



STATE OF CALIFORNIA

Department of Financial Protection and Innovation

GOVERNOR **Gavin Newsom** • ACTING COMMISSIONER **Christopher S. Shultz**

IN REPLY REFER TO:

FILE NO: _____

October 20, 2021

VIA EMAIL ONLY

Re: Request for Interpretive Opinion

Dear _____:

Thank you for your correspondence dated April 22, June 7, and June 29, 2021, to the Commissioner of the Department of Financial Protection and Innovation. You request an interpretive opinion from the Commissioner concerning whether your client, _____, is required to obtain a money transmitter license under the Money Transmission Act (“MTA”).

Background

_____ will create a platform (“Platform”) that facilitates the creation, sale, and trading of metal asset-backed tokens (“Metal ABTs”). These tokens represent a portion of a bar of metal. The providers of the metals (“Tokenizers”) give _____ administrative powers over the physical metal, which _____ stores in a secure vault or warehouse. _____ assists the Tokenizer in creating the Metal ABT, which are then stored in the Tokenizer’s digital wallet and can then be purchased, or traded with other customers, on _____ platform. The Tokenizer maintains title to the Metal ABT and the underlying metal until the Tokenizer sells the Metal ABT to a customer.

To purchase Metal ABTs with fiat currency, the customer first funds an _____ FBO account that holds all customers’ fiat currency in one account. Once the transaction purchasing the Metal ABT is executed, _____ will attribute the fiat currency value to the appropriate Tokenizer, but the fiat funds will remain in the FBO Account until they are withdrawn by the Tokenizer. The Metal ABT will be transferred to the customer’s digital wallet.

Once a customer purchases the Metal ABT, the title and delivery rights to the underlying metal also passes to the customer with that Metal ABT. The customer will have the right to redeem

the Metal ABT for the physical delivery of the underlying metal. If that right is exercised, _____ will facilitate the actual delivery of the physical underlying metal to that customer.

Your letter also states that _____ may provide technical services to sellers of palladium, nickel, and other metals who are seeking to convert a physical forward contract between a buyer and the seller to a token (“Industrial Token”). If the Industrial Token is redeemed, the delivery provisions of the underlying forward contract are triggered, requiring delivery of the respective metal. _____ anticipates that users of the Industrial Tokens will primarily be industrial producers and users of metals, such as manufacturers, who must qualify as “eligible contract participants” within the meaning of Section 1(a)(18) of the Commodities Exchange Act.¹ The Industrial Tokens will not be available to retail customers. Your request letter states that _____ platform will also be used to facilitate the creation, sale, and trading of Industrial Tokens.

There are fees associated with using the platform. Those fees may be paid with the customer’s fiat currency balance or using a stablecoin that _____ proposes to create. Specifically, these stablecoins (“Currency Tokens”) would be tethered to the U.S. Dollar on a 1:1 basis. The only use of Currency Tokens described in your correspondence is to pay _____ platform fees. The Currency Tokens are only redeemable for fiat currency on the Platform.

A customer can purchase a Currency Token by making a request through the Platform. Then, _____ mints the Currency Tokens requested and transfers the equivalent amount of the customer’s fiat currency to _____ separate bank account. The customer’s on-Platform digital wallet will reflect the Currency Token balance.

If a customer then pays Platform fees with Currency Tokens, the corresponding number of Currency Tokens on the on-Platform digital wallet will be burned.

In your correspondence, you state, “_____ does not permit Customers to use fiat currency stored in the FBO account for any purpose other than purchasing Metal ABTs or Currency Tokens, receiving the proceeds of a slate of Metal ABTs, or paying Platform fees.” You also clarify that _____ will not allow customers to transmit fiat currency to one another, except to facilitate the transactions listed above.

Money Transmission Act

Financial Code section 2030 prohibits a person from engaging in the business of money transmission in this state unless the person is licensed or exempt from licensure or is an agent of a person licensed or exempt from licensure.

¹ 7 U.S.C. § 1a(18).

Financial Code section 2003, subdivision (q), defines “money transmission” to include receiving money for transmission and issuing stored value. Section 2003, subdivision (u), defines “receiving money for transmission” to mean receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means. “Stored value” is 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. The term does not include a credit card voucher, letter of credit, or any stored value that is only redeemable by the issuer for goods or services provided by the issuer or its affiliate, except to the extent required by applicable law to be redeemable in cash for its cash value.²

Analysis

In your request, you ask whether an MTA license is required in order for _____ to:

1. provide technical services to enable owners of metal to create a digital asset representing interests in that metal;
2. facilitate trading in those digital assets; or
3. provide digital wallets to its customers.

Providing technical services to assist in the creation of a Metal ABT and Industrial Tokens and issuing a digital wallet holding the Metal ABT does not require licensure.

Although the issuance of stored value is generally considered money transmission, _____ is not issuing the Metal ABT or Industrial Tokens; it is only assisting with their creation. Further, Financial Code section 2003, subdivision (k) defines “issuer” as the entity that is liable to the holder of stored value and has undertaken or is obligated to pay the stored value. Here, to the extent the Metal ABT is considered stored value, the Tokenizer is the issuer as it holds title to the Metal ABT and stores it in the Tokenizer’s digital wallet on _____ platform. Similarly, for the Industrial Token, it is the seller of the metal, not _____, that creates the Industrial Token and the seller is obligated to deliver the metal to the holder of the Industrial Token. _____ does not need an MTA license to provide this assistance.

_____ does not need an MTA license to issue a digital wallet holding Metal ABT.³ The digital wallet is not stored value because it is not holding monetary value intended and accepted for use as a means for redemption for money/monetary value or payment for goods or services. The contents of the digital wallet provided by _____ are Metal ABT, which cannot

² Fin. Code, § 2003, subd. (x).

³ The request letter does not state whether the Industrial Tokens will be stored in a digital wallet issued by _____. By contrast, the letter states that Metal ABT and Currency Tokens will be held on digital wallets provided by _____. Therefore, as it relates to Industrial Tokens, this opinion only discusses whether _____ assistance in creating Industrial Tokens requires licensure under the MTA.

be redeemed for money or monetary value and is not used as payment for goods or services; the Metal ABT is only redeemable for the underlying metal.

The fiat currency-related services facilitating the sale of Metal ABTs or Currency Tokens, and the issuance and sale of Currency Tokens does not require licensure at this time.

The Department has been studying the cryptocurrency industry closely. At this time, the Department does not require licensure under the MTA for _____ to facilitate the sale of Metal ABTs and Currency Tokens⁴, or to create a stablecoin such as Currency Token which would be used solely to pay _____ own platform fees.

Please be aware, however, that this is subject to change. At any time, the Department may determine that _____ activities are subject to regulatory supervision. The Department may also adopt regulations or issue interpretive opinions that significantly restrict _____ business operations. If _____ chooses to operate in California, it would do so subject to these risks.

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. Further, this opinion only pertains to MTA. However, _____ should consider that Metal ABTs and Industrial Tokens could be considered a commodity and California Corporations Code section 29520 generally prohibits the sale of a commodity, unless an exception applies.

If you have any questions, please feel free to contact me at _____ or _____.

Sincerely,

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

By

Senior Counsel

cc: Robert Venchiarutti, Deputy Commissioner, Money Transmitter Division

⁴ Your correspondence does not explain how _____ will facilitate the sale or trade of Industrial Tokens. In your letter of June 7, 2021, you explained, "The only fiat transactions permitted on the Platform are funding and withdrawing from the [bank] accounts for the purposes of purchasing Metal ABTs and _____ Currency Tokens." Therefore, as stated earlier, as it relates to Industrial Tokens, this opinion only discusses whether _____ assistance in creating Industrial Tokens requires licensure under the MTA.