



STATE OF CALIFORNIA

Department of Financial Protection and Innovation

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

IN REPLY REFER TO:
FILE NO: _____

November 10, 2020

VIA EMAIL ONLY

Re: No Action Request Letter

Dear _____:

Thank you for your letter to the Department of Financial Protection and Innovation (formerly the Department of Business Oversight), dated October 12, 2020. As senior counsel for the Legal Division, the Commissioner requested that I respond to this matter. In your letter, you request confirmation that your client, _____ d/b/a/ _____ (“_____”) would not be required to obtain a license under the Money Transmission Act (“MTA”).¹

Background

In your letter, you explain that _____ plans to operate Bitcoin ATM kiosks in California. To conduct a transaction using the kiosk, a customer would approach the kiosk and select the “Buy” option. The customer would provide identifying information and then insert the appropriate amount of U.S. Dollars into the kiosk. Next, the customer would enter a digital address to which the Bitcoin would be sent. You clarify that the transaction is only between _____ and the customer, that the transaction is completed instantly, and that no third parties are involved in the transmission.

Analysis

The MTA provides that a person shall not engage in the business of money transmission in California unless the person is licensed or exempt from licensure under the MTA, or is an agent of a person licensed or exempt from licensure.² Financial Code section 2003, subdivision (q) defines “money transmission” as: (1) selling or issuing payment instruments, (2) selling or issuing stored value, or (3) receiving money for transmission.

¹ Cal Fin. Code 2000, et seq.

² Fin. Code, § 2030, subd. (a).

Under the MTA, “payment instrument” means, in part, a check, draft, money order, traveler’s check, or other instrument for the transmission or payment of money or monetary value.³ “Stored value” is defined, in part, as “monetary value representing a claim against the issuer that is stored on an electronic or digital medium and evidenced by an electronic or digital record, and that is intended and accepted for use as a means of redemption for money or monetary value or payment for goods or services.”⁴ “Money received for transmission” means receiving money or monetary value in the United States for transmission within or outside the United States.⁵

For purposes of this opinion, the Department presumes that _____ is selling Bitcoin from its own inventory and that this is the only type of transaction that the kiosks support.

Conclusion

Based on the information provided to the Department, _____’s activities in connection with the Bitcoin kiosk is not subject to licensure under the MTA because it is not engaging in the business of money transmission. While not the subject of this inquiry, if _____ offers customers the ability to purchase and/or sell virtual currency other than Bitcoin in the future, _____ may have obligations under California’s broker-dealer laws to the extent that any of those virtual currencies are securities. The Department reserves the right to take administrative action against _____ if it is later determined that _____ is trading securities in violation of California law.

This opinion is strictly limited to the facts and circumstances described above. Should any of the facts or circumstances change, the Department’s opinion may also change. Furthermore, 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.

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

Sincerely,

Manuel P. Alvarez
Commissioner
Department of Financial Protection and Innovation

By /s/

Senior Counsel

cc: Robert Venchiarutti, Department of Financial Protection and Innovation

³ Fin. Code, § 2003, subd. (s).

⁴ Fin. Code, § 2003, subd. (x)

⁵ Fin. Code, § 2003, subd. (u).