



STATE OF CALIFORNIA

## Department of Business Oversight

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

October 1, 2019

**VIA E-MAIL AND U.S. MAIL**

Re: \_\_\_\_\_

Dear \_\_\_\_\_:

Thank you for your firm's letters to the former Commissioner of Business Oversight, Jan Lynn Owen, dated January 9 and March 18, 2019, as well as its email correspondence on April 24 and May 22, sent on behalf of your client \_\_\_\_\_ ("\_\_\_\_\_"). As senior counsel for the Legal Division, the Commissioner requested that I respond to this matter. Your firm requests an opinion of whether \_\_\_\_\_'s proposed activities are subject to the California Money Transmitter Act ("MTA").

\_\_\_\_\_ plans to operate a platform that allows a customer to purchase and sell decentralized cryptocurrency in exchange for fiat currency or by exchanging one cryptocurrency for another. To facilitate this, \_\_\_\_\_ will have an arrangement with an affiliate, \_\_\_\_\_ ("\_\_\_\_\_").<sup>1</sup> \_\_\_\_\_ customers will also be online brokerage customers of \_\_\_\_\_. The customer will maintain fiat currency in his or her \_\_\_\_\_ account ("\_\_\_\_\_ Account") to buy cryptocurrencies through \_\_\_\_\_. The customer will have an account with \_\_\_\_\_ ("\_\_\_\_\_ Crypto Account"), which will maintain the customer's cryptocurrency.

There are two ways that purchases and sales can occur. One way is that if a customer wishes to purchase cryptocurrency at a stated price and another customer wishes to sell that cryptocurrency at the same price, there will be a respective purchase and sale between each of the customers and \_\_\_\_\_ to complete each such customer's order. So, for each of these transactions, there are only two parties involved: the customer and \_\_\_\_\_.

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<sup>1</sup> The correspondence stated that \_\_\_\_\_ is a broker-dealer licensed by the Securities and Exchange Commission.

The other way is if a customer wishes to purchase cryptocurrency and there isn't another customer on the platform that will sell that cryptocurrency for that price, \_\_\_ will find a matching order from an external source, such as another exchange. Once \_\_\_ verifies there is a source, \_\_\_ will facilitate the purchase and credit the customer's \_\_\_ Crypto Account. If a matching order from an external source cannot be found, the order will not be executed and will remain open until canceled.

Exchanges of cryptocurrencies are structured in a similar manner: if a customer wishes to exchange one type of cryptocurrency held in its \_\_\_ Crypto Account for another type of cryptocurrency, \_\_\_ will ensure that there is a source that can fulfill this order. If \_\_\_ verifies there is a sufficient source, \_\_\_ will credit the customer's \_\_\_ Crypto Account with the desired cryptocurrency and debit the balance of the applicable traded-out cryptocurrency. The customer is only transacting with \_\_\_ for this exchange. The customer also authorizes \_\_\_ to liquidate the necessary amount of cryptocurrency the customer is disposing of into USD to cover the applicable transaction fee.

For each of these transactions, all of the debit and credits of cash and cryptocurrency are noted as journal entries at the time of the transaction. If a customer wishes to make a purchase of cryptocurrency, the customer's \_\_\_ Crypto Account will be credited with the purchased amount of cryptocurrency and the customer's \_\_\_ Accounting will be debited the value of the transaction in USD, plus a transaction fee. If a customer sells cryptocurrency, the customer's cryptocurrency will be debited from the customer's \_\_\_ Crypto Account, and the customer's separate \_\_\_ Account will be credited by the sale price in USD, minus a transaction fee. Changes in the customer's \_\_\_ Crypto Account are reflected at the time of the transaction and the balances are immediately available to the customer. However, the actual cash or cryptocurrency transfers between \_\_\_ and \_\_\_, and between \_\_\_ and any applicable external sources, are done on an aggregate net basis at the end of the day.

Your firm provided drafts of the \_\_\_ Customer Agreement and \_\_\_ Customer Account Agreement for Securities. These agreements, as well as correspondence with and from your firm, explain that \_\_\_ does not have any custody, control, or contractual liability for the transfer of fiat currency from its customer's accounts. A customer's \_\_\_ Currency Account does not contain fiat currency, and \_\_\_ does not have the ability to transfer fiat currency from the customer's \_\_\_ Account. Your firm also confirmed that the \_\_\_ platform does not allow the customer to enter into a transaction with anyone other than \_\_\_ and that the platform is designed such that the customer bears no counterparty or execution risk.

The Department has been studying the cryptocurrency industry closely. Whether decentralized cryptocurrencies are a viable form of money or a non-money asset is widely debated. Given this ongoing debate, the Department has not concluded whether decentralized cryptocurrencies are a form of money. Likewise, the Department has not determined whether a business that purchases and sells decentralized cryptocurrencies, or issuance of stored value

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that can be redeemed for cryptocurrency, triggers the application of California's money transmission law.

Accordingly, the Department is not requiring \_\_\_ to be licensed and supervised under the aforementioned law at this time. But this is subject to change. At any time, the Department may determine that \_\_\_'s activities are subject to regulatory supervision. The Department may also adopt regulations or issue interpretive opinions that significantly restrict \_\_\_'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. Additionally, this letter does not address the applicability of California law to \_\_\_'s activities.

This opinion is based solely on the facts presented in your firm's correspondence. Any changes in the facts or circumstances, as we understand them, could lead to a different conclusion.

You may call me at \_\_\_\_\_ with any questions.

Sincerely,

Manuel P. Alvarez  
Commissioner  
Department of Business Oversight

By

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Senior Counsel