



STATE OF CALIFORNIA

Department of Financial Protection and Innovation

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

IN REPLY REFER TO:
FILE NO: _____

February 9, 2021

VIA EMAIL ONLY

Re: Request for Interpretive Opinion

Dear Ms. _____:

Thank you for your emails to the Department of Financial Protection and Innovation¹ of December 10, 2020 and January 13, 2021. As Senior Counsel for the Legal Division, I have been assigned to respond to this matter. In your emails, you seek confirmation that your client, _____ (“_____”), is not required to obtain a license pursuant to the Money Transmission Act (“MTA”).²

Background

As explained in your email of January 13, _____ offers its clients an opportunity to buy or sell cryptocurrency directly with _____ in exchange for fiat currency. If a client wishes to purchase cryptocurrency from _____, it submits a buy order. To effect the sale, _____ requests a fiat currency transfer from the client via ACH or wire transfer. Upon receipt of the fiat currency, _____ will deliver the cryptocurrency from its inventory to the client’s wallet.

For sales of cryptocurrency, the client places a sell order with _____ for a specified cryptocurrency. _____ requests a transfer of that cryptocurrency from the client’s wallet to _____’s wallet. Upon receipt of the cryptocurrency, _____ will transmit fiat currency payment to the client’s bank account.

You also explain that because all client transactions are directly with _____, there are no transmissions of client funds or cryptocurrency to third parties.

¹ The Department of Financial Protection and Innovation was previously the Department of Business Oversight.

² Fin. Code, § 2000 et seq.

Analysis

Under the MTA, a person may not engage in the business of money transmission in California unless the person is licensed, exempt from licensure, or an agent of a person licensed or exempt from licensure.³ 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.

_____’s activities are limited to buying and selling virtual currency. This does not require an MTA license because it does not involve the sale or issuance of a payment instrument, the sale or issuance of stored value, or receiving money for transmission.⁴

This opinion is based solely on the facts presented in your correspondence. Any changes in the facts or circumstances, as we understand them, could lead to a different conclusion. 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 _____ or _____.

Sincerely,

Manuel P. Alvarez
Commissioner
Department of Financial Protection & Innovation

By

Senior Counsel

cc: Robert Venchiarutti, Deputy Commissioner, Money Transmitter Division

³ Fin. Code, § 2030, subd. (a).

⁴ Fin. Code, § 2003, subds. (s), (x), and (u).