Abstract: On March 18, 2013, the Financial Crimes Enforcement Network issued interpretive guidance clarifying the applicability of the regulations implementing the Bank Secrecy Act to persons creating, obtaining, distributing, exchanging, accepting, or transmitting virtual currencies such as Bitcoin. The guidance explains only how FinCEN characterizes certain activities involving virtual currencies under the Bank Secrecy Act and FinCEN regulations. Under FinCEN’s rules a Bitcoin miner may be an administrator. This guidance clarified that Bitcoin exchanges are considered money transmitters and are required to obtain all proper licenses to conduct business in the United States. This registration and licensing process includes the federal registration as a money service business.

Based on the 2007 e-gold case, it was very evident that exchange agents handling Bitcoin transactions were money transmitters. However, this March 18, 2013, guidance from FinCEN made it official by stating that certain “convertible virtual currency” businesses were money transmitters.

Subject: Application of FinCEN’s Regulations to Persons Administering, Exchanging, or Using Virtual Currencies

On March 18, 2013, the Financial Crimes Enforcement Network issued interpretive guidance clarifying the applicability of the regulations implementing the Bank Secrecy Act to persons creating, obtaining, distributing, exchanging, accepting, or transmitting virtual currencies such as Bitcoin. Guidance, in this case, is not a new set of regulations. This guidance issued by FinCEN is information detailing existing government regulations. FinCEN explains that virtual currency, such as Bitcoin, falls under the existing financial service regulations. Participants in the Bitcoin industry such as exchangers and even miners, under certain circumstances, are considered to be financial institutions. Steve Hudak, a spokesman for FinCEN, detailed the reasons for this guidance. He was quoted saying, “[T]he industry and banks who provide services and law enforcement that investigate cases sought some regulatory certainty about where virtual currencies fall.”

This guidance represents the first step toward the formal regulation of Bitcoin and other virtual currencies. In general terms the more regulated the business, the more legitimate it appears to the public. Consequently, legitimate businesses viewed as “regulated” become more commercialized and accepted by consumers. The process of regulating this industry brings Bitcoin and other virtual currency one step closer to becoming more mainstream and received by the American public.

Directly relating to Bitcoin, this guidance explains FinCEN’s interpretation of the MSB rule as applied to virtual currencies and directs that “convertible virtual currencies” be subjected to the rules governing money transmission. The guidance explains only how FinCEN characterizes certain activities involving virtual currencies under the Bank Secrecy Act and FinCEN regulations. It should not be interpreted as a statement by FinCEN about the extent to which those activities