TEXAS DEPARTMENT OF BANKING

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SUPERVISORY MEMORANDUM – 1037

January 28, 2025 (rev.)

TO: All Virtual Currency Companies Operating or Desiring to Operate in Texas

FROM: Charles G. Cooper, Banking Commissioner

SUBJECT: Regulatory Treatment of Virtual Currencies Under the Money Services Modernization Act[1]

PURPOSE

This supervisory memorandum outlines the policy of the Texas Department of Banking (Department) with regard to virtual currencies. This policy expresses the Department's application of the Money Services Modernization Act (MSMA), which was enacted in 2023,[2] to various activities involving virtual currency. While the popularity of virtual currency has sparked new discourse on the nature of money and transferability of value, this memorandum seeks only to clarify the regulatory treatment of virtual currency under existing statutory definitions and framework.

TYPES OF VIRTUAL CURRENCY

In broad terms, virtual currency is an electronic medium of exchange typically used to purchase goods and services from certain merchants or to exchange for other currencies, either virtual or sovereign.[3]

One particular subclass of virtual currency is "stablecoin," which can be pegged to various assets; the MSMA (and this memo) apply to stablecoin that "(A) is pegged to a sovereign currency; (B) is fully backed by assets held in reserve; and (C) grants a holder of the stablecoin the right to redeem the stablecoin for sovereign currency from the issuer."[4] This redemption right may be explicitly granted to a stablecoin holder through a user agreement with the issuer or it may be an inherent right granted to the coin holder by the issuer guaranteeing it will buy back coins to keep

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[1] This memorandum revises and supersedes the policy issued on April 1, 2019 and addresses current trends in the Virtual Currency field along with recent legislation.

[2] TEX. FIN. CODE ch. 152.

[3] In this memorandum the term "sovereign currency" means "the coin and paper money issued by the United States or another country that is designated as legal tender, circulates, and is customarily used and accepted as a medium of exchange in the country of issuance." *See* TEX. FIN. CODE § 152.003(9) (providing this definition for "currency" under the Money Services Modernization Act).

[4] TEX. FIN. CODE § 152.003(19). This law comports with the prior version of this Supervisory Memorandum, released April 1, 2019, which also held that cryptocurrencies backed by sovereign currency redemption rights qualified as "money" or "monetary value" potentially subject to money transmission regulation.

the value stable. The fact that a stablecoin issuer does not in fact hold sufficient sovereign currency in reserve to fully back a stablecoin that is pegged to a sovereign currency does not remove that stablecoin from the regulatory ambit of the MSMA.

One important characteristic of non-stablecoin virtual currency is its lack of intrinsic value. A unit of virtual currency does not represent a claim on a commodity and is not convertible by law. Further, unlike fiat currencies, there may not be governmental or central bank authority establishing the value of the virtual currency through law or regulation. Its value is only what a buyer is willing to pay for it.

ANALYSIS

Currency Exchange

Exchanging virtual currency for sovereign currency is not currency exchange under the Texas Finance Code. As noted above, Finance Code § 152.003(9) defines currency as "the coin and paper money issued by the United States or any country that is designated as legal tender, circulates, and is customarily used and accepted as a medium of exchange in the country of issuance." Finance Code § 152.003(10) defines "currency exchange" as "receiving (A) the currency of one government and exchanging it for the currency of another government; or (B) a negotiable instrument, as defined by Section 3.104, Business & Commerce Code, and exchanging it for the currency of another government." As virtual currency is neither coin or paper money issued by the government of a country, nor a negotiable instrument under Section 3.104, Business & Commerce Code, the exchange of virtual currency for sovereign currency is not licensed as currency exchange.

Money Transmission

In many instances, the factors that distinguish various virtual currencies are complicated and nuanced. To make money transmission licensing determinations, the Department must individually analyze virtual currency businesses on a case-by-case basis. Accordingly, this memorandum does not offer generalized guidance on the treatment of virtual currencies, other than stablecoins, under the MSMA.

Money transmission licensing determinations regarding transactions with virtual currency, including stablecoins, turn on the question of whether the transaction involves "money or monetary value" under the MSMA. Under Finance Code §152.003(22), "money transmission" includes "receiving money for money transmission services from a person located in this state." [5] As indicated above, Finance Code § 152.003(19) provides that "money" or "monetary value'" includes stablecoin that "(A) is pegged to a sovereign currency; (B) is fully backed by assets held in reserve; and (C) grants a holder of the stablecoin the right to redeem the stablecoin for sovereign currency from the issuer."

[5] "Receiving money for money transmission services" means (a) the receipt of money or monetary value by any means, and (b) a reciprocal promise to make money or monetary value available at a later time or different location.

As already stated, other, non-stablecoin virtual currency is not "currency" as defined in the MSMA. A unit of non-stablecoin virtual currency is also not a claim.[6] It does not entitle its holder to anything and creates no duties or obligations in a person who gives, sells, or transfers it. There is no entity that must honor the value of a non-stablecoin virtual currency or exchange any given unit of a non-stablecoin virtual currency for sovereign currency. For comparison, under federal law, U.S. coin and paper currency must be honored for payment of all debts, public charges, taxes, and dues, and the U.S. Treasury Department must redeem it for "lawful money."[7] The holder of a unit of a non-stablecoin virtual currency has no right or guaranteed ability to convert that virtual currency to sovereign currency. The only way to convert a unit of non-stablecoin virtual currency to sovereign currency is to find a willing buyer. Therefore, except for stablecoin as noted above, other virtual currencies are not considered money or monetary value under the MSMA.

In addition to the above, a licensee who engages in activity involving virtual currency may be considered a "digital asset service provider" and be subject to additional requirements under Finance Code, Chapter 160. A "digital asset service provider" is "an electronic platform that facilitates the trading of digital assets on behalf of a digital asset customer and maintains custody of the customer's digital assets."[8] Any questions regarding the applicability of Chapter 160 or compliance with Chapter 160 should be directed to the Department's legal or non-depository supervision staff.

STATEMENT OF POLICY

Because non-stablecoin virtual currency is not money or monetary value under the MSMA, receiving it for transmission, alone, is not money transmission. However, when a virtual currency transaction does include sovereign currency or stablecoin, it may be money transmission depending on how the sovereign currency or stablecoin is handled.

A virtual currency business that conducts money transmission must comply with all applicable licensing provisions of both Chapter 152 of the Finance Code and Title 7, Chapter 33 of the Texas Administrative Code. Of particular note, a licensee may only include virtual currency assets in calculations for its permissible investments under Finance Code §152.356 if it is stablecoin, and only "to the extent of outstanding transmission obligations received by the licensee in the same kind of stablecoin."[9]

Additionally, pursuant to Finance Code § 152.104(a)(10), the Commissioner requires license applicants who handle virtual currency in the course of their money transmission activities to submit a current third-party security assessment of their relevant computer systems. Due to the level of risk from theft, loss, and cyberattacks, it is incumbent on a license applicant to demonstrate that all virtual currency is secure while controlled by the applicant. Since security of a company's virtual currency operation is dependent upon the integrated components of its operations, the scope

[6] A claim is defined as "the assertion of a right" or "an interest or remedy recognized at law." *Claim*, Black's Law Dictionary (12th ed. 2024).
[7] 31 U.S.C. § 5103; 12 U.S.C. § 411 ("The said notes shall be obligations of the United States and shall be receivable by all national and member banks and Federal Reserve banks and for all taxes, customs, and other public dues. They shall be redeemed in lawful money on demand at the Treasury Department of the United States, in the city of Washington, District of Columbia, or at any Federal Reserve bank.").
[8] TEX. FIN. CODE § 160.001(6).
[9] TEX. FIN. CODE § 152.356(a)(6).

of the required independent third-party assessment, audit, test or combination of a license applicant must include:

- Network security;
- Website and web application security;
- Application server security;
- Virtual currency wallet infrastructure security and controls;
- Information security policy assessment; and
- Application development controls and policy assessment.