Definitions

1. <u>Financial Institution</u> → (1) a bank, (2) a broker or dealer in securities, (3) **a money services business**, (4) a telegraph company, (5) a casino with +$1M in revenue, (6) a gaming club with +$1M in revenue, (7) a person subject to supervision by any state or federal bank supervisory authority, (8) a futures commission merchant, (9) an introducing broker in commodities, (10) a mutual fund.

2. <u>Money Services Business</u> → (1-3) Dealer in foreign exchange/check casher/issuer or seller of traveler's checks or money orders in +$1,000/day, (4) **a provider or prepaid access**, (5) **a money transmitter**, (6) the U.S. Postal Service, (7) a seller of prepaid access.

3. <u>Money Transmission (CA)</u> → selling or issuing payment instruments, (2) selling or issuing **stored value** ("*monetary value representing a claim against the issuer that is stored on an electronic or digital medium and evidenced by an electronic or digital record, (…) for use as a means of redemption for money or monetary value or payment for goods and services*"), (3) receiving **money for transmission** ("*receiving money or monetary value in the US for transmission within or outside the US by electronic or other means.*")

Licensing Primer

1. Licensing is **activity-based** and operates based on the **geography of the customer**.

2. Federal and state regulation also apply to **all providers servicing US customers**, whether **domestic or overseas**.

3. **Taking in fiat** into our platform and **allowing fiat exit** is subject to **money transmission/stored value licensing** (+ federal AML regulations).

4. **Operating without such licensing** in the US is technically a **federal crime** subject to monetary penalties and prison. Inconsistently enforced.

5. Whoever receives (fiat) money (or virtual value, in some states) for transmission or storage must (a) be **licensed,** (b) operate as an **authorized delegate** of a licensed MSB or (c) operate as **Program Manager** of a debit issuing bank.

6. Money transmission or stored value obligations kick in when a company:
   - is part of the **funds flow.**
   - **holds** third-party **monies in its accounts.** In our case, our "reserves."
   - **converts** fiat to fiat or virtual to fiat in both directions.

Licensing Exemptions

1 The term "money transmitter" shall not include a person that:

(A) Provides the **delivery, communication, or network access services** used by a money transmitter to support money transmission services;

(B) Acts as a **payment processor** to facilitate the purchase of, or payment of a bill for, a good or service through a clearance and settlement system by agreement with the creditor or seller;

(C) Operates a **clearance and settlement system** or otherwise acts as an **intermediary solely between BSA regulated institutions**. This includes but is not limited to the Fedwire system, electronic funds transfer networks, certain registered clearing agencies regulated by the Securities and Exchange Commission ("SEC"), and derivatives clearing organizations, or other clearinghouse arrangements established by a financial agency or institution;

(D) Physically transports currency, other monetary instruments, other commercial paper, or other value that substitutes for currency as a person primarily engaged in such business, such as an armored car (…)

(E) Provides prepaid access; or

(F) Accepts and transmits funds only **integral to the sale of goods or the provision of services**, other than money transmission services, by the person who is accepting and transmitting the funds.

2. Conditions for the "payment processor" exemption:

(a) the entity providing the service **must facilitate the purchase of goods or services**, or the payment of bills for goods or services (other than money transmission itself);

(b) the entity must operate through **clearance and settlement systems that admit only BSA-regulated** financial institutions;

(c) the entity must provide the service pursuant to **a formal agreement**; and

(d) the entity's agreement must be at a minimum **with the seller or creditor** that provided the goods or services and receives the funds.

Agency Primer

1. If a partner is **holding funds** or a **part of the funds flow**, it will have to (a) be **licensed** or (b) be an "**authorized delegate"** of a licensed entity.

2. In this type of relationships, the **license holder** (regulated business) must "sit at the front", i.e., be the party **clearly offering and controlling the regulated product** (_co-branding_, T&Cs, processing, bank accounts, etc.).

3. In some states (notably TX, PA and NY), a license holder cannot effectively "**rent a license**." If a partner is appointed as an agent ("authorized delegate"), the license holder must still control the regulated business (even as offered by a partner/program manager).

4. Significant constraints → an **authorized delegate**(TX) canNOT:
   → keep funds in its **own bank accounts**
   → offer its **own product or service** (P/S) (must offer the license holder's)
   → offer the license holder's P/S with its **own brand** (at minimum, co-branded)
   → offer P/S via its **own system/platform** (must use license holder's)
   → pay **fees** to the license holder (they must derive from transactions)
   → be party to the **service agreement with the customer** (it's license holder)
   → be **liable** for consumer funds (the license holder is)