

FinCEN Issues First Penalty Against Peer-to-Peer Virtual Currency Exchanger



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On April 18, 2019, FinCEN [announced its first penalty](#) against an individual for operating as a peer-to-peer exchanger for converting virtual currency. Eric Powers was charged with “willfully violating the Bank Secrecy Act (BSA)” registration, program, and reporting requirements.

Powers executed digital currency transactions with other individuals in person, by mail, and by wire transfer, and he advertised his services directly to consumers on the Internet. He operated as an individual and did not have an established business platform. His activity included over 200 transactions involving more than \$10,000 in currency, and approximately 160 purchases of Bitcoin totaling approximately \$5 million through in-person cash transactions.

FinCEN’s announcement refers back to its 2013 Guidance,^[1] in which FinCEN stated that peer-to-peer exchangers of convertible virtual currency are money transmitters,^[2] and thus are required to register as money services businesses (MSBs) and comply with the BSA. In order to comply, Powers would have had to (1) register with FinCEN as an MSB; (2) establish and implement an effective anti-money

laundering (AML) program; (3) detect and adequately report suspicious transactions by filing Suspicious Activity Reports (SARs); and (4) report currency transactions by filing Currency Transactions Reports (CTRs) where applicable.^[3] Powers failed to comply with these requirements.

In announcing the penalty against Powers, FinCEN stressed that anyone acting as an exchanger of virtual currency should understand their obligations based on the 2013 Guidance. In this first enforcement action FinCEN also affirmatively noted that Powers was aware of these specific obligations and chose to ignore them. Moreover, Powers conducted transactions bearing strong indicia of illicit activity. For example, Powers' bitcoin wallet addresses were associated with over a hundred transactions with customers doing business on the darknet website Silk Road, aggregating over \$12,000.^[4] He also conducted a series of transactions with customers using anonymizing torrent services that direct internet traffic through a series of layers to conceal a user's location and identity and that is used to access the darknet. He also conducted numerous transactions for currency in excess of \$10,000, but failed to file a single CTR.

The penalties imposed include a fine of \$35,000 and an industry bar, prohibiting Powers from engaging in any activity that would make him a "money services business," as well as penalties, sanctions, and remedies imposed on Powers by other state or federal agencies, including civil or criminal forfeitures imposed in the amount of \$100,000 and 237.53575 bitcoin.^[5] The monetary penalties could have been much more severe. In announcing those penalties, however, FinCEN made a point to note that Powers has cooperated in the investigation.

While this is FinCEN's first penalty against an individual peer-to-peer virtual currency exchanger, it is not FinCEN's first penalty issued in the digital asset arena. In July 2017, for example, FinCEN and the Department of Justice acted in coordination to issue a penalty for more than \$110 million against a virtual trading platform based outside of the U.S. based on the platform's transactions with customers inside of the U.S. and its failure to register as an MSB and implement effective AML programs.^[6]

FinCEN's first peer-to-peer penalty is a signal that small operators in the virtual currency space should not expect to fly under the radar, but instead need to consider FinCEN's 2013 Guidance. Those who find themselves out of compliance (or are concerned) should seek counsel or risk both monetary sanctions and a bar from the industry.

[1] FIN-2013-G001, "Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies" (March 18, 2013) (2013 Guidance).

[2] The term "money transmitter" is defined at 31 CFR § 1010.100(ff)(5).

[3] For a more detailed explanation of FinCEN's guidance and enforcement actions in the digital asset arena, see Chapter 6 of the American Bar Association's recent publication: ["Digital and Digitized Assets: Federal and State Jurisdictional Issues,"](#) co-authored, in part, by Jack P. Drogin and Rachel L. Schwartz of Schiff

Hardin LLP.

[4] On October 2, 2013, federal law enforcement authorities shut down and seized the Silk Road site following a highly publicized indictment alleging that it served as a marketplace for narcotics, malicious software, forgeries, false identification documents, and other illicit products and services and promoted money launders by concealing source of funds.

[5] See *United States of America v. Eric D. Powers*, JKB-15-854 (D. Md.).

[6] See *In the matter of BTC-E*, FinCEN No. 2017-03 (June 26, 2017), https://www.fincen.gov/sites/default/files/enforcement_action/2017-07-26/Assessment%20for%20BTCeVinnik%20FINAL%20SignDate%2007.26.17.pdf.

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