



STATE OF CALIFORNIA

Department of Business Oversight

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

IN REPLY REFER TO:

FILE NO: _____

December 16, 2019

Re: _____ – Opinion Request

Dear Mr. _____:

Thank you for your letter dated August 27, 2019 to Robert Venchiarutti, Deputy Commissioner of the Money Transmitter Division in the Department of Business Oversight (“Department”). You request confirmation that _____ (“_____” or the “Company”) is not required to obtain a license under the California Money Transmission Act in connection with its business activities in California.

According to your letter, _____ is registered as a money services business with the U.S. Department of Treasury’s Financial Crimes Enforcement Network (“FinCEN”). _____ operates “Bitcoin ATMs” that accept U.S. dollars from consumers in exchange for Bitcoin and accept Bitcoin from consumers in exchange for U.S. dollars. Transactions occur in the following manner: to buy Bitcoin, a consumer chooses an amount of Bitcoin to purchase, scans the QR code of their Bitcoin wallet, and inserts cash into the machine, and then Bitcoin is transferred from the Company’s wallet to the consumer’s Bitcoin wallet. To sell Bitcoin, a consumer selects an amount of Bitcoin to sell and scans the QR code of their Bitcoin wallet, and then Bitcoin is transferred from the consumer’s wallet to the Company’s wallet and U.S. dollars are dispensed to the consumer.

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 constitute a form of money.

Notwithstanding the foregoing, the sale and purchase of Bitcoin by _____ out of its own inventory through a Bitcoin ATM, which does not support any other types of transactions, does

not meet the definition of “receiving money for transmission.”¹ Therefore, _____’ activities in connection with Bitcoin ATMs are not subject to licensing under the MTA.

While not the subject of your inquiry, if in the future _____ offers customers the ability to purchase and sell cryptocurrencies other than Bitcoin, 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.

The Department’s determination is limited to the activities described herein and does not extend to any other activities in which _____ may engage. Any change in the facts and circumstances or the products or services that _____ provides could lead to a different determination.

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.

Please contact me at _____ if you have any questions.

Sincerely,

Manuel P. Alvarez
Commissioner
Department of Business Oversight

By

Pamela F. Hernandez
Counsel

PFH:ss

¹ Fin. Code, § 2003, subd. (u) (defining “receiving money for transmission” to mean receiving money or monetary value in the United States for transmission within or outside of the United States).