



IN REPLY REFER TO:
 FILE NO: _____

October 20, 2021

VIA EMAIL ONLY

Re: _____ – Opinion Request

Dear _____:

Thank you for your letter dated March 19, 2021 and your emails dated April 21, 2021 and May 2, 2021 to the Department of Financial Protection and Innovation (“Department”). You request an interpretive opinion regarding whether _____ (“_____”) is subject to the Money Transmission Act in connection with its proposed business activities in California.

BACKGROUND

_____ plans to operate a platform that provides customers with (1) an account to store and transfer virtual currencies and (2) access to an exchange to facilitate the purchase or sale of virtual currencies in exchange for other virtual currencies. The exchanges of virtual currencies are structured in the following manner: if a customer wishes to exchange one type of virtual currency for another type of virtual currency, _____ will ensure there is an external source that can fulfill the order. Once _____ verifies a source, _____ will credit the customer’s account with the desired virtual currency and debit the balance of the applicable traded-out virtual currency, minus a transaction fee when applicable. The customer will only transact with _____ for the exchange. If _____ cannot find a matching order from an external source, the order will not be executed and will remain open until canceled.

Virtual currency transfers between _____ and external sources are executed at the time of the transaction. Changes in the customer’s account are also reflected at the time of the transaction and balances are immediately available to the customer. The platform does not allow customers to enter into transactions with anyone other than _____ and the platform is designed such that customers do not bear counterparty risk. The _____ platform will support the exchange of Bitcoin (BTC), Ether (ETH), Tether (USDT), USD Coin (USDC), and CS Coin (CS)¹.

¹ CS Coin is a native utility token of _____ and issued by _____ in _____.

In the future, the platform will also support the exchange of Litecoin (LTC) and Bitcoin Cash (BCH).

No fiat currency will be used on the platform. A customer's account will not contain fiat currency and _____ does not have the ability to transfer fiat currency through its platform. Customers will be required to complete a know-your-customer ("KYC") verification process prior to accessing the platform and customer activity will be monitored by _____ for compliance with applicable anti-money laundering laws and regulations. _____ will register as a money services business with the U.S. Department of Treasury's Financial Crimes Enforcement Network ("FinCEN") prior to conducting business in California.

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.² 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.³ "Monetary value" means a medium of exchange, whether or not redeemable in money.⁴

The Department does not currently require licensure under the MTA for _____ to operate a platform that provides customers with an account to store and transfer virtual currencies.

Further, the Department does not currently require licensure under the MTA for _____ to operate a platform that provides customers with access to an exchange to facilitate the purchase or sale of virtual currencies in exchange for other virtual currencies.

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 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

² Fin. Code, § 2030, subd. (a).

³ Fin. Code, § 2003, subd. (x).

⁴ Fin. Code, § 2003, subd. (o).

circumstances or the products or services that Credits 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,

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

By

Counsel