

NFA Advises Members to Comply with U.S. Sanctions in Digital Currency Activities

May 14, 2018

On May 3, 2018, the National Futures Association (“NFA”) issued Notice I-18-09 to its members, instructing them to review recent guidance from the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”) regarding digital currency and compliance with U.S. economic sanctions.



Futures commission merchants (“FCM”) and introducing brokers (“IB”) are instructed to address risks arising from their virtual currency transactions and use of digital currency wallets in their anti-money laundering (“AML”) compliance programs.

Digital currency identifiers and compliance with U.S. sanctions. In March 2018, OFAC published five frequently asked questions (“FAQs”) to provide guidance on the agency’s compliance expectations when dealing with digital currencies.

FAQ 559 defines several key terms:

- “Virtual currency” is a digital representation of value that functions as (i) a medium of exchange; (ii) a unit of account; and/or (iii) a store of value; is neither issued nor guaranteed by any jurisdiction; and does not have legal tender status in any jurisdiction
- “Digital currency” includes sovereign cryptocurrency, virtual currency (non-fiat) and a digital representation of fiat currency
- A “digital currency wallet” is a software application (or other mechanism) that provides a means for holding, storing and transferring digital currency
- A “digital currency address” is an alphanumeric identifier that represents a potential destination for a digital currency transfer and is associated with a digital currency wallet

FAQ 560 explains that U.S. persons may not engage in prohibited transactions involving digital currency and recommends that administrators, exchangers and users of digital

currency, and others facilitating activities involving digital currencies, develop risk-based sanctions compliance programs that apply to their digital currency activities. More specifically, OFAC advises that both U.S. and non-U.S. persons may face risks of noncompliance with U.S. sanctions when dealing in digital currency. For example:

- Transactions undertaken to evade or avoid U.S. sanctions requirements, such as when a U.S.-sanctioned person seeks to disguise its interest in a transaction, are prohibited.
- Causing a U.S. person, such as a U.S. financial institution, to violate U.S. sanctions, i.e., by facilitating a transaction in which a U.S.-sanctioned person has an interest or involving property interests of a U.S.-sanctioned person, is also prohibited.

FAQs 561-563 note that:

- OFAC may include digital currency addresses associated with sanctioned persons in its list of Specially Designated Nationals (“SDN”), and any assets associated with these addresses may require blocking and reporting to OFAC. It does not appear that OFAC has yet included any digital currency addresses in the SDN list.

- **FCMs and IBs are expected to address digital currency risks in AML programs:**

The NFA’s notice requires FCMs and IBs to ensure that AML compliance programs that cover required customer due diligence and suspicious activity reporting requirements address OFAC’s guidance on digital currency transactions and use of digital currency wallets.

- At a minimum, the NFA’s notice appears to call for FCMs and IBs to understand their digital currency touch-points, and ensure that their AML processes are able to screen relevant digital currency addresses of their customers and other counterparties against OFAC’s SDN list, and monitor related transactions involving digital currency for potentially suspicious, and thus reportable, activity.

* * *

We are hosting two seminars on the new OFAC guidelines and related sanctions developments under the Trump administration. Please join us at 8:30 – 10:30 am in London on May 16 and in New York on May 23

To RSVP for the London event, click [here](#), and for the New York event, click [here](#).

* * *

For a periodic e-mail summary of developments in economic and trade sanctions, please subscribe to the Debevoise & Plimpton LLP Sanctions Alert by e-mailing sanctions@debevoise.com, or sign up on the [Insights Subscribe](#) page of our website. The firm's sanctions-related publications may also be found at [The Sanctions Resource](#) page on our website.

* * *

Please do not hesitate to contact us with any questions.

WASHINGTON, D.C.

Satish M. Kini
smkini@debevoise.com

Robert T. Dura
rdura@debevoise.com

NEW YORK

Byungkwon Lim
blim@debevoise.com

Gary E. Murphy
gemurphy@debevoise.com