,000 or more where a suspect can be identified; (3) transactions aggregating \$25,000 or more regardless of potential suspects; or (4) transactions aggregating \$5,000 or more that involve potential money laundering or violations of the BSA.

T

Third-party payment processors — This term refers to bank customers that provide payment-processing services to merchants and other business entities. Traditionally, TPPPS contracted primarily with retailers that had physical locations in order to process the retailers’ transactions. These merchant transactions primarily included credit card

payments but also covered ACH transactions, remotely created checks, and debit and prepaid cards transactions. With the expansion of the Internet, retail borders have been eliminated. TPPPS now provide services to a variety of merchant accounts, including conventional retail and Internet-based establishments, prepaid travel, telemarketers, and Internet gaming enterprises.

TPPS — Third-party processors.

TPPPS — Third-party payment processors.

U

UIGEA — Unlawful Internet Gambling Enforcement Act of 2006, 31 U.S.C. §§ 5361 et seq. The Act prohibits gambling businesses from knowingly accepting payments in connection with the participation of another person in a bet or wager that involves the use of the Internet and that is unlawful under any federal or state law (termed “restricted transactions” in the Act). The Act also requires DOT and the Federal Reserve Board (in consultation with the U.S. AG) to promulgate regulations requiring certain participants in payment systems that could be used for unlawful Internet gambling to have policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit the processing of restricted transactions. These regulations are independent of any other regulatory framework, such as the BSA or consumer protection regulations.

U.S.A. PATRIOT Act — The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law Pub.L. 107–56). It is intended to arm law enforcement with new tools to detect and prevent terrorism.

Users — According to FinCEN’s VC Guidance, this term refers to “a person that obtains virtual currency to purchase goods or services” and “[a] user who obtains convertible virtual currency and uses it to purchase real or virtual goods or services is not an MSB under FinCEN’s regulations. Such activity, in and of itself, does not fit within the definition of

“money transmission services” and therefore is not subject to FinCEN’s registration, reporting, and recordkeeping regulations for MSBs.”

U.S.C. — United States Code.

V

VC — Virtual currency. Not to be confused with venture capitalists who seem to print money these days.

VC Exception in the Final Rule (CARD Act) —

The Final Rule (CARD Act) recognizes that “some certificates or cards can be used to purchase music, media, or virtual goods. Once redeemed by a consumer, the entire balance on the certificate or card is debited from the certificate or card and credited or transferred to another “account” established by the merchant of such goods or services. The consumer can then make purchases of songs, media, or virtual goods from the merchant using that “account” either at the time the value is transferred from the certificate or card or at a later time.” 75 Fed. Reg. at 16621 (Comment 13). It concluded that “[u]nder these circumstances, once the card has been fully redeemed and the “account” credited with the amount of the underlying funds, the five-year minimum expiration term no longer applies to the underlying funds.” Id. “However, if the consumer only partially redeems the value of the certificate or card, the five-year minimum expiration term requirement continues to apply to the funds remaining on the certificate or card.”

Virtual Currency — According to FinCEN’s VC Guidance, this term refers to “a medium of exchange that operates like a currency in some environments, but does not have all the attributes of real currency.”

Virtual Goods — This term refers to “intangible digital items that can be purchased for use in on-line communities or on-line games.” 75 Fed. Reg. at 16607 n.33 (citing Claire Cain Miller & Brad Stone, “Virtual Goods Start Bringing Real Paydays,” *New York Times*, November 7, 2009, at A1).

Virtual Good Account — This refers to “an account established by a merchant to purchase virtual goods.” According to the Final Rule (CARD Act) this sort of account “would not be an account for purposes of Regulation E.” 75 Fed. Reg. at 16607 n.34.

W

Wallet – an application that enables users to conduct Bitcoin transactions and track a user’s balance.

X

Y

Z

Pillsbury’s Social Media & Games Team

Pillsbury’s multidisciplinary Social Media & Games team, the first of its kind, includes over 70 attorneys around the world working at the forefront of emerging business and legal issues relating to virtual currency, virtual goods, video games, gamification, gamblification (social games and gambling) and other social media. The team, which can assist clients with venture capital and private equity funding, mergers and acquisitions, legal and business strategies for virtual goods and currency, intellectual property strategies, implementation and enforcement, preparation of key agreements and policies, including: terms of service agreements; development agreements; DMCA policies, compliance and enforcement; data protection and privacy policies; COPPA policies; and much more, has represented both the largest players in the industry and some of the most promising emerging companies.

Recent publications and presentations, details on upcoming events and additional information about the Social Media & Games Team can be found at www.pillsburylaw.com/socialmedia.

Check out our blog at:
www.SocialGamesLaw.com

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