



STATE OF CALIFORNIA

Department of Financial Protection and Innovation

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

IN REPLY REFER TO:
FILE NO: _____

May 27, 2021

SENT VIA EMAIL

Re: _____ – Request for Interpretive Opinion

Dear Mr. _____:

Thank you for your letter dated April 19, 2021 and the supplemental information you provided in our April 27, 2021 phone conversation. You request an interpretive opinion from the Commissioner on whether specified services that _____ (_____) proposes to offer in California would require _____ to obtain a license under the Money Transmission Act (MTA).¹

Factual Background

_____ is a Delaware company which intends to offer services through an internet-enabled peer-to-peer (P2P) marketplace for the purchase and sale of decentralized digital currencies bitcoin, ethereum and tether (collectively, Crypto). In your letter, you describe four services that _____ proposes to offer in California. You explain that _____ does not collect, store, or transmit any digital or fiat currency in any of these four products. Rather, _____ has a Custodial Services Agreement (Agreement) and master virtual wallet with _____ (____). Under the Agreement, _____ provides custodial and trust services of Crypto owned by _____ customers. _____ maintains an internal ledger indicating each customer's Crypto balance in _____'s custody. If a customer wishes to make a transfer to an external wallet, both _____ and _____ must unlock their respective security keys. _____ neither owns any of the Crypto in custody with _____ nor can _____ unilaterally take any action with respect to such custodied Crypto. _____ does not include customer Crypto in _____'s assets listed on _____'s financial statements. The

¹ Fin. Code, § 2000, et seq.

only Crypto _____ owns is the Crypto it earns in nominal fees in effectuating customer transactions.

P2P Marketplace

_____’s P2P marketplace will allow buyers and sellers of Crypto to connect and arrange for the direct settlement of purchases and sales between such users.

_____’s website provides that Crypto can be paid for via bank transfers, gift cards, money transmission,² debit card, credit card, and more. Each buyer and seller must independently have a customer account with _____ to be able to connect with each other in _____’s P2P marketplace.

Pay-with-_____

_____ intends to use its marketplace to allow consumers to buy goods or services with Crypto from unaffiliated, third-party online retailers who accept Crypto as a form of payment. Participating retailers must have a merchant account with _____. Upon opting to utilize the Pay-with-_____ option, the _____ customer will pay with Crypto to complete the retail purchase. _____ will make a debit entry to the customer’s account on its internal ledger with _____ and a credit entry to the merchant’s account on the internal ledger.

Facilitating Stablecoin Trades

_____ also intends to provide its customers the option to exchange their bitcoin and ethereum for the rights to tether, a US dollar-backed stablecoin,³ by providing a link on _____’s website. _____ will enter into an agreement with a third-party trading platform (3rd Party Platform) to allow _____ users to trade bitcoin and ethereum for tether directly through the 3rd Party Platform. _____ does not intend to operate a stablecoin wallet with any third-party stablecoin custodian nor will it provide custodial services.

Remittance

The fourth service which _____ intends to offer is to facilitate the remittance of funds in different currencies through _____’s P2P Crypto marketplace. A _____ customer (Giver) will buy Crypto with one currency and sell the Crypto to another _____ customer willing to buy the Crypto with foreign currency. This foreign currency will be deposited into the bank account of a different, specified individual in a foreign jurisdiction (Receiver).

² The website mentions _____, _____, and _____, which are licensed money transmitters.

³ “A stablecoin is a new class of [cryptocurrencies](#) that attempts to offer price stability and are backed by a [reserve asset](#).” < <https://www.investopedia.com/terms/s/stablecoin.asp> > (as of April 20, 2021).

_____ will use trade bots to match a Crypto seller who is willing to receive the Giver's currency with a buyer who is willing to pay the Receiver's currency. The trade bot is a robotic conduit which notifies the parties when each step of the transaction has occurred. Once the Giver buys the Crypto, _____ and _____ will put a hold on the Crypto in the Crypto seller's account. _____'s trade bot will then notify Giver and Receiver of the Crypto buyer's transfer of the foreign currency to Receiver's designated bank account. Once Receiver confirms receipt of the funds into his or her bank account, _____ releases the on-hold Crypto to the Crypto buyer's account.

_____ will not hold or take receipt of any Crypto or fiat payments used in the remittance process. Fiat payments occur entirely outside of _____'s platform, directly between the parties. The Giver pays the Crypto seller by sending payment to the seller's specified bank account. The Crypto buyer pays the Receiver by sending payment to the Receiver's specified bank account.

Discussion

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.⁴ Financial Code section 2003, subdivision (q) defines "money transmission" to mean selling or issuing payment instruments, selling or issuing stored value, or receiving money for transmission.

The sale and purchase of Crypto directly between two parties, where _____ does not facilitate the exchange of the fiat currency or Crypto, does not meet the definition of money transmission. Likewise, the use of Crypto to buy goods or services directly from a retailer does not meet the definition of money transmission. The use of Crypto to buy stablecoin also does not constitute money transmission.⁵ Finally, _____'s remittance service, in which _____ does not itself take possession of any fiat currency or Crypto, does not constitute money transmission. Therefore, _____'s activities discussed above are not subject to licensing under the MTA.

Conclusion

The Department has determined that the four products discussed above do not meet the definition of money transmission. Therefore, the Department is not requiring _____ to be licensed under the MTA to offer these four products. Please be aware, however, that this determination is subject to change. At any time, the Department may determine these activities are subject to regulatory supervision. If _____ chooses to operate in California, it does so subject to these risks.

⁴ Fin. Code, § 2030, subd. (a).

⁵ This letter does not address whether stablecoin is a money transmission product.

This opinion is based solely on the facts presented in your communications. 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 and Innovation

By

Senior Counsel

cc: Robert Venchiarutti, Department of Financial Protection and Innovation, San Francisco
Jonathan Lee, Department of Financial Protection and Innovation, Los Angeles
_____, Partner, _____