



STATE OF LOUISIANA
OFFICE OF FINANCIAL INSTITUTIONS
BATON ROUGE, LOUISIANA



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Consumer and Investor Advisory on Virtual Currency

The Louisiana Office of Financial Institutions (LOFI) is issuing this advisory due to the increased interest in virtual currency and other payments innovations which has led to the rapid emergence of different types of currencies and payments mechanisms. As new and innovative products and services are released into the marketplace, it is important for consumers and investors to educate themselves in order to make informed decisions about this innovative and evolving industry. Consumers should consider the following factors when transacting with or investing in virtual currency.

What is Virtual Currency?

Virtual currency is an electronic medium of exchange that does not have all the attributes of real or fiat currencies. Virtual currencies include cryptocurrencies, such as Bitcoin and Litecoin, which are not legal tender and are not issued or backed by any central bank or governmental authority. Virtual currencies are:

- **not** backed by the United States or any other national government;
- **not** insured by the Federal Deposit Insurance Corporation or any governmental agency;
- **not** backed by any physical commodity, such as gold or silver; and
- **not** legal tender for debts.

Virtual currencies have legitimate purposes and can be purchased, sold, and exchanged with other types of virtual currencies or real currencies like the U.S. dollar. This can happen through various mechanisms such as exchangers, administrators, or merchants that are willing to accept virtual currencies in lieu of real currency.

What Should a Consumer Consider?

Prior to buying, selling, transacting with, or investing in a virtual currency, consumers should consider the following:

- **Virtual currencies are volatile in value.** Virtual currencies are not backed by a central bank or government and are highly volatile with the potential for complete loss of value. Most virtual currencies derive their value solely from the market's perception of their value. This may affect investors as well as consumers using virtual currencies as a means of payment. Virtual currency volatility may also make securities offerings tied to these currencies unsuitable for most investors.

- **Virtual currencies are subject to loss.** Currently, most virtual accounts or “wallets” – unlike funds held in U.S. banks or credit unions – are not insured against loss. Also, there is no way to reverse virtual currency transactions once completed.
- **Virtual currencies can be stolen.** Similar to other property, virtual currency can be stolen or otherwise subject to cybercrime. Consumers may incur financial losses if an account is not maintained in a secure manner. There are several well-publicized virtual currency exchange collapses whereby the virtual currencies were lost and/or stolen.
- **Virtual currencies have been connected to criminal activities.** Like other forms of payment, virtual currencies and virtual currency exchanges have been used to fund illicit activities. Legitimate customers of virtual currencies may be unable to access accounts if an exchange is shut down as part of a criminal investigation or for any other reason.
- **Virtual currencies and companies dealing in virtual currencies may or may not be regulated.** State and federal regulators continue evaluating and developing approaches to regulating virtual currencies and companies that deal in virtual currencies. Any company that offers to exchange, administer, or maintain virtual currencies may be subject to state regulation and licensing as well as federal regulation.

In March 2013, the Financial Crimes Enforcement Network (FinCEN) issued guidance to clarify the applicability of the regulations implementing the Bank Secrecy Act (“BSA”) to persons creating, obtaining, distributing, exchanging, accepting, or transmitting virtual currencies. Such persons are defined within the guidance as “users,” “administrators,” and “exchangers.” Specifically, an *exchanger* is a person engaged as a business in the exchange of virtual currency for real currency, funds, or other virtual currency. For purposes of the Louisiana Sale of Checks and Money Transmission Act, an *exchanger* is the only party who may be subject to licensure as a money transmitter by this Office at this time. The FinCEN guidance can be reviewed at <https://www.fincen.gov/sites/default/files/shared/FIN-2013-G001.pdf>.

Also, an *administrator* or *exchanger* that accepts and transmits a convertible virtual currency or buys or sells convertible virtual currency for any reason is a money transmitter under federal regulations and therefore should be registered as a money services business (MSB) with FinCEN. To check if a virtual currency exchanger or administrator is registered with FinCEN, go to http://www.fincen.gov/financial_institutions/msb/msbstateselector.html.

- **Virtual currency transactions may be taxable.** For federal tax purposes, the Internal Revenue Service has announced that virtual currency is treated as property. General tax principles applicable to property transactions apply to transactions using virtual currency. This includes determining the fair market value of virtual currency in U.S. dollars as of the date of payment or receipt, as well as any gain or loss incurred. For more information, go to <http://www.irs.gov/uac/Newsroom/IRS-Virtual-Currency-Guidance>.

- **Do your homework.** Consumers considering the use of virtual currencies should research any company offering services related to virtual currencies. This includes exchanges, platforms, administrators, sellers, or ATMs. There are a variety of sources of information available:
 - In August 2014, the Consumer Financial Protection Bureau (CFPB) issued a consumer advisory titled *Risks to Consumers Posed by Virtual Currencies*, which can be found at <http://www.consumerfinance.gov/blog/category/virtual-currency/>
 - Consumers should check our website (www.ofi.la.gov) and other state agencies' websites for information about licensed money transmitters. For a comprehensive list of state regulatory agencies, go to <https://www.csbs.org/state-bank-agency-contact-quick-access>.
 - The NMLS Consumer Access website at www.nmlsconsumeraccess.org may also be able to assist with determining if an entity is state-licensed.
 - Investors should also check our website (www.ofi.la.gov) and other state agencies' websites for information about investments involving digital currency. For a complete list of state securities regulators, go to <http://www.nasaa.org/about-us/contact-us/contact-your-regulator/>.

If you have additional questions, please contact Deputy Chief Examiner Michelle Jeansonne at (225) 925-3828 or visit our website at www.ofi.la.gov.

This advisory is not intended as legal advice. The LOFI cannot provide legal representation to individual consumers.