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A new rule amending Alaska's money transmission regulations expands the scope of money transmission activity subject to regulation to include virtual currency. As a result, effective January 1, 2023, companies engaged in virtual currency money transmission to, from or within Alaska will be required to obtain an Alaska money transmission license. The amended regulations also establish that virtual currency is a permissible investment, but only to the extent of a licensee's virtual currency obligations to its customers (e.g., virtual currency custodied on behalf of such customers).

Expansion encompasses virtual currency

The regulation adopted by the Division of Banking and Securities (DBS) changes Title 3, Chapter 13, of the Alaska Administrative Code, effective January 1, 2023, to:

- Establish that an activity or transaction that would be covered as money transmission remains covered, if that activity or transaction is in the form of virtual currency (new 3 AAC 13.005).
- Require a person engaging in money transmission activity involving virtual currency to submit a licensing application (new 3 AAC 13.006).
- Define permissible investments to include virtual currency for outstanding virtual currency denominated in the same currency (amended 3 AAC 13.810).
- Add a definition of virtual currency and expand the definition of "monetary value" to include virtual currency (3 AAC 13.990, as repealed and readopted).

Similar to other states that have expressly defined virtual currency for the purposes of money transmission regulation (or the equivalent), the DBS has adopted an expansive definition of "virtual currency," defining it as a "digital representation of value that is used as a medium of exchange, unit of account, or store of value; and is not money, whether or not denominated in money." The definition excludes, however, affinity and rewards programs and digital tokens related to online games, provided that certain criteria are met.

As a result of this change, companies that engage in any activities involving virtual currency in Alaska likely will need to assess whether those activities, if involving fiat money, would come within the scope of activity subject to regulation under the Alaska money transmission law. For example, does the activity involving virtual currency constitute (or is it analogous to) "receiving money or monetary value for transmission" per § 06.55.990(15) of the money transmission law? Mapping blockchain-related activities back to the world of traditional centralized finance may be challenging, but this regulatory approach does have the virtue of at least trying to be technology-agnostic and regulating the activity (i.e., moving value on behalf of others) regardless of how it is performed.

Limited Licensing Agreement eliminated

Prior to adopting this rule, the DBS had determined that it did not have the jurisdiction to regulate virtual currency activity under its money transmission statute. Nevertheless, companies that engaged in activity involving fiat money and virtual currency generally were required to obtain an Alaska money transmission license. To do so, such companies were required to enter into a Limited Licensing Agreement (LLA) with the DBS that, among other things, required a licensee to post a statement that its license had not been issued for the licensee to transmit virtual currency, using the phrase "Please note that this license does not cover the transmission of virtual currency."

As a result of the explicit inclusion of virtual currency activity as money transmission activity requiring a license, the DBS is phasing out the LLA requirement, and LLAs currently in effect will be voided and removed from the Nationwide Multistate Licensing System record on January 1, 2023. It is not clear if the change to the regulations will require current Alaska licensees that engage in virtual currency activity to take any action. Presumably, licensees will need to remove the disclaimer stating that the license does not cover virtual currency transmission, given that virtual currency activity is subject to licensing effective January 1; existing money transmission licenses should cover such activity to the extent previously disclosed to the DBS (e.g., in

application materials), but more clarity on this point will be necessary.

Finally, companies engaged in virtual currency activity that they previously concluded did not require an Alaska money transmission license will need to reevaluate their compliance position when the new rule takes effect at the beginning of next year if they transmit or custody virtual currency to, from or within Alaska.

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