

March 23, 2021

Policy Division
Financial Crimes Enforcement Network
P.O. Box 39
Vienna, VA 22183

Submitted Electronically: <http://www.regulations.gov/commenton/FINCEN-2020-0020-7420>

Re: Proposed Rule—*Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets*

(Docket Number FINCEN–2020–0020 RIN number 1506–AB47)

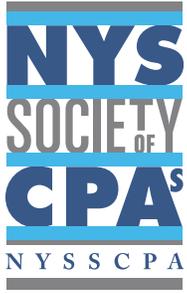
The New York State Society of Certified Public Accountants (NYSSCPA), representing more than 22,000 CPAs in public practice, industry, government and education, welcomes the opportunity to comment on the above-captioned exposure draft.

The NYSSCPA’s Digital Assets Committee deliberated the proposed rule and prepared the attached comments. If you would like additional discussion with us, please contact Melissa Gillespie, Chair of the Digital Assets Committee, at (646) 494-2102, or Ernest J. Markezin, NYSSCPA staff, at (212) 719-8303.

Sincerely,

Edward L. Arcara
President

Attachment



**NEW YORK STATE SOCIETY OF
CERTIFIED PUBLIC ACCOUNTANTS**

COMMENTS ON

**PROPOSED RULE—REQUIREMENTS FOR CERTAIN TRANSACTIONS
INVOLVING CONVERTIBLE VIRTUAL CURRENCY OR DIGITAL ASSETS**

(Docket Number FINCEN–2020–0020 RIN number 1506–AB47)

March 23, 2021

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Comments on

Proposed Rule—*Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets*

(Docket Number FINCEN–2020–0020 RIN number 1506–AB47)

The New York State Society of Certified Public Accountants (NYSSCPA) welcomes the opportunity to respond to the Financial Crimes Enforcement Network’s (FinCEN) invitation to comment on Proposed Rule—*Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital* (Proposed Rule).

General Comment

The NYSSCPA is supportive of proactive regulation that encourages innovation and continuous monitoring of financial markets, including the safeguarding and protecting of financial markets from illegal uses, money laundering, and other potential criminal activities. These duties lie at the center of the responsibility of FinCEN and other similar regulators around the world and serve a critically important function to developing and maintaining well-functioning capital markets. With that context in mind, however, there are several specific issues that we respectfully submit for reconsideration by FinCEN as they pertain to crypto accounting and reporting issues that have arisen during our review of the Proposed Rule.

Specific Comments

Cost and Complexity of Reporting

If the proposal moves forward as drafted, the cost and complexity of implementation may far exceed estimates indicated in the Proposed Rule. The document acknowledges a lack of comprehensive information regarding cost issues for smaller enterprises, and the request for additional clarification on this point is commendable. However, even with the extended comment period window for commentary and feedback, there remain several substantive issues that could pose a significant risk to successful implementation.

- Markets and exchanges for digital assets, as opposed to markets for equity securities, operate on a continuous basis every day of the year. To remain in compliance as per the current proposal, organizations would need to record and report prices, trading levels, and other associated information on this continuous basis. In addition to the costs necessary to enable real time reporting, the lack of a

centralized or authoritative source for prices and trading volumes the world over will further complicate this task.

- There are not unified or universally agreed upon reference points for market data or prices, or on the recording of such information. This fact, in addition to increasing the costs of compliance, could also make the required documenting and reporting of transactions of \$3,000 and \$10,000 (as per the Proposed Rule) more difficult. Given that smaller firms and startup organizations are plentiful in the digital asset sector, this underestimation of costs could prove to be a significant industry headwind.

In addition to the implications of this proposal on the blockchain and crypto organizations that would be directly impacted, the accounting profession will also be impacted by these same issues. To provide the necessary level of service – be it attestation, tax, or advisory in nature – the increased complexity and cost will also be challenging for the profession given the lack of crypto-specific authoritative accounting guidance.

Lack of Differentiation

An additional concern regarding this proposal is the fact that, based on the reading of current language contained therein, is the supposition that all blockchain-based and digital asset transactions operate in an equivalent manner. This seems to overlook the reality that the rapid growth of digital asset services and products, including custodial services, privately issued stablecoins, and more recent developments such as decentralized finance (DeFi) and non-fungible tokens (NFTs) have created a more differentiated and nuanced landscape. For example, for many of the more recent iterations of digital assets that have entered the marketplace, there may already be a clearinghouse-like or equivalents already performing many of the recording and reporting obligations put forward in this proposal. In other words, the Proposed Rule may unintentionally duplicate actions that are already manifesting organically in the marketplace, as well as adding more uncertainty to an already ambiguous regulatory landscape.

There are other aspects that point to the fact that not every blockchain operates in a similar manner. Namely, signatures are not always required for transactions to be completed, and in a permissionless (public) blockchain, none of the counterparties involved verify specific transactions, as that is the role fulfilled by the mining nodes on the blockchain itself.

Furthermore, the concern and focus around unhosted wallets seems to overlook that transactions that do indeed occur via a peer-to-peer basis on a permissionless blockchain are traceable and auditable on said blockchains. The Proposed Rule requiring banks and money service businesses (MSBs) to file a report with FinCEN regarding unhosted wallets provides little to no specifics. With virtual currency, new wallets can be created

instantaneously, for free. It will often be impossible for the bank or MSB to determine if a wallet is an “unhosted wallet” or “otherwise covered wallet.”

The Proposed Rule also requires recordkeeping of the “counterparty” of the transaction. Because of the nature of virtual currency, it may well be impossible to verify the “counterparty” of the transaction. If that were the case, what would be the responsibility of the bank or MSB? Would it be sufficient to take the customer’s word regarding the counterparty’s identity? Or are they required to obtain supporting documentation? What if the customer falsifies the counterparty’s identity? We suggest the Proposed Rule should address these issues.

Lastly, the conversion of digital assets back into fiat equivalents, taking place on an exchange or similar platform, would already be subject to various financial and banking regulations; introducing new and potentially duplicate reporting requirements would not seem to improve the situation.

Consumer Privacy

The full scope of potential privacy and cybersecurity issues around this proposal are numerous, but for brevity, we offer what we consider some of the higher profile items below:

1. Will there be a mechanism to incorporate existing privacy laws and regulations, both domestic and international, into the proposal?
2. Are there plans to increase the cybersecurity policies and controls around the regulatory agencies and counterparties that will be involved in the recording and storage of this information?
3. Given the centralizing nature of this proposal, does this introduce an element of systemic risk to the digital asset trading landscape that had, until now, been offset due to its decentralized nature?

Stated another way, the very same cybersecurity risks and challenges that continuously make headlines in the private and public sectors are equally applicable to regulatory agencies. As increasingly large amounts of information are gathered and custodied by regulators, the importance of privacy and protecting this information will only increase over time.

Concluding Thoughts

We believe the Proposed Rule is a well-intentioned piece of regulation, but we also believe it potentially overlooks some core items as discussed that could diminish its functionality and impact. The accounting profession is at the forefront of many of the legal, technical, and accounting-specific issues that the rapid development and rise of the blockchain and crypto-asset sector continues to create. As currently proposed, there are significant considerations linked to blockchain differentiation, the cost and complexity of implementing this rule, and the associated privacy implications that we believe might serve as obstacles to achieving the intended benefits.