



The Bitcoin Foundation, Inc.
One Ferry Building
Suite 255
San Francisco, California 94111
llew@bitcoinfoundation.org

November 22, 2017

Ephraim (Fry) Wernick
Counsel (DOJ Detailee) for Chairman Charles E. Grassley
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510-6050
Phone: [\(202\) 224-4134](tel:(202)224-4134)
By e-mail: Fry_Wernick@judiciary-rep.senate.gov

VIA E-MAIL & FAX TRANSMISSION

RE: S. 1241, “Combating Money Laundering, Terrorist Financing and Counterfeiting Act of 2017”-Section 13

Dear Mr. Wernick:

This letter is in response to your request made to our counsel on October 16 seeking additional comments regarding Section 13 of a bill titled “Combating Money Laundering, Terrorist Financing and Counterfeiting Act of 2017” (S. 1241) (the “**Bill**”), which was recently introduced in the Senate, and referred to the U.S. Senate Committee on the Judiciary (the “**Judiciary Committee**”). We thank you for providing us with this opportunity to present you with our attached feedback.

The Bitcoin Foundation, Inc. is a global non-profit organization founded in September 2012. Comprised of senior leaders in the Bitcoin community, the Bitcoin Foundation coordinates joint efforts of the Bitcoin community, helping to create awareness of the benefits of Bitcoin, its use and its related technology requirements. The Bitcoin Foundation has been at the forefront of campaigning for an unimpeded economic system for the future.

As you may know, Bitcoin is the first decentralized digital currency and payment system. It is “digital” or “virtual” because it does not exist in physical form. It is decentralized because there is no central repository or administrator. Bitcoin is not legal tender (“fiat currency”) in any jurisdiction and is not backed or controlled by any sovereign. But it can be bought and sold on exchanges now for such legal tender. Transactions in Bitcoin are confirmed by cryptography and recorded on blockchain.

There are now many other virtual currencies like Bitcoin (cryptocurrencies), and the



technology which created Bitcoin continues to grow and develop rapidly. The considerable benefits of Bitcoin and other virtual currencies are beginning to be understood more broadly, and such virtual currencies and the technology which created it are being adopted for many useful purposes by commercial enterprises and others.

In November 2013, Patrick Murck, general counsel of the Bitcoin Foundation, testified before the Senate Homeland Security and Government Affairs Committee which was convened to assess digital currencies. After engaging with federal regulators and lawmakers, a near-unanimous consensus that the federal government needed to be careful to avoid hampering the growth of the world's first completely decentralized payment network resulted.

In May 2017, the Bill was introduced in the Senate, and the Bill was referred to the Senate Judiciary Committee. The Bill would strengthen federal legislation on anti-money laundering, terrorist financing and counterfeiting (together, “AML”). Section 13 of the Bill would add to the definition of “financial institution” an “issuer, redeemer or cashier ... of digital currency”, a “digital exchanger” and a “tumbler”.

The Bitcoin Foundation continues to oppose much of Section 13 of the Bill. As drafted, Section 13 of the Bill would, in our view, effectively limit or even terminate development, at least in the United States, of this important technology because the burdens of compliance would be greater in many instances than the benefit of developing the technology in the United States. Moreover, buying and selling virtual currency is often more like buying and selling commodities and less like transacting in money. At minimum, the Bitcoin Foundation believes that further research and review of this developing and complex area is needed before AML obligations are applied, other than obligations that are already applied, for example through the Financial Crimes Enforcement Network (“FinCEN”) of the U.S. Department of the Treasury (the “Treasury”).

In the event that these provisions are not deleted from the current Bill, however, we wish to propose amendments to Section 13 of the Bill as set forth in Exhibit A hereto, for the following reasons.

Section 13 of the Bill, as currently written, would, as noted above, define “financial institution” to include an “issuer, redeemer or cashier” of “digital currency”. It does not define, however, “digital currency”. Unfortunately, the term “digital currency” can apply to many things that we believe are not intended by the current Bill, such as tokens that indicate airline miles and ownership of real estate. The Bitcoin Foundation believes that “digital currency” or “virtual currency” to which AML obligations might apply are really cryptocurrencies: decentralized currencies used as a medium of exchange and convertible into fiat currency, and transactions in which are confirmed by cryptography and recorded in blockchain. But our view is that this definition – the things that are in and those that are not – requires further careful study. Like other determinations made under the Bill and the legislation it amends, the Secretary of the Treasury should be given the authority (which it can delegate to FinCEN) to decide what “digital currency” or “virtual currency” means for these purposes.



Section 13 of the Bill would include an “issuer” of “digital currency” in the definition of “financial institution” under 31 U.S.C. § 5312. It is, however, very unclear what is meant by an “issuer” of “digital currency”: is it the virtual entity that issues the code in relation to the digital currency (which is often an otherwise empty vehicle), the sponsors, the people who “mine” (among other things, confirm transfers of) the currency and may receive that currency as a “reward”, or others? To whom and how would the AML obligations apply to such persons? Applying AML obligations to any and all of these people seems inappropriate to us in this context.

Section 13 would also provide that a “financial institution” includes a “redeemer” of “digital currency”. If what is meant is someone who has authority to take a portion or all of digital currency out of circulation, there is often no one who has such authority. One of the characteristics of this type of currency is that it is controlled by the cryptography and not by individual actors.

Section 13 would also make a “cashier” of a “digital currency” a “financial institution”. The Bitcoin Foundation does not believe that there is a “cashier” of a “digital currency” in the same sense as there is a check cashier or a money order cashier. There are people who exchange “digital currency” for fiat currency, so to the extent that “cashier” is the same as “digital exchanger”, it is unnecessary.

Section 13 of the Bill would apply AML requirements to any “tumbler” of “digital currency”. Tumblers (or “mixers”) allow users to prevent another person from seeing every transaction (including the size of the transaction) that has ever been linked to a user’s digital wallet, and therefore provide a useful service where there is otherwise limited privacy. While tumblers can be used to hide transactions, however, most tumbler services receive transactions from unnamed sources (identified solely by keys) and are usually not in a position to comply with AML obligations. If AML requirements were applied to tumblers, it would likely end the legitimate service. In any event, tumblers are not being used as much anymore because virtual currency exchangers like Coinbase are effectively providing this service by separating the sale and purchase transactions.

Section 13 of the Bill would apply AML requirements to any “digital exchanger”. AML obligations might be applicable to “digital exchangers” that exchange fiat currency with digital currency. The Bitcoin Foundation would call such persons “virtual currency exchangers”. The AML obligations should not apply to the conversion of one digital currency to another because (i) trying to comply with AML obligations in such a case may be impossible because the information is not available; (ii) even if possible, the burden of compliance in a case not affecting fiat currency would far outweigh the benefit, which is completely not shown; (iii) application of AML requirements in such a case would stifle innovation in this space; and (iv) such digital representations may not be “currency” in any event.

Finally, small businesses and small transactions should be exempted from AML obligations. While large “digital exchangers” perhaps can comply with AML obligations, businesses that have low revenues (less than \$100,000 per year) or which are growing but do not



yet have large revenues, cannot bear, and should not be required to bear, the burden of such obligations. Such small entities would effectively be put out of business if they are required to comply with such obligations. Small transactions below \$10,000 would also be exempted.

As noted, the Bitcoin Foundation's suggested amendments to Section 13 of the Bill are attached as Exhibit A. The Bitcoin Foundation seeks to revise the language so that the Bill does not stifle the benefits of innovation in this extremely fast-moving area while applying AML requirements to a person in the chain of transactions who might have the information to comply with AML requirements and the ability to bear the burden.

We thank you in advance for your support and your time. If you have any questions please do not hesitate to contact us or our counsel at your convenience.

Yours sincerely,

Llew Claasen
Executive Director
The Bitcoin Foundation

Cc: Members of the United States Senate Committee on the Judiciary
U.S. Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, D.C. 20510-6050

Nathan J. Hallford
Senior Counsel, U.S. Senate Committee on the Judiciary
Nathan_Hallford@judiciary-rep.senate.gov

Tim Kelly
Chief Counsel for National Security and Senior Crime Counsel at U.S. Senate Committee
on the Judiciary
Tim_Kelly@judiciary-rep.senate.gov

Richard DiZinno
U.S. Senate Judiciary Committee
Richard_DiZinno@judiciary-rep.senate.gov



EXHIBIT A

CURRENT SECTION 13:

13. PREPAID ACCESS DEVICES, DIGITAL CURRENCIES, OR OTHER SIMILAR INSTRUMENTS.

(a) IN GENERAL.—Section 5312(a) of title 31, United States Code, is amended—

(1) in paragraph (2)(K)—

(A) by inserting “prepaid access devices, digital currency,” after “money orders,”; and

(B) by inserting before the semicolon at the end the following: “, or any digital exchanger or tumbler of digital currency”;

(2) in paragraph (3)(B), by inserting “prepaid access devices,” after “delivery,”; and

(3) by adding at the end the following:

“(7) ‘prepaid access device’ means an electronic device or vehicle, such as a card, plate, code, number, electronic serial number, mobile identification number, personal identification number, or other instrument, that provides a portal to funds or the value of funds that have been paid in advance and can be retrievable and transferable at some point in the future.”.

PROPOSED SECTION 13:

13. PREPAID ACCESS DEVICES, DIGITAL CURRENCIES, OR OTHER SIMILAR INSTRUMENTS.

(a) IN GENERAL.—Section 5312(a) of title 31, United States Code, is amended—

(1) in paragraph (2)(J), by inserting “or virtual currency exchange” after “currency exchange”; and

(2) in paragraph (2)(K), by inserting “prepaid access devices,” after “money orders,”; and

(3) in paragraph (3)(B), by inserting “prepaid access devices,” after “delivery,”; and



(4) by adding at the end the following:

“(7) ‘prepaid access device’ means an electronic device or vehicle, such as a card, plate, code, number, electronic serial number, mobile identification number, personal identification number, or other instrument, that provides a portal to funds or the value of funds that have been paid in advance and can be retrievable and transferable at some point in the future.”

(8) ‘virtual currency exchange’ means a person doing business as an exchanger of legal tender currency (fiat currency) with “virtual currency” as defined by the Secretary, provided that excluded from this definition is (i) a virtual currency exchange with less than U.S. \$100,000 gross revenues (or the equivalent) per annum from virtual currency exchanges and (ii) transactions less than \$10,000 (or the equivalent) carried out by a virtual currency exchange.