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March 26, 2025

The Honorable Tim Scott
Chairman, Senate Committee on Banking

The Honorable Elizabeth Warren
Ranking Member, Senate Committee on Banking

The Honorable Chuck Grassley
Chairman, Senate Committee on the Judiciary

The Honorable Dick Durbin
Ranking Member, Senate Committee on the Judiciary

The Honorable French Hill
Chairman, House Committee on Financial Services

The Honorable Maxine Waters
Ranking Member, House Committee on Financial Services

The Honorable Jim Jordan
Chairman, House Committee on the Judiciary

The Honorable Jamie Raskin
Ranking Member House Committee on the Judiciary

Dear Members of the Senate Committee on Banking, Senate Committee on the Judiciary, House Committee on Financial Services, and House Committee on the Judiciary:

We write to urge you to correct the Department of Justice's (DOJ) unprecedented and overly expansive interpretation of the criminal code provision proscribing operating an "unlicensed money transmitting business" as applied to software developers. The DOJ's new policy position, first debuted in August 2023 via criminal indictment, creates confusion and ambiguity with the spectre of criminal liability, and ultimately threatens the viability of U.S.-based software development in the digital asset industry and other industries. In short, under this interpretation, essentially every blockchain developer could be prosecuted as a criminal.

The term "money transmitting business" is found in two places in the U.S. code: in the Bank Secrecy Act's licensure requirements and in the criminal code.[1] The definition at 31 U.S.C. 5330 defines *who* must be licensed as a "money transmitting business," and 18 U.S.C. 1960

[1] 31 U.S.C. 5330; 18 U.S.C. 1960.

criminalizes *operating* an "unlicensed money transmitting business." Section 1960 was meant to be the enforcement mechanism for the BSA and state licensing requirements.

The definition of "money transmitting business" is substantively identical in both statutes, evidencing Congress's intent to read them similarly. Section 5330 defines a "money transmitting business" to include a "money transmitting service," which includes "accepting currency, funds, or value that substitutes for currency and transmitting the currency, funds, or value that substitutes for currency by any means." Under Section 1960(b)(2), the term "money transmitting" means "transferring funds on behalf of the public by any and all means." Section 5330 is explicitly referenced in Section 1960(b)(1)(B).

The plain meaning of "transfer[] funds on behalf of" another person has always been clear: in order to transfer funds *on someone's behalf,* one must have possession of those funds and then relinquish control over them to a third party. The Department of Treasury's Financial Crimes Enforcement Network ("FinCEN") agrees. Since 2019, the digital asset industry has relied on FinCEN Guidance that provided examples of what activities constitute "money transmitting" under the BSA.[2] That Guidance explains that if a software developer never obtains possession or control over customer funds, that developer is not operating a "money transmitting business." The industry has followed this Guidance in good faith for over five years. It is not hyperbole to say it is one of if not the most important legal cornerstone supporting the development of this multi-billion dollar industry.

Despite the intentional similarity in definitions of "money transmitting business" in both Section 5330 and Section 1960, and despite FinCEN's 2019 Guidance, the DOJ has taken the position that the definition of a "money transmitting business" under the BSA is not relevant to determining whether someone is operating an unlicensed "money transmitting business" under Section 1960.[3] This position does not comport with the law, congressional intent, nor the realities of the technology.

For years, courts have repeatedly looked to Section 5330, FinCEN regulations, and FinCEN Guidance for the precise purpose of understanding what "money transmitting" means under Section 1960(b)(2).[4] In none of those cases has a criminal court analyzing a Section 1960

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[2] Fin. Crimes Enf't Network, Application of FinCEN's Regulations to Certain Business Models Involving Convertible Virtual Currencies, FIN-2019-G001, at 15, § 4.2, https://www.fincen.gov/sites/default/files/2019-05/FinCEN%20Guidance%20CVC%20FINAL%20508.pdf (May 9, 2019).

[3] Peter Van Valkenburgh, "DOJ's New Stance on Crypto Wallets is a Threat to Liberty and the Rule of Law," Coin Center (Apr. 29, 2024), https://www.coincenter.org/dojs-new-stance-on-crypto-wallets-is-a-threat-to-liberty-and-the-rule-of-law/.

[4] *See* Barabander, D., Tuminelli, A., and Chervinsky, J. (2024), Through the Looking Glass: Conceptualizing Control and Analyzing Criminal Liability For Unlicensed Money Transmitting Businesses Under Section

violation supported or endorsed DOJ's novel interpretation of the statute. Yet, the DOJ has ignored both this guidance and precedent to pursue its new interpretation of "money transmitting business" in the form of criminal indictments against individual software developers. The result: two separate U.S. government agencies with conflicting interpretations of "money transmission" — an unclear, unfair position for law-abiding industry participants and innovators.

Logically, if a person is not operating a "money transmitting business" as defined in the statutes requiring the licensure of money transmitting businesses, that person should not be subject to criminal liability for operating an "unlicensed money transmitting business." This interpretation conforms with Congressional intent and common sense. As explained by Senators Lummis and Wyden: "[T]he statutes and regulations are clear that direct receipt and control of assets are required elements of money transmission. Indeed, this limiting factor is essential, otherwise a wide range of additional services such as internet service providers or postal carriers could inadvertently be caught in the definition of a money transmitting business since they routinely send, receive and process information and messages regarding payments."[5]

If left unaddressed, the DOJ's departure "from the clear, logically sound, and well-established definition of 'money transmission' established by FinCEN" would expose every technology developer of non-custodial software within the reach of the U.S. to criminal liability.[6] The resulting, and very rational, fear among developers would effectively end the development of these technologies in the United States, push U.S. innovators overseas, and tarnish confidence in the DOJ's respect for the rule of law. The federal government should not be playing a game of bait and switch. Congress should urge the DOJ to correct its misapplication of the law, and clarify Section 1960 to more clearly convey Congress's intent.

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1960, The International Academy of Financial Crime Litigators Working Paper No 3. available at https://edit.financialcrimelitigators.org/api/assets/cd682a1c-1cb0-4c99-a491-ac6155f4bdc2.pd

[5] Cynthia M. Lummis & Ron Wyden, Letter to Hon. Merrick Garland, Attorney General of the United States, U.S. Department of Justice (May 9, 2024), available at https://www.lummis.senate.gov/wp-content/uploads/Lummis-Wyden-Letter-on-Non-Custodial-Crypto-Asset-Software.pdf.

[6] *Id*.

Respectfully signed,

Paradigm

The DeFi Education Fund

Multicoin Capital

A16z Crypto

Polygon Labs

Decentralization Research Center

Slingshot Finance, Inc.

Electric Coin Co.

IoTex

Filecoin Foundation

dYdX Trading Inc.

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