WEST VIRGINIA CODE: §32A-2-1

§32A-2-1. Definitions.

(a) "Acting in concert" means persons knowingly acting together with a common goal of jointly acquiring control of a licensee whether or not pursuant to an express agreement.

(b) "Average daily money transmission liability" means the amount of the licensee's outstanding money transmission obligations in this state at the end of each day in a given period of time, added together, and divided by the total number of days in the given period of time. For purposes of calculating average daily money transmission liability, the given period of time shall be the quarters ending March 31, June 30, September 30, and December 31.

(c) "Check" means any check, traveler's check, draft, money order, or other instrument for the transmission or payment of money whether or not the instrument is negotiable. "Check" does not include a credit card voucher or a letter of credit.

(d) "Closed loop stored value" means stored value that is redeemable by the issuer only for goods or services provided by the issuer or its affiliate or franchisees of the issuer or its affiliate, except to the extent required by applicable law to be redeemable in cash for its cash value.

(e) "Commissioner" means the Commissioner of Financial Institutions of this state.

(f) "Control" means:

(1)(A) The power to vote, directly or indirectly, at least 25 percent of voting shares or voting interests of a licensee or person in control of a licensee;

(B) The power to elect or appoint a majority of key individuals or executive officers, managers, directors, trustees, or other persons exercising managerial authority of a person in control of a licensee; or

(C) The power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee.

(2) Rebuttable presumption of control:

(A) A person is presumed to exercise a controlling influence when the person holds the power to vote, directly or indirectly, at least 10 percent of outstanding voting shares or voting interests of a licensee or person in control of a licensee.

(B) A person presumed to exercise a controlling influence as defined in this section can rebut the presumption of control if the person is a passive investor.

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(3) For the purposes of determining the percentage of a person controlled by any other person, the person's interest shall be aggregated with the interest of any other immediate family member, including the person's spouse, parents, children, siblings, mothers-in-law, fathers-in-law, sons-in-law, daughters-in-law, brothers-in-law, sisters-in-law, and any other person who shares such person's home.

(g) "Control of virtual currency," when used in reference to a transaction or relationship involving virtual currency, means the power to execute unilaterally or prevent indefinitely a virtual currency transaction.

(h) "Currency exchange" means the conversion of the currency of one government into the currency of another government, but it does not include the issuance and sale of travelers checks denominated in a foreign currency. Transactions involving the electronic transmission of funds by licensed money transmitters which may permit, but do not require, the recipient to obtain the funds in a foreign currency outside of West Virginia are not currency exchange transactions: *Provided*, That they are not reportable as currency exchange transactions under federal laws and regulations.

(i) "Currency exchange, transportation, transmission business" means a person who is engaging in currency exchange, currency transportation, or currency transmission as a service or for profit.

(j) "Currency transmission" or "money transmission" means, directly or through an authorized delegate: (1) Engaging in the business of selling or issuing checks or the business of receiving currency, the payment of money, or other value that substitutes for money by any means for the purpose of transmitting, either prior to or after receipt, that currency; (2) Payment of money or other value that substitutes for money by wire, facsimile, or other electronic means, or through the use of a financial institution, financial intermediary, the Federal Reserve system, digital wallet, including, but not limited to, a digital wallet used in connection with a consumer payment mobile application, or other funds transfer network; or (3) Engaging in the business of owning or operating a virtual currency kiosk. It includes the transmission of funds through the issuance and sale of stored value or similar prepaid products' cards which are intended for general acceptance and used in commercial or consumer transactions. It also includes payroll processing services. It does not include the provision solely of online or telecommunications services or network access.

(k) "Currency transportation" means knowingly engaging in the business of physically transporting currency from one location to another in a manner other than by a licensed armored car service exempted under section three of this article.

(l) "Digital wallet" means any electronic or digital functionality that:

(1) Stores value or virtual currency for a customer, including, but not limited to, in encrypted or tokenized form; and

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(2) Transmits, routes, or otherwise processes such stored value or virtual currency to facilitate a payment transaction.

(m) "Elder adult" means a person who is 60 years of age or older.

(n) "Exchange", used as a verb, includes to assume control of virtual currency from or on behalf of a person, at least momentarily, to sell, trade, or convert:

(1) Virtual currency for money, bank credit, or one or more forms of virtual currency; or

(2) Money or bank credit for one or more forms of virtual currency.

(o) "Existing customer" means a consumer who:

(1) Is engaging in a transaction at a virtual currency kiosk in this state; and

(2) Has been registered for more than 10 days as a customer of the owner of the virtual currency kiosk or virtual currency kiosk operator.

(p) "Key individual" or "principal" means any individual ultimately responsible for establishing or directing policies and procedures of the licensee, such as an executive officer, manager, director, or trustee.

(q) "Licensee" means a person licensed by the commissioner under this article.

(r) "Money" or "currency" means a medium of exchange that is authorized or adopted by the United States or a foreign government and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments.

(s) "Money order" means any instrument for the transmission or payment of money in relation to which the purchaser or remitter appoints or purports to appoint the seller thereof as his or her agent for the receipt, transmission, or handling of money, whether the instrument is signed by the seller, the purchaser, remitter, or some other person.

(t) "Money transmission kiosk" or "virtual currency kiosk" means an automated electronic machine that allows users to engage in money transmission, including any machine that is capable of accepting or dispensing cash in exchange for virtual currency. "Money transmission kiosk" or "virtual currency kiosk" does not include consumer cellular telephones and similar personal devices.

(u) "MSB accredited state" means a state agency that is accredited by the Conference of State Bank Supervisors and Money Transmitter Regulators Association for money transmission licensing and supervision.

(v) "Nationwide Multistate Licensing System and Registry" or "NMLS" means the system developed by the Conference of State Bank Supervisors and the American Association of

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Residential Mortgage Regulators and owned and operated by the State Regulatory Registry, LLC, or any successor or affiliated entity, for the licensing and registration of persons in the financial services industries.

(w) "New customer" means a consumer who is engaging in a virtual currency transaction in this state and has been registered for 10 days or less as a customer of the owner of a virtual currency kiosk or virtual currency kiosk operator.

(x) "Outstanding money transmission obligations" shall mean:

(1) Any payment instrument or stored value issued or sold by the licensee to a person located in the United States or reported as sold by an authorized delegate of the licensee to a person that is located in the United States that has not yet been paid or refunded by or for the licensee or escheated in accordance with applicable unclaimed property laws; or

(2) Any money received for transmission by the licensee or an authorized delegate in the United States from a person located in the United States that has not been received by the payee or refunded to the sender or escheated in accordance with applicable unclaimed property laws.

(3) For purposes of this subsection, "in the United States" shall include, to the extent applicable, a person in any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a United States military installation that is located in a foreign country.

(y) "Passive investor" means a person that:

(1) Does not have the power to elect a majority of key individuals or executive officers, managers, directors, trustees, or other persons exercising managerial authority of a person in control of a licensee;

(2) Is not employed by and does not have any managerial duties of the licensee or person in control of a licensee;

(3) Does not have the power to exercise directly or indirectly a controlling influence over the management or policies of a licensee or person in control of a licensee; and

(4) Either:

(A) Attests to subdivisions (1), (2), and (3) of this subsection in a form prescribed by the commissioner or

(B) Commits to the passivity characteristics of subdivisions (1), (2), and (3) of this subsection in a written document.

(z) "Payment instrument" means a written or electronic check, draft, money order, traveler’s

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check, or other written or electronic instrument for the transmission of payment of money or monetary value, whether or not negotiable, and does not include stored value or any instrument that: (1) is redeemable by the issuer only for goods or services provided by the issuer or its affiliate or franchisees of the issuer or its affiliate, except to the extent required by applicable law to be redeemable in cash for its cash value, or (2) not sold to the public but issued and distributed as part of a loyalty, rewards, or promotional program.

(aa) "Payroll processing services" means receiving money for transmission pursuant to a contract with a person to deliver wages or salaries, making payment of payroll taxes to state and federal agencies, making payments relating to employee benefit plans, or making distributions of other authorized deductions from wages and salaries: *Provided*, That it does not include an employer performing payroll processing services on its own behalf or on behalf of an affiliate or a professional employment organization subject to regulation under other applicable state law.

(bb) "Person" means any individual, partnership, association, joint stock association, limited liability company, trust, or corporation.

(cc) "Stored value" means monetary value representing a claim against the issuer evidenced by an electronic or digital record and that is intended and accepted for use as a means of redemption for money or monetary value, or payment for goods or services. The term includes, but is not limited to, "prepaid access" as defined by 31 C.F.R. § 1010.100, as amended or recodified from time to time. Notwithstanding the foregoing, the term "stored value" does not include a payment instrument, closed loop stored value, or stored value not sold to the public but issued and distributed as part of a loyalty, rewards, or promotional program.

(dd) "Tangible net worth" means the aggregate assets of a licensee excluding all intangible assets, less liabilities, as determined in accordance with United States generally accepted accounting principles.

(ee) "Transfer" includes to assume control of virtual currency from or on behalf of a person and to:

(1) Credit the virtual currency to the account of another person;

(2) Move the virtual currency from one account of a person to another account of the same person; or

(3) Relinquish control of virtual currency to another person.

(ff) "U.S. Dollar equivalent of virtual currency" means the equivalent value of a particular virtual currency in United States dollars shown on a virtual currency exchange based in the United States for a particular date or period specified in this article.

(gg) "Virtual currency" means a digital representation of value that is used as a medium of

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exchange, unit of account, or store of value and is not money, whether or not denominated in money. Virtual currency does not include:

(1) A transaction in which a merchant grants, as part of an affinity or rewards program, value that cannot be taken from or exchanged with the merchant for money, bank credit, or virtual currency; or

(2) A digital representation of value issued by or on behalf of a publisher and used solely within an online game, game platform, or family of games sold by the same publisher or offered on the same game platform.

(hh) "Virtual currency administration" means issuing virtual currency with the authority to redeem the currency for money, bank credit, or other virtual currency.

(ii) "Virtual currency business activity" means:

(1) Exchanging, transferring, or storing virtual currency or engaging in virtual currency administration, whether directly or through an agreement with a virtual currency control-services vendor;

(2) Holding electronic precious metals or electronic certificates representing interests in precious metals on behalf of another person or issuing shares or electronic certificates representing interests in precious metals; or

(3) Exchanging one or more digital representations of value used within one or more online games, game platforms, or family of games for:

(A) Virtual currency offered by or on behalf of the same publisher from which the original digital representation of value was received;

(B) Money or bank credit outside the online game, game platform, or family of games offered by or on behalf of the same publisher from which the original digital representation of value was received.

(jj) "Virtual currency control-services vendor" means a person that has control of virtual currency solely under an agreement with a person that, on behalf of another person, assumes control of virtual currency.

(kk) "Virtual currency kiosk operator" means a person who engages in virtual currency business activity through a money transmission kiosk located in this state or a person that owns, operates, solicits, markets, advertises, manages, or facilitates a money transmission kiosk located in this state through which virtual currency business activity is offered.

(ll) "Virtual currency storage" means:

(1) Maintaining possession, custody, or control over virtual currency on behalf of another

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person, including as a virtual currency control-services vendor;

(2) Issuing, transferring, or otherwise granting or providing to any person in this state any claim or right or any physical, digital, or electronic instrument, receipt, certificate, or record representing any claim or right to receive, redeem, withdraw, transfer, exchange, or control any virtual currency; or

(3) Receiving possession, custody, or control over virtual currency from a person in this state in return for a promise or obligation to return, repay, exchange, or transfer such virtual currency or a like amount of such virtual currency.

(mm) "Virtual currency wallet" means a software application or other mechanism providing a means for holding, storing, and transferring virtual currency.

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