



STATE OF CALIFORNIA
Department of Business Oversight

GOVERNOR **Gavin Newsom** · COMMISSIONER **Jan Lynn Owen**

IN REPLY REFER TO:
FILE NO:

January 28, 2019

Re: — Opinion Request

Dear Ms. :

Thank you for your letter dated October 5, 2018, to Julio Prada, Assistant Deputy Commissioner of the Money Transmitter Division in the Department of Business Oversight (“Department”). As Counsel for the Legal Division, I have been asked to respond to this matter. Your letter requests confirmation that (“”) is not currently required to obtain a license under the California Money Transmission Act in connection with its proposed business activities in California.

According to your letter, is a Delaware limited liability company and a wholly-owned subsidiary of , a financial services firm based in Chicago, Illinois. is registered as a money services business with the U.S. Department of Treasury Financial Crimes Enforcement Network (“FinCEN”) and intends to register as a broker-dealer with the U.S. Securities and Exchange Commission (“SEC”) and the Financial Institution Regulatory Authority (“FINRA”).

plans to offer consumers the ability to purchase, store, and sell virtual currencies through registered broker-dealers that clear transactions through an affiliated entity, (“”). customers will be able to purchase virtual currency directly from , store the virtual currency in an controlled wallet, and liquidate their holdings by selling the virtual currency back to .¹ Currently, intends to support the exchange of Bitcoin, Bitcoin Cash, Ethereum, Ethereum Classic, and Litecoin. Other cryptocurrencies may be added to the service in the future.

¹ To limit anti-money laundering risks and cybersecurity risks, customers will not be permitted to transfer virtual currency into and out of their wallet to other customers, to external wallets, or to other addresses on the public blockchain. Fiat currency used to purchase virtual currency from may only originate from customer accounts held at and proceeds from the sale of virtual currency may only be returned to customer accounts at .

The Department has been studying the cryptocurrency industry closely. Whether Bitcoin and other cryptocurrencies are a viable form of money or a speculative non-money asset is widely debated. Given this ongoing debate, the Department has not concluded whether Bitcoin and other cryptocurrencies are a form of money. Likewise, the Department has not determined whether exchange and wallet services like your client's trigger the application of California's banking laws or money transmission laws.

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

While not the subject of your inquiry, we note that _____ has indicated that it may in the future offer customers the ability to purchase, store, and sell cryptocurrencies other than Bitcoin, Bitcoin Cash, Ethereum, Ethereum Classic, and Litecoin. To the extent that any of those other cryptocurrencies are securities, _____ may have obligations under California's broker-dealer laws. The Department reserves the right to take administrative action against _____ if it is later determined that _____ is trading securities in violation of California law. Therefore, by offering its services in California, _____ proceeds at its 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 government.

Sincerely,

Jan Lynn Owen
Commissioner
Department of Business Oversight

By

Pamela F. Hernandez
Counsel

PFH:ss

cc: Robert Venchiarutti, Department of Business Oversight, San Francisco
Stephen Lau, Department of Business Oversight, Sacramento