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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

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December 14 2017

Jamal El-Hindi
Acting Director
Financial Crimes Enforcement Network
U.S. Department of Treasury
P.O. Box 39
Vienna, Virginia 22183

Dear Acting Director Jamal El-Hindi,

I write to request more information about FinCEN's oversight and enforcement capabilities over the growing use of blockchain technology for financial transactions. In particular, I seek clarification of FinCEN's authority and capabilities to apply anti-money laundering (AML) and counter-terrorist financing (CFT) laws to non-cash tokens. Additionally, businesses such as token developers need clarification on when to register as a money services business (MSB) or money transmission business (MTB).

Blockchain-based startups have raised over \$3 billion through a new funding vehicle called initial coin offerings (ICO). Developers can raise funds by issuing tokens or coins on a blockchain, such as Ethereum, in exchange for virtual currency like Ether or Bitcoin. Participants can also buy and sell tokens on an exchange using real money or virtual currency held in a digital wallet. An exchange facilitates the trade of crypto assets among digital wallets, recording transactions on a distributed ledger. A typical currency transmitter, such as an exchange, must register with FinCEN. However, it remains unclear how registered virtual currency exchanges meet basic know-your-customer (KYC) and AML requirements that prevent them, wittingly or unwittingly, from laundering money and financing terrorism through the exchange.

I am encouraged by the early use cases for blockchain startups and the technology's potential. But in this rapidly growing market, certain virtual currencies and tokens are intentionally designed to enable anonymous, untraceable transactions. And the owners of the digital wallets that hold virtual currencies and tokens can be obfuscated. It is important, therefore, that this technology be safeguarded from misuse and abuse.

Bitfinex, for example, is the world's largest cryptocurrency exchange and conducts \$2.5 billion in trades per day. In August, 2016, hackers stole over 119,000 bitcoins from the Bitfinex exchange. The owners of Bitfinex also own Tether, a digital token that suffered a hack in which \$30 million was stolen. It is my understanding that neither Bitfinex nor Tether has registered with American regulators, disclosed basic details about their businesses, or implemented

functional KYC processes. With the highly volatile price of bitcoin now exceeding \$15,000 per coin, I am concerned that stolen bitcoins could be laundered through trades that occur outside the regulatory framework that applies to current financial transactions.

I am also concerned that criminals, hackers and hostile foreign actors will exploit the anonymous and pseudonymous nature of tokens. For example, Russian leaders enthusiastically support digital currencies as a way to circumvent U.S. sanctions. Further, Venezuela's President announced that the country will introduce a state-backed cryptocurrency to "overcome the financial blockade." While this is unlikely to be a credible plot to evade U.S. sanctions, it is an example of how this promising new technology could be used for nefarious purposes.

I believe that we should look to support financial innovation, but that we should ensure new technology companies comply with existing AML and CFT laws. To that end, I appreciate the swift action FinCEN has taken already to address this serious threat, including enforcement actions against rogue virtual currency exchanges, such as Liberty Reserve and BTC-e. Nonetheless, this is a rapidly evolving challenge and requires a systemic solution. Could you please respond to the following questions by December 29, 2017:

1. Describe FinCEN's authority and capabilities to identify the beneficial owners of virtual currencies, coins and tokens?
2. What is FinCEN's capability to trace and seize digital assets such as virtual currencies, coins, and tokens?
3. Describe FinCEN's efforts to evaluate compliance by virtual currency-related MSBs with Bank Secrecy Act laws and regulations, including compliance with KYC and AML rules as well as the ability of MSBs to identify beneficial owners of customer entities.
4. How will FinCEN apply existing anti-money laundering laws such as the Bank Secrecy Act to participants in the ICO market, like token developers?
5. How will FinCEN identify, prioritize and address money laundering and terrorist financing risks associated with digital tokens?
6. When will FinCEN provide clear guidance describing its enforcement intentions concerning digital token exchanges and initial coin offerings?

Please include unclassified answers for the public and a classified annex, if necessary. Thank you for your response.

Sincerely,



Ron Wyden
U.S. Senator