

January 4, 2021

Via eRulemaking Portal

Policy Division
Financial Crimes Enforcement Network
P.O. Box 39
Vienna, VA 22183

Re: Comments Regarding the Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets – Docket No. FINCEN-2020-0020; RIN No. 1506-AB47

To whom it may concern:

On behalf of the Electronic Transactions Association (“ETA”), we appreciate the opportunity to share our thoughts on the Department of Treasury’s Financial Crime Enforcement Network (“FinCEN”) on a proposal to require banks and money service businesses (“MSBs”) to submit reports, keep records, and verify the identity of customers in relation to transactions involving convertible virtual currency (“CVC”) or digital assets with legal tender status (“LTDA”) held in self-hosted wallets, or held in wallets hosted in a jurisdiction identified by FinCEN.

ETA supports FinCEN’s ability to gather information that would benefit law enforcement and national security investigations. However, ETA is concerned that extending anti-money laundering (“AML”) regulation to self-hosted wallets would likely lead to greater compliance efforts for covered entities without garnering a substantial return in useful information for law enforcement. MSBs and virtual currency providers would be especially burdened by this rule given the nature of their business models. In addition, FinCEN should be mindful of the chilling effect this proposal could have on consumers, many of whom may not have access to depository accounts and the users who use cryptocurrencies for legitimate purposes, and the burden it could create for small and medium sized businesses that may offer MSB services as an ancillary product.

Who We Are

ETA is the leading trade association for the payments industry, representing over 500 companies that offer electronic transaction processing products and services. ETA’s members include banks, mobile payment service providers, mobile wallet providers, money transmitters and non-bank financial technology companies (“FinTech”) that provide access to credit, primarily to small businesses, either directly or in partnership with other lenders. ETA member companies are creating innovative offerings in financial services, revolutionizing the way commerce is conducted with safe, convenient, and rewarding payment solutions and lending alternatives – facilitating over \$22 trillion in payments in 2019 worldwide.



Comments

Modernizing Anti-Money Laundering Regulations

ETA does support modernizing our AML regime and allowing financial institutions to better assist law enforcement in its efforts to detect and deter financial crimes, including terrorism financing, fraud, and other illicit activity. Except this proposed rule will not help law enforcement do its job.

According to the *2020 Crypto Crime Report*, the percent of all cryptocurrency transaction volume that was illicit in 2017, 2018, and 2019 was 0.7%, 0.4%, and 1.1%, respectively.¹ Additional restrictions on individuals' ability to use self-hosted wallets would not only represent a disproportionate response to the risks posed by the illicit use of digital assets but would also undermine law enforcement's ability to establish attribution in cases involving digital assets by dividing the peer-to-peer and regulated ecosystems.

For criminals and terrorists to launder their funds through the cryptocurrency ecosystem, they must off load their cryptocurrency into a fiat currency. For those bad actors to successfully turn their cryptocurrencies into fiat currencies, they must fool virtual asset service provider's ("VASPs") or find non-compliant VASPs that do not conduct the required AML or know-your-customer due diligence.

For example, at the two exchanges that received the most illicit bitcoin throughout 2019, about 0.2% of accounts that were sent illicit bitcoin received 75% of the total illicit funds sent to exchanges.²

ETA believes the partnership that industry and law enforcement agencies continue to do has been effective and should be further strengthened and supported. Current AML monitoring are effective at achieving the goals of this rule. ETA members are not against AML requirements, but they understand the importance of efficient regulations and rules while maintaining consumer protection and safety and soundness standards. Any guidelines should be sustainable in that it adjusts to changes in the market and technology. This strikes the necessary balance among principles of safety and soundness, consumer protection, innovation, and promoting competition – allowing any new guidelines to be tailored based to the risk profile of the participant.

Privacy Concerns

The coronavirus pandemic has accelerated the use of digital payment options and using cash is in a state of decline. While cash is still used in 26% of transactions³, consumers typically use cash for privacy concerns. It shouldn't be assumed that an individual is conducting illegal or illicit activity when they transact in cash. It is critical that digital payment options, such as self-hosted wallets, represent another avenue for replicating those cash like transactions.

Transactions using self-hosted wallets can successfully mirror the privacy and autonomy of cash transactions. If cash usage continues to decrease and peer-to-peer transactions using self-hosted

¹ Chainalysis, "2020 Crypto Crime Report," <https://go.chainalysis.com/2020-Crypto-Crime-Report.html>.

² *Id.*

³ Federal Reserve System's Cash Product Office, "2020 Findings from the Diary of Consumer Payment Choice."

wallets are limited or banned, the policy implications of this fundamental undermining of privacy and autonomy would be far reaching. Authoritarian governments, such as Hong Kong, already exploit digital financial transactions to control their citizens and there are potential unforeseen consequences of restricting a digital cash-like option in this increasingly digital world.

Restrictions on self-hosted wallets would lay the foundation for total surveillance of citizens' financial lives by eliminating a digital cash-like payment option, with potentially disastrous consequences for free societies.

Financial Inclusion

The unprecedented recent advancements in technology show great benefits for underserved consumers, as well as the broader economy. ETA members are constantly developing and deploying new products and services, bringing together traditional players and new participants. The innovation in this space delivers new products and services quickly, less expensively, and supports an inclusive financial system that provides high quality, responsible, secure, and affordable financial services for the broadest possible set of consumers. ETA member companies touch, enrich, and improve the lives of underserved consumers while making the global flow of commerce possible. A goal of ETA member companies is to continually enhance the electronic payments and financial ecosystem so that it is accessible for all consumers, while ensuring their transactions can be completed securely, efficiently, and ubiquitously. A key driver to achieving such a system is the development of new technologies that allow traditionally underserved consumers to access financial products and services.

The Federal Deposit Insurance Corporation's *How America Banks* report estimates that 5.4% or approximately 7.1 million of U.S. households were underserved in 2019.⁴ FinTechs and digital payment options allow consumers to conduct everyday financial transactions in a safe, convenient, affordable, and secure way.

Along with products and services being developed and deployed, digital transactions that occur over a blockchain platform can help reduce the number of underserved U.S. households and represents a viable solution for consumers in the United States. Restrictions placed on self-hosted wallets would hamper the diverse and developing cryptocurrency ecosystem and not adequately serving U.S. households. For cryptocurrencies and LTDA to reach their full potential of meeting the needs of everyone they must not place undue burdens on consumers.

Anyone with an internet connection can create and use self-hosted wallets to transact with others, they are the critical feature of digital assets that could make basic financial services available to people currently without access to these services.

Comment Period is Insufficient

The proposed rule would create significant new requirements for MSBs that impact users and market participants and this 15-day comment period does not provide an adequate chance to provide thoughtful analysis and comments. ETA asks that FinCEN extend the comment period to provide a chance for expanded comments and allow for collaboration from all stakeholders.

⁴ Federal Deposit Insurance Corporation, *How America Banks: Household Use of Banking and Financial Services, 2019 FDIC Survey* (October 2020).

In closing, ETA appreciates FinCEN's desire to enact a rule but reiterates that the changes proposed are significant and the potential implications are far-reaching. While ETA and our members do support law enforcement agents in their efforts to assist and deter financial crimes, restricting individuals' use of self-hosted wallets would be misguided and any potential regulations should balance the need to detect and deter criminal activity and the effect it will have on society and U.S. competitiveness as a whole.

While ETA believes this rule needs to have an extended comment period, should the rule move forward unamended or in substantially similar fashion, ETA believes its member companies would need at least 18 months after a final rule is published to come into compliance. We are hopeful that FinCEN views a reasonable implementation timeframe as a key component of ensuring our members can work diligently toward meeting regulatory expectations while continuing to serve the needs of consumers without interruption. Additionally, all interested stakeholders should continue to collaborate through other avenues, such as working groups, to help achieve the policy goals associated with this proposed rule.

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ETA appreciates the opportunity to provide input on this important issue. If you have any questions, please contact me or ETA's Senior Vice President of Government Affairs, Scott Talbott at stalbott@electran.org.

Sincerely,



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