



STATE OF CALIFORNIA

Department of Business Oversight

GOVERNOR Gavin Newsom • COMMISSIONER Manuel P. Alvarez

IN REPLY REFER TO:
FILE NO: _____

December 24, 2019

via U.S. mail and e-mail:

Re: Request for Interpretive Opinion – _____

Dear Mr. _____:

Thank you for your letter dated August 19, 2019, requesting an interpretive opinion from the Department of Business Oversight (“Department”) as to whether _____ (“_____”) is required to obtain a license under the Money Transmission Act (“MTA”).¹

Background

_____, incorporated in Delaware and based in New Jersey, proposes to offer its clients (“Clients”) a platform (“Platform”) to facilitate their exchange of fiat currency and digital assets with other Clients. In connection with the Platform, each Client may load fiat currency into an account, segregated from other Clients’ accounts, with a third-party, bank custodian (“Custodian”). Clients may also load digital assets into a multi-signature wallet segregated from other Clients’ wallets. Each wallet requires two signatures to move digital assets, and signature keys are only distributed to the Client, a third-party Digital Asset Clearing Firm (“Clearing Firm”), and _____. _____ does not at any time possess, control, transmit, or maintain custody of the Clients’ fiat currency, and _____ cannot independently move Clients’ digital assets.

Once Clients place orders on the Platform to buy or sell digital assets, _____ gathers the orders, matches the orders, adds these trades to the order book, and updates each Client’s fiat and digital asset balances on the Platform. _____, which does not settle these transactions, sends the Custodian and Clearing Firm 1) a trade file listing all trades on the Platform, 2) a position file with each Client’s fiat and digital currency balance calculated by _____, and 3) a digital asset transaction signed with _____’s private key reflecting the new digital asset balances. After

¹ Fin. Code, § 2000 et. seq. All statutory references in this letter are to the Financial Code unless otherwise indicated.

verifying and reconciling this information, the Custodian and Clearing Firm effect settlement. The Custodian moves the appropriate amount of fiat currency between the Clients' bank accounts, and the Clearing Firm, after signing with its own key, broadcasts the transactions to the blockchain.

_____ is currently applying for a broker-dealer license with the Financial Industry Regulatory Authority to become an Alternative Trading System regulated by the U.S. Securities and Exchange Commission.

Money Transmission Act

Financial Code section 2030, subdivision (a) states a person shall not engage in money transmission in California unless he or she is licensed or exempt from licensure under the MTA, or an agent of a person licensed or exempt from licensure. Financial Code section 2003, subdivision (q) defines "money transmission," in relevant part, as receiving money for transmission. "Receiving money for transmission" means receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means.² California regulations specify "receiving money for transmission" means actually or constructively receiving, taking possession of, or holding any money or monetary value for transmission and does not include only receiving payment instructions, orders, or directions to transmit money or monetary value.³

Analysis

_____, in performing the activities described above, is not subject to the requirements of the MTA. _____ does not receive money for transmission as it never receives, takes possession of, or holds Clients' funds or digital assets. Rather, _____ simply relays transaction information from the Platform to the Custodian and Clearing Firm for settlement.

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

Furthermore, to the extent any cryptocurrencies are securities or commodities, _____ may have legal obligations under California's securities or commodities laws. The Department reserves the right to take enforcement action if it later determines _____ is trading in violation of California law. Therefore, _____ proceeds at its own risk by providing these services in California.

² Fin. Code, section 2003, subd. (u).

³ Cal. Code Regs., tit. 10, § 80.129.

December 24, 2019

Page 3

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,

Manuel P. Alvarez
Commissioner
Department of Business Oversight

By

Senior Counsel

cc: Robert Venchiarutti, Department of Business Oversight, San Francisco