



STATE OF CALIFORNIA

Department of Business Oversight

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

April 13, 2020

Re: Request for Interpretive Opinion

Dear _____:

Thank you for your letter dated March 13, 2020, in which you requested an interpretive opinion from the Commissioner on whether the services that _____ (“Company”) proposes to offer would require the Company to obtain a license under the California Money Transmission Act (“MTA”).

Background

Money Transmission Act

Financial Code section 2003, subdivision (q), defines “money transmission” to include selling or issuing stored value.¹ Financial Code section 2003, subdivision (x) defines “stored value” as monetary value representing a claim against the issuer that is stored on an electronic or digital medium, and that is intended and accepted for use as a means of redemption for money or monetary value or payment for goods or services.

“Money transmission” is also defined to include receiving money for transmission. Section 2003, subdivision (u), defines “receiving money for transmission” to mean receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means. The term “receiving money for transmission” means actually or constructively receiving, taking possession, or holding any money or monetary value for transmission, but does not include only receiving instructions, orders, or directions to transmit money or monetary value.²

¹ Fin. Code, § 2003, subd. (q).

² Cal. Code Regs., tit. 10, § 80.129.

Company's Services

In your letter, you described three services that the Company proposes to offer in California, either independently of each other or all integrated together. You explained that the Company is specifically seeking guidance regarding whether any one of these business models, or all three of them together, would require licensure under the MTA.

Hosted Wallet

The Company allows its customers ("Users") to create a custodial wallet to deposit, hold, and send digital assets ("Hosted Wallet").³ Users can transfer digital assets between their Hosted Wallet and external digital asset wallets; or transfer digital assets to another User's Hosted Wallet, either through an ordinary transaction where they share their Hosted Wallet address with another User, or as part of the P2P Exchange, described below. Fiat currencies cannot be deposited, held in, or sent to the wallet.

DDA Platform

Through the Company, Users can create a demand deposit account ("DDA") with an Arkansas state-chartered bank ("DDA Bank"). Then, Users can use that account to receive or send fiat currency from or to the User's external bank account, or send or receive fiat currency from another User's DDA as part of a P2P Exchange transaction, as described below. Users cannot send fiat currency from their DDA to another User's DDA, except in the context of a P2P Exchange.

The Company's only role in these transfers is to send and receive data between the User and the DDA Bank through DDA Bank's agent. The Company does not take possession of any fiat currency and has no liability with relation to the fiat currency transactions. Rather, your letter, the agreement between the Company and User, and the agreement between the Company and the Bank's agent each explain that the DDA Bank is liable for all fiat transactions.

P2P Exchange

The Company also operates a peer-to-peer digital asset exchange ("P2P Exchange") which allows Users to buy or sell digital assets with other Users. The Company is not a buyer or seller of digital assets or fiat currency in any part of either type of exchange.

Users execute trades using their Hosted Wallets and/or DDAs. For example, if a User wishes to purchase digital assets for fiat, to effect the trade, the fiat currency is transferred by the DDA

³ The User Agreement provided defines digital assets as decentralized virtual currency. You explain that the specific digital assets involved in the proposed services are Bitcoin, Ethereum, Litecoin, and Bitcoin Cash.

Bank from buyer's DDA to the seller's DDA, and the quantity of the digital asset purchased is transferred from the seller's Hosted Wallet to the buyer's Hosted Wallet.

If a User wants to buy digital assets in exchange for digital assets, to effect the trade, the Hosted Wallet of each corresponding User is debited and credited in the respected amounts.

Analysis

DDA Platform

You explained that the Company's role in the DDA Platform is only to transfer data. You explain that with the DDA Platform service, separate from any integration with the Hosted Wallet and P2P Exchange, the Company does not collect, store, or transmit any currency (digital or fiat). Rather, it simply provides transaction data to the DDA Bank.

The definition of receiving money for transmission does not include only sending instructions or directions to transmit money. Thus, the Company's role in operating the DDA Platform alone, separate and apart from anything involved with the Hosted Wallet or P2P Exchange, does not fall within the purpose and scope of the MTA.

Hosted Wallet and P2P Exchange

The Department has been studying the cryptocurrency industry closely. Whether cryptocurrencies are a viable form of money or speculative non-money asset is widely debated. Given this ongoing debate, the Department has not concluded whether the types of decentralized virtual currencies held and traded by the Company are a form of money. Likewise, the Department has not determined whether wallet and exchange services, like those provided by the Company in conjunction with the Hosted Wallet and P2P Exchange, trigger the application of the MTA.

Conclusion

The Department is not requiring the Company to be licensed under the MTA at this time for any of the individual services, or all three together. Please be aware, however, that this is subject to change. At any time, the Department may determine these activities are subject to regulatory supervision. If the Company chooses to operate in California, it does so subject to these risks.

Furthermore, to the extent the Company facilitates trades of cryptocurrencies that are securities or commodities, the Company may have legal obligations under California securities or commodities laws. The Department reserves the right to take enforcement action if it later determines the Company is trading in violation of California law therefore the Company must proceed at their own risk in providing these services in California.

April 13, 2020

Page 4

Nothing in this letter should be interpreted to relieve the Company from any obligations under the laws administered by FinCEN or any other agency of the federal government.

This opinion is based solely on the facts as represented in your correspondence, and the Department's understanding of those representations. The Department may reach a different conclusion under other facts and circumstances.

If you have any questions, please feel free to contact me at _____ or _____.

Sincerely,

Manuel P. Alvarez
Commissioner
Department of Business Oversight

By

Senior Counsel