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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 reference to the hearing held on November 28, 2017 (the “**Hearing**”), regarding 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 wanted to thank you again for the opportunity to share our feedback since the Bill’s introduction, including our letter to you dated November 23, 2017 (the “**Initial Letter**”). In this current letter, we wanted to share with you our concerns regarding some aspects of the Hearing.

First, the Bitcoin Foundation is pleased that none of the witnesses (see witness list available at <https://www.judiciary.senate.gov/meetings/s1241-modernizing-aml-laws-to-combat-money-laundering-and-terrorist-financing>) made statements against the validity or utility of Bitcoin or other “virtual currencies”. These virtual currencies represent the implementation of a new technology in which decentralized, non-material, online ledgers can validate and record all types of transactions. This technological innovation must be allowed to develop, be rolled out and tested in real environments without material interference or overburdening regulations, especially at the initial stages of its adoption.

We do understand, of course, the need to protect the U.S. financial system and to place certain anti-money laundering and related burdens (together, “**AML**”) on some financial actors who are in a position to bear those burdens. All of the witnesses who testified in the Hearing,



however, failed to distinguish between criminal activity and the impact of the Bill on specific payment methods. Therefore, the panels were unable to discuss the impact of the additional burden created by AML obligations on new technologies. In fact, one of the witnesses, Mr. John A. Cassara acknowledged, during the Q&A portion of the Hearing, that the vast majority of the enforcement challenges involve by far fiat currency-based transactions.

Second, all the witnesses focused the need for new legislation on trade-based money laundering, the use of shell companies to hide illicit activity and proceeds, as well as overcoming obstacles in collecting evidence and obtaining cooperation with foreign governments. There appeared to be minimal focus on virtual currency (generally defined as non-material units that may in some circumstances be used as a payment mechanism) or crypto-currency (a subset of virtual currency that is not now legal tender (fiat currency) in any jurisdiction, but may be bought and sold for legal tender (is convertible), and the transfer of which is validated and recorded on a dematerialized, distributed online ledger (Blockchain)) during the Hearing. Furthermore, witnesses in Panel II raised issues only with exchangers, and most specifically unregistered foreign exchangers, which is consistent with the recommendations included in our Initial Letter.

Third, the written record submitted by law enforcement agencies raises significant concerns for the Bitcoin Foundation regarding the context of these comments.

The Blanco written testimony, as it related to virtual or crypto-currencies, relied primarily on two statements. The first statement involved the alleged laundering of Chinese-based companies' illicit funds, arguably laundered outside of China through trade-based activities involving "some" Bitcoin payments. Without much more specifics, it is hardly possible for any lawmaker to establish the risk of Bitcoin-based transactions in laundering illicit gains from international activities within the United States. Since the goal of the Bill is, as stated by the witnesses, to protect the U.S. financial system, a focus on exchangers to legal tender, which is one of the components of the proposed language in our Initial Letter, is completely consistent with that goal.

Most importantly, the Liberty Reserve case invoked in the Blanco written testimony under the heading "virtual currency" involved fiat currency payments made through an electronic platform technologically analogous to PayPal, and DID NOT involve Bitcoin or any crypto-currency tool. The Liberty Reserve case was pursued against a Costa Rican entity and persons (U.S. persons were participants in the Liberty Reserve activities) between 2006 and 2009 in Costa Rica, and thereafter in the U.S., and Bitcoin was not even launched until January 2009! Therefore, to the extent that the Liberty Reserve case was used to justify new AML rules for virtual currency, the Blanco written testimony is at best disingenuous.

Furthermore, the Allen written testimony refers to two cases supporting the notion that criminals frequently use Bitcoin in their criminal activity, therefore justifying the inclusion of virtual currencies in the Bill's Section 13. However, in both of these cases, both defendants were charged under 21 U.S.C. § 841(a)(1), involving illicit trafficking of controlled substances, therefore supporting the notion that sufficient criminal provisions were available to charge those defendants. These cases hardly support the notion that the inclusion of virtual currency



provisions in the Bill would somehow be required to fight criminal activity due to insufficient statutory tools, especially as the AML burdens may have a disproportionate impact on legitimate start-up businesses.

Therefore, the written record submitted by law enforcement agencies as it relates to virtual or digital currencies to justify the need for S. 1241's Section 13 does not support the implementation of AML obligations to persons who neither have the information nor the ability to bear them. In fact, the cases invoked by law enforcement agencies have been successfully prosecuted or are being currently prosecuted under existing statutes and regulations, and do not support the notion that new and burdensome statutory tools are needed at this juncture. If law enforcement agencies have shared additional and specific cases supporting this theory, we would greatly appreciate it if this information could be shared with us.

In fact, the overall record before the Judiciary Committee supports our recommendation that, if virtual currencies were to be involved in S. 1241, the Bill should focus on the role of corporate professional exchangers of virtual currencies with fiat currency specifically identified by the Treasury Department.

The Bitcoin Foundation continues to oppose much of Section 13 of the Bill, and, in the event that these provisions are not deleted from the current Bill, maintains its proposed amendments detailed in our Initial Letter.

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,

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