



SINCE 1902

CONFERENCE OF STATE BANK SUPERVISORS



North American Securities Administrators Association

The Conference of State Bank Supervisors, through its Emerging Payments Task Force, and the North American Securities Administrators Association (NASAA) have released the “Model State Consumer and Investor Guidance on Virtual Currency” that follows. PLEASE NOTE that there are references throughout the virtual currency guidance to “money services businesses” and to “money transmitters”. Money services businesses, which include money transmitters, are regulated by the federal Financial Crimes Enforcement Network (FinCEN). [http://www.fincen.gov/financial\\_institutions/msb/](http://www.fincen.gov/financial_institutions/msb/)

Some states also have their own laws and regulations pertaining to money services businesses and money transmitters. As you review the virtual currency guidance below, please keep in mind that the Montana Division of Banking and Financial Institutions does not license or regulate money services businesses or money transmitters. Therefore, if a dispute arises between participants in virtual currency transactions, the Division is likely not authorized to take action against the alleged wrongdoer or to otherwise assist in the resolution of those disputes.

### **Model State Consumer and Investor Guidance on Virtual Currency April 23, 2014**

The Conference of State Bank Supervisors (CSBS), through its Emerging Payments Task Force, and the North American Securities Administrators Association (NASAA) have developed the following model consumer guidance to assist state regulatory agencies in providing consumers with information about virtual currency and factors consumers should consider when transacting with or investing in virtual currency.

The increased interest in virtual currency and other payments innovations has led to the rapid emergence of different types of currencies and payments mechanisms. As these are released into the marketplace, it is important for consumers and investors to educate themselves with accurate information to make informed decisions about this innovative and evolving industry.

#### **What is Virtual Currency?**

Virtual currency is an electronic medium of exchange that does not have all the attributes of real currencies. Virtual currencies include cryptocurrencies, such as bitcoin and litecoin, which are not legal tender and are not issued or backed by any central bank or governmental authority. Virtual currencies have legitimate purposes and can be purchased, sold, and exchanged with

other types of virtual currencies or real currencies like the U.S. dollar. This can happen through various mechanisms such as exchangers, administrators, or merchants that are willing to accept virtual currencies in lieu of real currency.

### **What Should a Consumer Consider?**

Prior to buying, selling, transacting with, or investing in a virtual currency, consumers should consider the following:

- **Virtual currencies are volatile in value.** Virtual currencies are not backed by a central bank and are highly volatile with the potential for complete loss of value. This may affect investors as well as consumers using virtual currencies as a means of payment. Virtual currency volatility also may make securities offerings tied to these currencies unsuitable for most investors.
- **Virtual currencies can be stolen or otherwise subject to loss.** There is the potential for consumers to incur financial losses if an account is not maintained in a secure manner. Currently, most virtual accounts or “wallets” – unlike funds held in U.S. banks or credit unions – are not insured against loss. There is no way to reverse virtual currency transactions.
- **Virtual currencies have been connected to criminal activities.** Like other forms of payment, virtual currencies and virtual currency exchanges have been used to fund illicit activities. Legitimate customers of virtual currencies may be unable to access accounts if an exchange is shut down as part of a criminal investigation or for any other reason.
- **Virtual currencies and companies dealing in virtual currencies may or may not be regulated.**
  - State and federal regulators are evaluating and developing approaches to regulating virtual currencies and companies that deal in virtual currencies. Any company that offers to exchange, administer, or maintain virtual currencies may be subject to state regulation and licensing as well as federal regulation.
  - An administrator or exchanger that accepts and transmits a convertible virtual currency or buys or sells convertible virtual currency for any reason is a money transmitter under federal regulations<sup>1</sup> and therefore should be registered as a money services business (MSB).

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<sup>1</sup> Convertible virtual currency is virtual currency that either has an equivalent value in real currency or acts as a substitute for real currency. The FinCEN guidance can be located here: [http://fincen.gov/statutes\\_regs/guidance/html/FIN-2013-G001.html](http://fincen.gov/statutes_regs/guidance/html/FIN-2013-G001.html).

- **Virtual currency transactions may be taxable.** For federal tax purposes, the IRS has announced that virtual currency is treated as property. General tax principles applicable to property transactions apply to transactions using virtual currency. This includes determining the fair market value of virtual currency in U.S. dollars as of the date of payment or receipt, as well as any gain or loss incurred. For more information, go to <http://www.irs.gov/uac/Newsroom/IRS-Virtual-Currency-Guidance>.
- **Do your homework.** Consumers considering the use of virtual currencies should research any company offering services related to virtual currencies. This includes exchanges, platforms, administrators, sellers, or ATMs. There are a variety of sources of information available:
  - Consumers should check their state banking regulator’s website and other state agencies’ websites for information about authorized money transmitters. For a comprehensive list of state regulatory agencies, go to: <http://www.csbs.org/about/what/Pages/StateBankingDepartmentLinks.aspx>.
  - Investors should check with their state securities regulator for information about investments involving digital currency. For a complete list of state securities regulators, go to: <http://www.nasaa.org/about-us/contact-us/contact-your-regulator/>.
  - To check if a virtual currency exchanger or administrator is registered with the Financial Crimes Enforcement Network (FinCEN), go to: [http://www.fincen.gov/financial\\_institutions/msb/msbstateselector.html](http://www.fincen.gov/financial_institutions/msb/msbstateselector.html).
  - The NMLS Consumer Access website, [nmlsconsumeraccess.org](http://nmlsconsumeraccess.org), also may be able to assist with determining if an entity is state-licensed.

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**About CSBS.** The Conference of State Bank Supervisors (CSBS) is the nationwide organization of banking regulators from all 50 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands. State banking regulators supervise nearly 5,200 state-chartered financial institutions. Further, most state banking departments also regulate a variety of non-bank financial services providers, including mortgage lenders. For more than a century, CSBS has given state supervisors a national forum to coordinate supervision of their regulated entities and to develop regulatory policy. CSBS also provides training to state banking and financial regulators and represents its members before Congress and the federal financial regulatory agencies.

**About the CSBS Emerging Payments Task Force.** In February of this year, CSBS launched its Emerging Payments Task Force to take a comprehensive look at the changing payments

landscape. The Task Force will seek to identify opportunities for a coordinated state approach to payments issues as well as promote compliance, security and protection for consumers.<sup>2</sup>

**About NASAA.** The North American Securities Administrators Association (NASAA) is the oldest international organization devoted to investor protection. NASAA's membership consists of 67 state, provincial, and territorial securities administrators in the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Canada, and Mexico. In the United States, NASAA is the voice of state securities agencies responsible for efficient capital formation and grass-roots investor protection. For more information, visit [www.nasaa.org](http://www.nasaa.org).

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<sup>2</sup> For more on the CSBS Emerging Payments Task Force, go to <http://www.csbs.org/news/press-releases/pr2014/Pages/pr-022014.aspx>.