



IN REPLY REFER TO:
FILE NO: _____

August 11, 2021

VIA EMAIL ONLY

Re: Request for Interpretive Opinion

Dear _____

Thank you for your letter to the Department of Financial Protection and Innovation (formerly Department of Business Oversight) dated June 21, 2021 and email dated July 19, 2021. In your letter, you request confirmation that your client, _____ (“_____”), 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 direct the kiosk to send the appropriate Bitcoin to the customer’s personal Bitcoin wallet.

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. You also clarify that _____ never holds virtual currency on behalf of customers and does not act in a fiduciary capacity, and that it sells Bitcoin from its own inventory.

For purposes of this opinion, the Department presumes that the purchase of Bitcoin for U.S. Dollars is the only type of transaction that the kiosks support.

¹ Fin. Code 2000, et seq.

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.

_____ activities are limited to selling Bitcoin. 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.³

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. 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,

Christopher S. Shultz
Acting Commissioner
Department of Financial Protection and Innovation

By

Senior Counsel

cc: _____ Robert Venchiarutti, Deputy Commissioner, DFPI

² Fin. Code, § 2030, subd. (a).

³ Fin. Code, § 2003, subds. (s), (x), and (u).