STATE OF CALIFORNIA
Department of Financial Protection and Innovation

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

March 10, 2021

VIA EMAIL ONLY

Re: _____ – Request for Interpretive Opinion

Dear Ms. _____:

Thank you for your letter dated January 27, 2021 to the Department of Financial Protection and Innovation ("Department"). You request confirmation that _____ ("_____ _____.") and _____ ("_____") are not required to obtain licenses under the Money Transmission Act ("MTA") in connection with their anticipated business activities in California.

BACKGROUND

_____[1], a _____ limited liability company, and _____[2], a Delaware limited liability company (collectively, "_____") plan to offer California customers the opportunity to buy and sell bitcoin and other virtual currencies (the "Services"). _____ operates a proprietary virtual currency trading and exchange platform (the "Platform"). Through the Platform, registered users ("Customers") can trade supported virtual currencies in exchange for fiat currency or another virtual currency, either directly with _____[3] or with other Customers through the Platform's proprietary global order book. To facilitate

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[1] _____ is licensed by the _____ and registered as a money services business with the U.S. Department of Treasury Financial Crimes Enforcement Network ("FinCEN") and with the Financial Transactions and Reports Analysis Centre of Canada ("FINTRAC").

[2] _____ is a wholly owned subsidiary of _____. _____ intends to register with FinCEN as a money services business and apply for state money transmitter licenses in all U.S. jurisdictions that regulate its proposed business activities.

[3] _____ maintains its own inventory of virtual currencies which it sells to Customers at the prevailing market price.

trading, _____ offers Customers custodial wallet services for fiat currency ("Fiat Currency Wallets")[4] and for each supported virtual currency ("Virtual Currency Wallets")[5].

_____ does not offer fiat-for-fiat currency exchange services, nor does it facilitate remittances, peer-to-peer payments, or merchant payment services. _____ supports the following virtual currencies: Bitcoin, Bitcoin Cash, Ether, and Litecoin. At a future date, _____ may expand its list of supported virtual currencies and may support secondary-market trading of fiat currency-backed stablecoins. _____ does not plan to support initial issuance of any stablecoin, including fiat-currency-backed stablecoins.

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.[6] 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. "Stored value" means monetary value representing a claim against the issuer that is stored on an electronic or digital medium and evidenced by an electronic or digital record, and that is intended and accepted for use as a means of redemption for money or monetary value or payment for goods or services, but does not include value that is only redeemable by the issuer for goods or services provided by the issuer.[7]

_____'s virtual currency exchange service and Virtual Currency Wallet do not meet the definition of money transmission. _____'s Fiat Currency Wallet meets the definition of stored value because it contains monetary value that represents a claim against _____, is electronically or digitally stored, and is accepted as payment for virtual currency sold on the Platform.[8] However, _____ offers Fiat Currency Wallets to Customers solely to facilitate the exchange of virtual currency. Based on these facts, the Department is not requiring _____ to be licensed at this time. Please be aware, however, this is subject to change. At any time, the Department may determine these activities are subject to regulatory supervision. The Department may also adopt regulations or issue interpretive opinions that

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[4] U.S.-based customers ("U.S. Customers") will only be able to fund a Fiat Currency Wallet with U.S. Dollars. U.S. Dollars from U.S. Customers will be held in an omnibus account maintained by _____ for the benefits of its Customers which will be kept separate and apart from funds owned by _____.

[5] Customer virtual currency is pooled and securely stored on behalf of Customers in a combination of "hot" and "cold" storage environments maintained by and under the direct control of _____.

[6] Fin. Code, § 2030, subd. (a).

[7] Fin. Code, § 2003, subd. (x).

[8] Stored value does not include "closed loop transactions" where stored monetary value is only redeemable for goods or services provided by the issuer of the stored value, or its affiliate. (Fin. Code, § 2003, subd. (x).) Here, Customers are not limited to purchasing virtual currency from _____ directly but can purchase virtual currency from other Customers through the Platform's global order book. Therefore, the Fiat Currency Wallet is not closed loop.

significantly restrict these business operations. If _____ chooses to operate in California, it would do so subject to these risks.

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 government.

Please contact me at _____ or _____ if you have any questions.

Sincerely,

Manuel P. Alvarez
Commissioner
Department of Financial Protection and Innovation

     By

     _____

     Counsel

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cc: Dept. of Financial Protection and Innovation, Money Transmitter Division, San Francisco