

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 Messrs. _____ :

Thank you for your letter dated January 26, 2018, to Deputy Commissioner for the Money Transmitter Division Robert Venchiarutti. You asked for confirmation that your client, _____, is not subject to the California Money Transmission Act. As Senior Counsel, I have been asked to respond.

We understand that _____ intends to allow consumers to purchase Bitcoin, Litecoin, and Ethereum from _____ using a credit card. Under its business model, _____ would maintain a line of credit with a third-party cryptocurrency exchange (the “Exchange”). Once a consumer has requested to purchase a specific amount of cryptocurrency from _____, _____ would tap its credit line and request that same amount of cryptocurrency from the Exchange. At that point, the Exchange would provide the private keys for the cryptocurrency to the consumer directly. Once the consumer’s credit card transaction with _____ has settled, _____ would repay the Exchange with the proceeds.

The Department of Business Oversight (“Department”) has been studying the cryptocurrency industry closely. Whether decentralized cryptocurrencies like Bitcoin and Litecoin are viable forms of money or speculative non-money assets is widely debated. Given this ongoing debate, the Department has not concluded whether cryptocurrency is a form of money. The Department has therefore not concluded whether cryptocurrency triggers the application of California’s money transmission laws.

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Similarly, the Department has not determined whether Ether (ETH) is a security. If it is, California's Corporate Securities Law potentially applies to businesses that facilitate Ether transactions. On that issue, too, the Department has not yet reached a conclusion.

In short, the Department has not concluded whether companies that deal in cryptocurrency need to be licensed and supervised. If [redacted] chooses to operate in California in the meantime, it should do so 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 [redacted]'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 [redacted]'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 [redacted] from any obligations under the laws administered by FinCEN or any other federal government agency.

Jan Lynn Owen
Commissioner
Department of Business Oversight

By

/s/

Manuela Rumsey
Senior Counsel