



STATE OF CALIFORNIA

Department of Business Oversight

GOVERNOR Gavin Newsom • COMMISSIONER Manuel P. Alvarez

IN REPLY REFER TO:  
FILE NO: \_\_\_\_\_

February 25, 2020

Re: Request for Interpretive Opinion – \_\_\_\_\_ and \_\_\_\_\_

Dear Mr. \_\_\_\_\_:

Thank you for your letter dated August 23, 2019, supplemented by your letter dated November 13, 2019, requesting an interpretive opinion from the Department of Business Oversight (“Department”) as to whether \_\_\_\_\_ (“\_\_\_\_\_”) and \_\_\_\_\_ (“\_\_\_\_\_”) are required to obtain a license under the Money Transmission Act (“MTA”).<sup>1</sup>

\_\_\_\_\_, a Delaware limited liability company, and its affiliate \_\_\_\_\_, a South Dakota-chartered trust company, propose to offer clients in California (“Clients”) virtual currency exchange services. Each Client may load virtual currency into a custodial digital wallet maintained by \_\_\_\_\_ and U.S. dollars into a bank account held by \_\_\_\_\_ for the benefit of its Clients. These amounts, associated with each Client’s account, can only be used to exchange digital currency or U.S. dollars through \_\_\_\_\_ with third-party exchanges, over-the-counter counterparties, or \_\_\_\_\_’s own inventory. \_\_\_\_\_, which provides brokerage services, receives orders from Clients, finds the most appropriate venue for a Client’s order, and instructs \_\_\_\_\_ to execute Client transfers to settle the Client’s order.

The Department has been studying the cryptocurrency industry closely. Whether 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 cryptocurrencies are a form of money. Likewise, the Department has not determined whether exchange and wallet services, like those provided by \_\_\_\_\_ and \_\_\_\_\_, trigger the application of California’s banking laws or MTA.

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

Accordingly, the Department is not requiring \_\_\_\_\_ or \_\_\_\_\_ 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 \_\_\_\_\_ and \_\_\_\_\_ choose to operate in California, they would do so subject to these risks.

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

Nothing in this letter should be interpreted to relieve \_\_\_\_\_ or \_\_\_\_\_ 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