

Cryptocurrency Regulatory Complexities Multiply

BLOCKCHAIN AND DIGITAL CURRENCY | LIFE, ANNUITY, AND RETIREMENT SOLUTIONS | FINANCIAL SERVICES REGULATORY | SECURITIES & INVESTMENT COMPANIES | JULY 11, 2019



Matthew E. Kohen

Firms seeking to integrate digital assets into their business — including the sale of insurance or securities products and services — must grapple with the potential applicability of money transmission regulation that varies from state to state.

For example, in early 2019, a Florida state appellate court opinion in *State v. Espinoza* added to the growing regulatory mosaic affecting how individuals and businesses use bitcoin and other virtual currencies.

The appellate court ruled that the trial court incorrectly dismissed a case against Michell Espinoza, who was charged with operating an unlicensed money services business and money laundering. Espinoza was arrested after selling bitcoin to undercover law enforcement officers in exchange for U.S. dollars. In order to establish a money laundering violation, the undercover officers informed Espinoza that they had obtained the U.S. dollars being used to purchase the bitcoin via illegal activity.

The trial court originally dismissed the charges because, among other things, it concluded that bitcoin did not constitute money within the purview of Florida's money transmission and money laundering statutes. The appellate court disagreed, holding that bitcoin can be considered a medium of exchange that had monetary value and, as such, was a payment instrument as defined in Florida law.

Accordingly, the appellate court held that a person who transfers bitcoin to a third party in exchange for payment from that third party is engaging in money transmission under Florida law. A firm conducting such operations in Florida generally must obtain a license from the state Office of Financial Regulation.

Although the opinion lends further support to the proposition that bitcoin represents monetary value, it does little to resolve other questions about the scope of conduct that is considered money transmission. Even in Florida, therefore, firms seeking to buy, sell, or otherwise integrate digital assets into their business model may face uncertainties about whether a money transmission license is required.