



STATE OF CALIFORNIA

Department of Financial Protection and Innovation

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

IN REPLY REFER TO:

FILE NO: _____

January 27, 2021

VIA EMAIL ONLY

Re: _____ – Opinion Request

Dear Mr. _____:

Thank you for your letter to the Department of Financial Protection and Innovation (“Department”) dated November 27, 2020 on behalf of _____ (“_____”). You request a determination from the Department as to whether _____’s proposed business activity is subject to licensure under the Money Transmission Act (“MTA”).

BACKGROUND

_____ is a _____ limited liability company. _____ conducts business as a licensed armored car company providing secure cash-in-transit services for financial institutions and other clients. _____ seeks to offer services to cryptocurrency kiosk (“Bitcoin ATM”) operators in California. You state there are currently a number of Bitcoin ATM operators in California who provide cryptocurrency exchange services that allow consumers to make cash purchases of Bitcoin and other cryptocurrencies. You state that during the normal course of business, Bitcoin ATM operators accumulate significant amounts of cash, creating security risks and the need for cash management solutions.

_____ seeks to offer a service whereby: (i) a Bitcoin ATM operator’s cash will be placed in secure containers at the operator’s location and transported via armored courier and/or secured common carrier to _____’s vault location, (ii) the cash will be counted and verified by _____, and (iii) _____ will electronically transmit an equivalent amount of Bitcoin, minus transaction fees, to the Bitcoin ATM operator. The Bitcoin that _____ pays out to Bitcoin ATM operators will come from _____’s own inventory. In sum, _____ seeks to provide cash management solutions to Bitcoin ATM operators who would

like to exchange their accumulated cash for Bitcoin, which they may then resell through their business operations.

You state _____ will not engage in any third-party funds transfers. _____'s service will be limited to the acceptance and verification of currency from approved customers (Bitcoin ATM operators) and delivery of an equivalent amount of Bitcoin, minus transaction fees, back to the same customer. You state _____ will not act as a repository of its customer's funds, meaning it will not hold physical currency or cryptocurrency on behalf of customers. You also state _____ will not engage in the exchange of U.S. dollars for any foreign fiat currencies or the exchange of cryptocurrencies for any foreign fiat currencies.

ANALYSIS

The MTA prohibits a person from engaging in the business of money transmission in California, unless the person is licensed or exempt from licensure or is an agent of a person licensed or exempt from licensure.¹ Financial Code section 2003, subdivision (q)(3) defines "money transmission" to include receiving money for transmission. Financial Code 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.

You argue _____'s proposed service does not constitute regulated activity under the MTA. Specifically, you argue that _____'s proposed service will only occur between _____ and its customers, i.e. Bitcoin ATM operators, with no third parties involved. Therefore, you argue the proposed business activity will not involve receiving money or monetary value in the United State for transmission within or outside the United States by electronic or other means.

The Department agrees that _____'s proposed business activity does not meet the definition of "receiving money for transmission." Essentially, _____ will sell Bitcoin for U.S. dollars, similar to the Bitcoin ATM operators that _____ seeks to provide services to. The sale of Bitcoin by _____ out of its own inventory for cash obtained and transported from customer locations to _____'s vault location does not meet the definition of "receiving money for transmission." Therefore, _____'s proposed business activities in connection with Bitcoin ATM operators are not subject to licensing under the MTA.

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.

¹ Fin. Code, § 2030, subd. (a).

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 the undersigned at _____ or _____ if you have any questions.

Sincerely,

Manuel P. Alvarez
Commissioner
Department of Financial Protection and Innovation

By

Counsel

cc: _____ Robert Venchiarutti, Dept. of Financial Protection and Innovation, Money Transmitter Division