



STATE OF CALIFORNIA

**Department of Financial Protection and Innovation**

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

IN REPLY REFER TO:

FILE NO: \_\_\_\_\_

April 29, 2021

SENT BY EMAIL

Re: \_\_\_\_\_-Request for Interpretive Opinion re Operating Bitcoin ATM Kiosks in California

Dear Ms. \_\_\_\_\_:

Thank you for your letter to the Department of Financial Protection and Innovation, formerly known as the Department of Business Oversight (Department), on behalf of your client, \_\_\_\_\_ (\_\_\_\_\_). Your letter is dated December 7, 2020 but was sent to the Department on March 16, 2021. You provided supplemental information on March 21, 2021 and April 19, 2021.

You inquire whether the sale and purchase of bitcoin through ATM kiosks operated by \_\_\_\_\_ is subject to the Money Transmission Act.<sup>1</sup>

FACTS

\_\_\_\_\_ is registered with the Financial Crimes Enforcement Network (FinCEN) as a Money Services Business. \_\_\_\_\_ operates bitcoin ATM kiosks, which allow customers to buy bitcoin in exchange for U.S. dollars. \_\_\_\_\_ would like to expand into California by placing bitcoin ATM kiosks in California. This would be the only business \_\_\_\_\_ proposes to conduct in California.

Customers wishing to buy bitcoin at an ATM kiosk enter required identification information, insert U.S. dollars in payment and specify the customer wallet to which the purchased bitcoin should be sent. \_\_\_\_\_ keeps the payment dollars inserted into the ATM kiosk and immediately sends the purchased bitcoin from \_\_\_\_\_'s wallet to the customer's specified wallet. \_\_\_\_\_ hosts its own bitcoin wallet but does not host customer wallets.

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<sup>1</sup> Fin. Code, § 2000 et seq.

The transactions are between just two parties: \_\_\_\_\_ and the customer/bitcoin purchaser. No third parties are involved.

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.<sup>2</sup> 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.

The sale and purchase of bitcoin from \_\_\_\_\_ through a bitcoin ATM kiosk does not meet the definition of “money transmission.”<sup>3</sup> Therefore, \_\_\_\_\_’s activities through its bitcoin ATM kiosks 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. 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 or state government.

Please contact me at \_\_\_\_\_ if you have any questions.

Sincerely,

Manuel P. Alvarez  
Commissioner  
Department of Financial Protection and Innovation

By

/s/

Senior Counsel

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<sup>2</sup> Fin. Code, § 2030, subd. (a).

<sup>3</sup> Fin. Code, § 2003, subds. (s), (x), and (u).