



IN REPLY REFER TO:
FILE NO: _____

October 20, 2021

VIA EMAIL ONLY

Re: _____ – Opinion Request

Dear _____:

Thank you for your letter dated April 14, 2021 and your emails dated May 5, 2021 and July 8, 2021 to the Department of Financial Protection and Innovation (“Department” or “DFPI”) on behalf of _____ (“_____”). You request confirmation that _____ is not required to obtain a license under the California Money Transmission Act¹ in connection with its business activities in California.

BACKGROUND

According to your letter, _____ is a _____ limited liability company and an online cryptocurrency-to-precious metals (bullion) dealer. _____ website allows customers to buy precious metals from _____ with cryptocurrency. Transactions are conducted in the following manner: customers place orders through _____ online store and pay for precious metals by transferring cryptocurrency directly into _____ cryptocurrency wallet. _____ sells the cryptocurrency for U.S. Dollars on an online exchange. _____ then pays a distributor U.S. Dollars to ship the precious metals to _____ customer. _____ also purchases precious metals from customers. The distributor or wholesaler receives precious metals sent in by _____ customers and pays _____ in U.S. dollars for the precious metals received. _____ then converts the U.S. Dollars into cryptocurrency on an online exchange and sends the customer cryptocurrency for the precious metals. When using _____ website, customers transact only with _____ with no knowledge of, or contact with, the precious metals distributors.

Currently, _____ accepts a variety of different cryptocurrencies for precious metals. _____ pays customers for precious metals with a variety of different cryptocurrencies.

ANALYSIS

¹ Fin. Code, § 2000 et seq.

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 2033, subdivision (q) defines “money transmission” to mean selling or issuing payment instruments³, selling or issuing stored value⁴, or receiving money for transmission⁵.

You reference a DFPI opinion letter dated August 3, 2016 in which the Department found that a company operating a software technology platform to facilitate the purchase and sale of gold was not engaged in money transmission. The Department found that gold and other precious metals were not payment instruments, and the transactions did not represent selling or issuing stored value. The Department also held that the activity did not constitute receiving money for transmission because the sale or repurchase of gold was a bargained-for-exchange and did not involve transmission to a third party. You argue that the purchase and sale of precious metals with cryptocurrency is similar and does not represent the sale or issuance of a payment instrument, the sale or issuance of stored value, or receiving money for transmission. Therefore, you argue that the activity should not trigger the licensing requirements of the MTA.

The Department agrees that _____ business activity does not meet the definition of money transmission. Precious metals are not payment instruments and therefore, the purchase and sale of precious metals for cryptocurrency does not represent the sale or issuance of a payment instrument. Secondly, _____ is not selling or issuing stored value. The purchase or sale of precious metals for cryptocurrency does not result in a claim against _____ for redemption at a later, unspecified time. Lastly, the transactions do not involve the receipt of money or monetary value for transmission within or outside the United States. _____ does not receive money from customers to transmit to precious metals distributors. When using _____ website, customers transact only with _____ with no knowledge of, or contact with, the precious metals distributors. Accordingly, _____ is not subject to licensing under the MTA.

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.

² Fin. Code, § 2030, subd. (a).

³ Fin. Code, § 2030, subd. (s).

⁴ Fin. Code, § 2030, subd. (x).

⁵ Fin. Code, § 2030, subd. (u).

Please contact me at _____ if you have any questions.

Sincerely,

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

By

Counsel