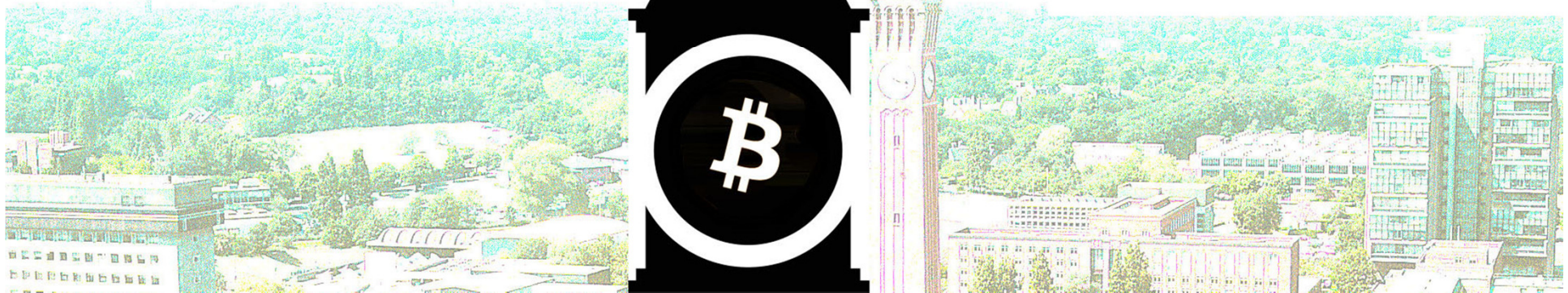


THE MODERN
LAW REVIEW



GAMING COUNSEL
PROFESSIONAL CORPORATION



Controlling Crypto-Currencies

June 12 2015



THE BACHELOR OF
LIBERAL ARTS
AND SCIENCES
BE AMONG THE NEXT GENERATION OF LEADERS



Regulating Virtual Currencies to Address Financial Crime: *Examples from the United States (or, the “Bad Cop” Approach)*

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Controlling Crypto-Currencies

June 12, 2015

Challenges and Concerns

- Financial Crime
- Investments and Taxation
- Consumer and Market Protection
- Prudential
- Stability and Legitimacy

Legitimize
“Good Cop”



Challenges and Concerns

- **Financial Crime**
- Investments and Taxation
- Consumer and Market Protection
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Overview of Presentation

- Policy Goals
- Money Laundering
- Federal Regulations
- Applications to Virtual Currency
- Enforcement
- State Regulations
- Policy Proposals

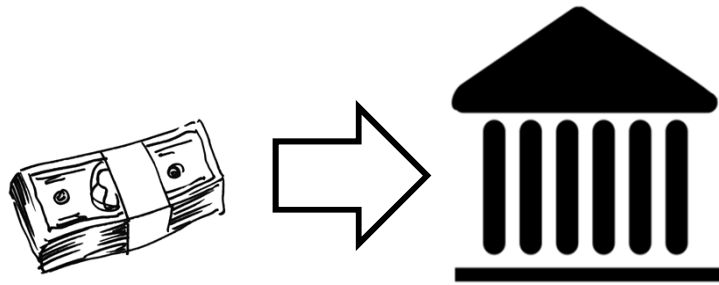


Policy Goals

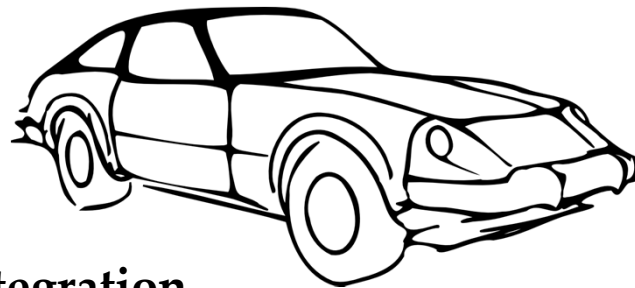
- Maintain regulatory control.
- Avoid stifling innovation with onerous or duplicative regulation.
- Provide consistency, clarity, and legitimacy for virtual currency businesses.
- Meet unique regulatory needs.



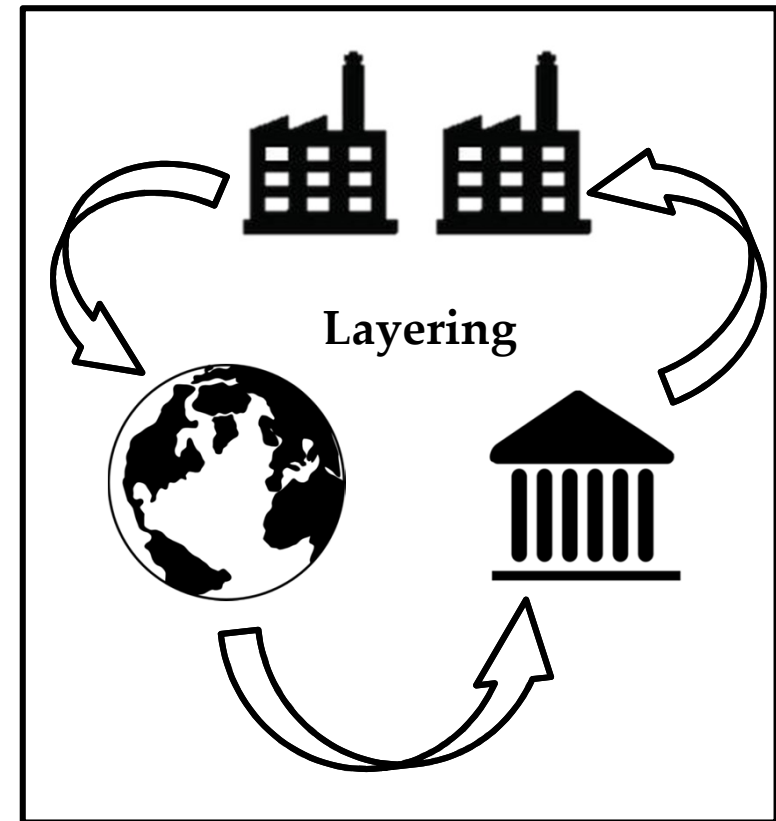
Money Laundering



Placement



Integration



Layering



Money Service Business

- Non-Bank Financial Institutions
- Examples: Foreign Exchange, Check Cashers, and Money Transmitters
- Regulated on both Federal and State Level



State and Federal Roles in Regulating MSBs

Federal Government Requires MSBs to:

- Register with FinCEN
- Meet federal recordkeeping and reporting requirements

State Governments Require MSBs to:

- Obtain a license,
- Post a bond,
- Meet minimum net worth,
- Retain records of transactions, and
- Retain list of authorized agents.



Federal Level: Bank Secrecy Act Requirements

- Money Service Business Registration
 - MSBs must collect identifying information about customers.
- Suspicious Activity Reports
 - MSBs must report suspicious transactions or patterns of transactions above \$2,000.
- Currency Transaction Reports
 - MSBs must report transactions above \$10,000.



Application to Virtual Currencies

FinCEN Administrative Rulings

- Businesses that transmit, sell, or exchange Bitcoin (“exchanges”) are money transmitters.
- Miners who mine “for themselves” do not have to register as MSBs.
- A user is not an MSB.



Enforcement of Federal Regulations

- Liberty Reserve
- Ripple Labs Inc.



State-Level Regulations

- New York
- Hawaii and Washington
- Texas



Regulatory and Policy Proposals

New York BitLicense (Charles Cowan)

- Exemptions for “investments purposes only,” customers, and software developers.
- “Conditional Licenses” for startups.
- No duplication of SARs between FinCEN and NYDFS.



Regulatory and Policy Proposals

Proposed policies by **Conference of State Bank Supervisors (CSBS)** and **California's AB1326**

- Leave AML regulation to FinCEN
- California policy includes a more narrow definition of virtual currency business activity.



Regulatory and Policy Proposals

Federal MSB License

- Opt in / opt out
- Would provide consistency and clarity, while minimizing duplication of licensure.
- Likely lacks political feasibility.



Policy Goals

- Meet unique regulatory needs.
- Maintain regulatory control.
 - New York
- Avoid stifling innovation with onerous or duplicative regulation.
 - California / CSBS
- Provide consistency, clarity, and legitimacy for virtual currency businesses.
 - Federal MSB License?





Questions?

Thank you!

Definition of Bitcoin as Currency

FinCEN

- Bitcoin is “a medium of exchange... Does not have legal tender status in any jurisdiction.”

Eastern District Court of Texas

- “Bitcoin is a currency or a form of money” (2013).

U.S. District Court, Southern District of New York

- Bitcoin “qualifies as ‘money’” as it “can be easily purchased in exchange for ordinary currency, acts as a denominator of value, and is used to conduct financial transactions” (2014).



- Financial Crimes Enforcement Network
- Bureau of the U.S. Department of the Treasury
- Combats money laundering, terrorist financing, and other financial crimes

