

**Testimony of Andrew Wichmann, Associate, Gordon Feinblatt LLC before the
Maryland Financial Consumer Protection Commission
June 5, 2018**

Chairman Gensler and members of the Commission, my name is Andrew Wichmann, and I am a lawyer with Gordon Feinblatt in Baltimore City.¹ Thank you for inviting me to participate in this hearing.

At Gordon Feinblatt, my practice focuses on technology law, intellectual property, and privacy and data security. My original experience with virtual currencies concerned the technical aspects of distributed ledgers and the protection of intellectual property related thereto. Over the past several years my colleagues and I have encountered issues stemming from public uncertainty regarding the business and investment aspects of virtual currencies, and their relation to laws governing money services businesses.

One area of confusion relates to the application of Maryland's Money Transmission Act to the operation of virtual currency exchanges. For example, we have encountered questions concerning whether a person operating a virtual currency exchange is required to obtain a money transmitter license, as well as whether an existing money transmission business can incorporate a virtual currency exchange under an existing license. Clear answers to such questions are important because the unauthorized operation of a money transmission business can subject the operator to fines and imprisonment under Maryland and Federal law.² Further, obtaining a money transmission license in Maryland is a significant investment.³

On April 24, 2014, in the only previous public writing by the State regarding virtual currencies, former Commissioner Kaufman issued an Advisory Notice that stated "currently, Maryland does not regulate virtual currencies." A casual reader might superficially interpret this statement as indicating that virtual currency exchanges are not subject to Maryland law. However, the language of the Money Transmission Act defines "money transmission" to be "the business of . . . receiving money or monetary value, for transmission to a location . . . by any means, including electronically or through the internet" where "monetary value" is defined as "a medium of exchange whether or not redeemable in money."⁴ Thus, receiving and exchanging virtual currencies for transmission to another location appears to qualify as money transmission under Maryland law.

¹ All statements made in this testimony are my own and not those of Gordon Feinblatt LLC or any of our clients.

² Md.Code Ann., Fin. Inst. § 12-430 and 18 U.S.C. § 1960(a).

³ See Md.Code Ann., Fin. Inst. § 12-407 and § 12-408 (Money Transmitter License application requirements include fees, financial statements, surety devices, fingerprints, background investigation, etc. . .).

⁴ Md.Code Ann., Fin. Inst. § 12-401.

Except for actions by certain depository institutions and other narrow exemptions, all money transmission in Maryland requires a license by the Department of Labor, Licensing, and Regulation. Thus the licensing requirements under the Money Transmission Act appear to be broad enough in scope to cover virtual currency exchanges as well as potentially other types of virtual currency operations.⁵

Most of the issues with Maryland's Money Transmission Act are similar to those being discussed in other states across the country, as we all attempt to determine what type of policy should govern this emerging space. This hearing is part of an effort to determine whether Maryland will take action to regulate virtual currencies and virtual currency exchanges. In considering any new regulation, it would be beneficial to clarify the applicability of Maryland's money transmission licensing requirements for virtual currency operations, without unduly regulating blockchain technologies that do not put consumers at significant risk.

As currently written, the Maryland Money Transmission Act appears to impose licensing requirements in a way that may hinder potentially important, pro-consumer developments in blockchain technology. For example, one notable area of development is the introduction of micropayments. Micropayments are small transactions, sometimes fractions of a cent, which can settle between nodes on a blockchain network almost instantly. Micropayments could have many beneficial applications, such as direct automated payments for data usage and storage, public utilities, and machine-to-machine services. Perhaps most notably, micropayments could provide direct payment for access to online content instead of the current status-quo, which requires the sacrifice of consumer data and risk to consumer privacy.

It is unclear exactly what widespread adoption of micropayments would look like at this time. Some nascent micropayment implementations involve a network of off-blockchain channels distributed among participating nodes.⁶ These nodes can execute a series of smart contracts to transfer values that may be securely validated at a later time on the blockchain. Multiple transactions among many nodes on these micropayment networks can be netted out for minimal transaction fees. However, when netting micropayment transactions, a node may be deemed to be receiving a transfer of "a medium of exchange" from one node for transmission to another node. Thus, the operation of a micropayment node may be deemed money transmission, implicating all of the compliance requirements of the Money Transmission Act for any node participating in the micropayment network.⁷

⁵ See also *U.S. v. 50.44 Bitcoins*, 2016 WL 3049166, at *2 (D. Md. May 31, 2016) (Discussing that an exchanger of virtual currency in Maryland is required to be registered with the State of Maryland as a money transmitter).

⁶ See e.g. Lightning Network, <https://lightning.network/> (last visited Jun. 4, 2018) and Raiden Network, <https://raiden.network/> (last visited Jun. 4, 2018).

⁷ Legislative solutions have been put forward that attempt to accommodate the implications of micropayments and other blockchain innovations. See Uniform Law Commission, *Uniform Regulation of Virtual-Currency Business Act*,

Requiring each node in a micropayment network to fully comply with the Money Transmission Act would effectively kill the network. Maintaining the Money Transmission Act, in its current, unclarified form would leave the legality of certain micropayment networks in Maryland in an uncertain status. Moreover, micropayment technology is just one of several potential near-term innovations in blockchain technology. Therefore, in considering regulation of virtual currency exchanges in Maryland, it would be beneficial for the Commission to consider clarifying the applicability of Maryland's Money Transmission Act to virtual currency operations, while keeping in mind the chilling effect that overbroad regulation can have on a rapidly evolving technology.