



IN REPLY REFER TO:
 FILE NO: _____

March 23, 2022

VIA E-MAIL & U.S. MAIL

Re: _____ - Request for Interpretive Opinion

Dear _____:

Thank you for your letter dated July 13, 2021, requesting an interpretive opinion from the Department of Financial Protection and Innovation (“Department”) regarding the applicability of the Money Transmission Act (“MTA”)¹ to certain virtual currency services offered by your clients, _____. (“___”) and _____. (“___”) (collectively, “_____”).

I. BACKGROUND

_____ is a privately owned company incorporated in _____ which operates a registered money services business in _____. You explain that _____ software platform provides retail and institutional investors with the ability to buy and sell digital assets, including cryptocurrency, and to access related products and services (the “Platform”). You state that _____, a wholly-owned subsidiary of _____, is a _____ corporation registered under the Bank Secrecy Act as a money services business (“MSB”) with the Financial Crimes Enforcement Network (“FinCEN”) and has implemented an anti-money laundering compliance program.

Through _____ will allow U.S. residents to access the Platform. Initially, _____ will execute purchase and sale transactions on the Platform involving Bitcoin, Ethereum, and the stablecoin USDC. You state that _____ will not execute any transaction involving the purchase or sale of a virtual currency or token considered to be securities under U.S. securities law.

¹ Fin. Code, § 2000, et seq.

U.S. residents will have access to _____ products and services through a web interface and mobile application. Customers can establish an account that enables the buying and selling of cryptocurrencies and access related products on the Platform.

Each customer must fund an account prior to buying cryptocurrency on the Platform with either U.S. dollars (“fiat”) or cryptocurrency. _____ contracts with an FDIC-insured bank (the “Bank”) to receive fiat from customers and facilitate certain fiat-related services to customers. Customer funds are held in an omnibus account designated for the benefit of _____ customers (the “FBO Account”).

_____ also offers customers certain services related to cryptocurrencies they may purchase or sell using the Platform. _____ has contracted with various service providers related to the transfer and holding of digital assets through _____ wallets, including software wallets to hold customers’ cryptocurrency solely for the benefit of the customers (“FBO Wallet”).

a. Buy and Sell Services

Customers can buy from and sell to _____ certain cryptocurrencies at the best prices available on one or more cryptocurrency exchanges (each the “Exchange”). _____ sells or buys cryptocurrency from the customer at the selected price and settles the trade using its own fiat or cryptocurrency it holds in its own accounts. Simultaneous to the transaction with the customer, _____ executes a trade for its own benefit on the Exchange offering the price the customer selects. _____ uses its own capital to execute trades with customers and does not use any of the customer’s funds to buy or sell the cryptocurrency from or to the Exchange.

i. Purchasing Cryptocurrency with Fiat on the Platform

To buy cryptocurrency on the Platform with fiat, the customer sends fiat to the Bank by wire or ACH. The Bank deposits the customer fiat into the FBO Account designated for _____ customers. The customer can then access the Platform and choose the amount and type of cryptocurrency to purchase from _____. _____ transfers the cryptocurrency from its own wallet to the FBO Wallet for the customer. At the same time, _____ debits the FBO Account and transfers that fiat amount to _____ operating account at the Bank.

ii. Selling Cryptocurrency on the Platform

To sell cryptocurrency on the Platform, the customer transfers cryptocurrency from the customer’s cryptocurrency wallet to the FBO Wallet. When the software finishes executing the transaction, a fiat amount equal to the transaction price transfers from _____ operating account into the FBO Account. The customer’s cryptocurrency transfers from the FBO Wallet to a separate wallet used to hold _____-owned cryptocurrency.

iii. Buying Cryptocurrency with Cryptocurrency on the Platform

Customers can use cryptocurrency (“Crypto 1”) to purchase another cryptocurrency (“Crypto 2”) on the Platform. To execute the transaction, _____ software automatically transfers the amount of Crypto 1 to buy Crypto 2 from the FBO Wallet to _____ Wallet. The amount of Crypto 2 purchased by the customer is transferred from _____ Wallet to the FBO Wallet. The Platform reflects the customer’s new cryptocurrency balances to show the debit of Crypto 1 and credit of Crypto 2.

b. Return of Customer Fiat and Digital Assets

After execution of a purchase, sale, or exchange transaction, a customer may choose to withdraw all or part of his or her fiat or cryptocurrency from the Platform. Alternatively, the customer can continue to keep a balance of fiat and cryptocurrency to facilitate future transactions with _____. For return of fiat, _____ will direct the Bank to return the customer’s fiat in the FBO Account to the customer’s bank account. _____ will return digital assets to the wallet the customer used to register with _____ initially.

II. ANALYSIS

Financial Code section 2030 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.

Financial Code section 2003, subdivision (q), defines “money transmission” as receiving money for transmission, selling or issuing stored value, or selling or issuing payment instruments. Financial Code section 2003, subdivision (u), defines “receiving money for transmission” as receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means.

Financial Code section 2003, subdivision (x) defines “stored value” as monetary value² representing a claim against the issuer³ that is stored on electronic or digital medium, 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 any stored value that is only redeemable by the issuer for goods or services provided by the issuer or its affiliates (“closed loop”).

The sale and purchase of cryptocurrency directly between _____ and the customer, where _____ does not facilitate the exchange of the fiat currency or cryptocurrency with a third party, does not meet the definition of money transmission 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. Likewise, the exchange of one cryptocurrency for another

² Financial Code section 2003, subdivision (o) defines “monetary value” as a medium of exchange, whether or not redeemable in money.

³ Financial Code section 2003, subdivision (l) defines “issuer”, regarding stored value, as the entity that is liable to the holder of stored value and has undertaken or is obligated to pay the stored value.

directly between two parties (the customer and _____) does not meet the definition of money transmission.

The customer can only redeem the monetary value stored in the FBO Account for digital currency sold by _____ (or instruct _____ to return it to the customer's bank account). Therefore, this stored value is a closed loop transaction and does not constitute regulated money transmission under the MTA.

The Department has not concluded whether a wallet storing cryptocurrency constitutes a form of monetary value representing a claim against the issuer and accepted for use as a means of redemption for money or monetary value or payment for goods or services. Therefore, the Department does not currently require licensure under the MTA for _____ to provide customers with an account to transfer and store cryptocurrency in order to exchange it directly with _____.

III. CONCLUSION

The Department is not currently requiring _____ to obtain an MTA license to operate its Platform that provides its customers with fiat and digital wallets to store and exchange cryptocurrency directly with _____. Please be aware, however, this is subject to change. And at any time, the Department may decide this activity is subject to regulatory supervision. If _____ choses to operate in California, it would do so subject to these risks.

This opinion is based solely on the facts as represented in your correspondence, and the Department's understanding of those representations. The Department may reach a different conclusion under other facts and circumstances. 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 contact me at _____.

Sincerely,

Clothilde V. Hewlett
Commissioner
Department of Financial Protection and Innovation

By

Senior Counsel

cc: Robert Venchiarutti, Deputy Commissioner, Money Transmitter Division