



STATE OF CALIFORNIA
Department of Business Oversight

GOVERNOR **Gavin Newsom** • COMMISSIONER **Manuel P. Alvarez**

IN REPLY REFER TO:
FILE NO: LIS 2423

June 25, 2019

Re: Request for Interpretive Opinion

Dear Mr. _____:

Thank you for your letter to Stephen Lau, dated March 18, 2019, requesting an interpretive opinion from the Department of Business Oversight ("Department") as to whether _____ ("____") is required to obtain a license under the Money Transmission Act ("MTA").¹

I. BACKGROUND

_____, a Texas corporation with its principal place of business in California, is a wholly-owned subsidiary of _____ ("_____"), a California corporation. _____ is registered with the Financial Crimes Enforcement Network ("FinCEN") as a money services business.

_____ proposes to offer customers in California an online platform ("Platform") to purchase, trade for, and store, blockchain-based digital assets. The platform will:

- Allow customers to load U.S. Dollars from their external bank account ("External Bank Account") into a custodial bank account maintained by _____ and titled in the customer's name ("Custodial Bank Account") for the sole purposes of purchasing digital assets from, and paying fees to, _____;
- Allow customers to buy and sell digital assets in direct transactions with _____ only; and
- Allow customers to store their digital assets in a custodial wallet managed by _____.

The Platform will initially support five different digital assets (Bitcoin, Bitcoin Cash, Ethereum, Ethereum Classic, and Litecoin). However, _____ anticipates adding other digital assets in the future.

¹ Fin. Code, § 2000 et. seq. All further statutory references in this letter are to the Financial Code unless otherwise indicated.

Through the Platform, customers may load U.S. Dollars from their External Bank Account into a Custodial Bank Account maintained by _____. The funds in the Custodial Bank Account will only be used to purchase digital assets from, or pay fees to, _____. The funds in the Custodial Bank Account will be FDIC-insured, held in either a pooled omnibus account or a master-sub account structure, and titled in the customer's name. When transferring U.S. Dollars out of the Custodial Bank Account, _____ will deduct U.S. Dollars from the balance in the customer's _____ user interface and transfer this amount to the customer's External Bank Account. _____ may charge a fee for certain withdrawals of U.S. Dollars, especially when there is operationally intensive activity, such as same-day wires.

The Platform also enables a customer to buy digital assets from, or sell digital assets to, _____ in exchange for U.S. Dollars or other digital assets. _____ does not maintain a reserve of digital assets. Rather, once _____ receives a request to acquire a digital asset, it will acquire the inventory at that time from one of its corporate affiliates or on the open market.

When a customer uses the Platform to purchase a digital asset from _____ using U.S. Dollars, two transactions occur simultaneously. The virtual currency is taken from _____'s inventory and added to the customer's virtual currency balance while _____ deducts U.S. Dollars from the customer's U.S. Dollar balance in the Custodial Bank Account and adds these funds to its own account ("_____ Bank Account"). At all times, _____ will maintain a ledger reflecting the U.S. Dollar amount belonging to each customer and stored in the Custodial Bank Account.

When a customer uses the Platform to purchase a digital asset from _____ using another form of virtual currency in the customer's wallet, _____ will transfer the customer's virtual currency into its own inventory. Once _____ confirms receipt, the amount of virtual currency requested by the customer will be taken from _____'s inventory and transferred to the customer's external wallet. Alternatively, customers may choose to have _____ maintain custody of those digital assets on their behalf on an omnibus basis until the customer withdraws them through the Platform to the customer's external wallet.

II. MONEY TRANSMISSION ACT

A person may not engage in the business of money transmission in California unless he or she is licensed or exempt from licensure under the MTA.² Money transmission includes, in applicable part, "selling or issuing stored value."³

² Fin. Code, § 2030, subd. (a).

³ Fin. Code, § 2003, subd. (q).

“Stored value” is “monetary value representing a claim against the issuer... stored on an electronic or digital medium... and... intended and accepted for use as a means of redemption for money or monetary value or payment for goods or services.”⁴ However, stored value does not include “closed loop transactions,” where stored monetary value is only redeemable for goods or services provided by the issuer or its affiliate.⁵ Therefore, closed loop transactions do not constitute regulated money transmission under the MTA.

III. CONCLUSION

Through the Platform, a customer can only redeem the value issued by _____ and stored in the Custodial Bank Account for digital assets provided by _____. Therefore, this stored monetary value is a closed loop transaction and does not constitute regulated money transmission under the MTA.

With respect to the transfer of virtual currency, the Department has been studying the cryptocurrency industry closely. Whether cryptocurrencies are a viable form of money or a non-monetary asset is widely debated. Given this ongoing debate, the Department has not concluded whether cryptocurrencies constitute a form of money or determined whether a business that purchases and sells cryptocurrencies triggers the application of California’s money transmission law.

Accordingly, the Department is not requiring _____ to be licensed and supervised under the MTA at this time. However, this is subject to change. At any time, the Department may determine _____’s activities are subject to regulatory supervision. The Department may also adopt regulations or issue interpretive opinions significantly restricting _____’s business operations. If _____ chooses to operate in California, it would do so subject to these risks.

Nothing in this letter should be interpreted to relieve _____ from any obligations under the laws administered by FinCEN or any other agency of the federal government.

This opinion is based solely on the facts presented in your correspondence and how it relates to the Money Transmission Act. Any changes in the facts or circumstances, as we understand them, could lead to a different conclusion.

⁴ Fin. Code, § 2003, subd. (x).

⁵ *Id.*

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If you have any questions regarding this matter, please contact me at _____.

Sincerely,

Manuel P. Alvarez
Commissioner
Department of Business Oversight

By
