

DEPARTMENT OF BUSINESS OVERSIGHT*Ensuring a Fair and Secure Financial Services Marketplace for all Californians***Jan Lynn Owen****Commissioner of Business Oversight**IN REPLY REFER TO:
FILE NO:

July 6, 2018

Re:

Dear Mr. _____ :

Thank you for your letter dated February 7, 2018, to Financial Institutions Manager Julio Prada, Assistant General Counsel Stephen Lau, and Financial Institutions Manager Oscar Lumen. As Senior Counsel, I have been asked to respond.

We understand that your client, _____ (“_____”), intends to “operate a suite of services” that facilitates certain transactions involving cryptocurrency and digital assets. You described these transactions as “Spot Exchange Services” and “Limit Order Services” (collectively, “Services”). Spot Exchange Services allow a customer to buy and sell cryptocurrency and digital assets in direct transactions with _____ at “fixed rates and volumes.” And Limit Order Services allow customers to buy and sell cryptocurrency and digital assets “at a limited, specified range of rates over a limited time period.”

According to your colleague, _____, _____ will offer the Services for four cryptocurrencies: Bitcoin, Bitcoin Cash, Ether, and Ripple. You further stated that _____ has established a trading bank account with _____, which is based in San Diego. That account will be used as a trading account to hold its customers’ funds for use on its trading platform. You also stated that the account is an F.B.O. account (for the benefit of) specially designated for holding customer funds associated with the Services.

The Department of Business Oversight (“Department”) has been studying the cryptocurrency industry closely. Whether Bitcoin and Bitcoin cash are viable forms of money or speculative non-money assets is widely debated. Given this ongoing debate, the Department has not

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concluded whether Bitcoin or Bitcoin Cash is a form of money. The Department has therefore not concluded whether Bitcoin and Bitcoin Cash trigger the application of California's banking laws or money transmission laws.

Similarly, there remains wide debate about whether Ether and Ripple constitute a form of "security" under state and federal laws. If they are, California's broker-dealer law potentially applies to businesses that facilitate their exchange. On that issue, too, the Department has not yet reached a conclusion.

In short, the Department has not concluded whether companies that deal in Bitcoin, Bitcoin Cash, Ether, and Ripple need to be licensed and supervised. If your client chooses to operate in California in the meantime, it should do with the understanding that the regulatory environment may change at any time. In other words, the Department may at any time reach a conclusion about the above issues and determine that _____'s activities are subject to regulatory supervision under existing statutes. The Department may also adopt regulations or issue interpretive opinions that have the effect of significantly restricting _____'s business operations. Companies like _____ that operate in California therefore do so at their own risk. 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 governments.

Jan Lynn Owen
Commissioner
Department of Business Oversight

By

/s/

Manuela Rumsey
Senior Counsel