



IN REPLY REFER TO:
FILE NO: _____

February 22, 2022

VIA EMAIL ONLY

Re: Request for Interpretive Opinion

Dear _____:

Thank you for your letter dated November 2, 2021 and the information provided during a video conference on January 5, 2022. In your letter, you request an interpretive opinion regarding whether the proposed activities of your client, _____ (the “Company”), requires licensure under the California Money Transmission Act (“MTA”).

Background

In your letter, you explain that the Company will provide California residents access to its digital currency trading platform (the “Platform”) to buy, sell, or hold digital currency¹ and provide liquidity services.

To use the Platform, a customer must first create an account with the Company. Customers can transfer digital currency into the account, which balance will be reflected in the customer’s wallet issued by the Company (“_____ Wallet”). Customers can also transfer fiat currency by transferring it from their own bank account or by debit or credit card to the Company. These deposits will be placed in a Company omnibus bank account for the benefit of its customers and will be reflected in the customer’s _____ Wallet balance.

To initiate a buy or sell order, the customer first transfers the currency it wishes to trade from their _____ Wallet to another wallet issued by the Company that is designated specifically

¹ In your correspondence, you explain that the Platform intended to permit trading of Bitcoin, Ethereum, EOS, and USD Coin.

for trading those assets. The Platform will operate an order book that matches and fills the order based on bids and offers generated by customers.²

Customers can only withdraw fiat or digital currency from their _____ Wallet to their own bank account or digital wallet. Customers cannot send fiat or digital currency to others, except in the context of a sale.

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.

Financial Code section 2003, subdivision (q), defines “money transmission” to include issuing stored value. “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, but does not include value that is only redeemable by the issuer for goods or services provided by the issuer.³

Analysis

The Department has not determined whether trading digital currency or digital currency wallets are money transmission. Therefore, Department does not currently require the Company to obtain a license under the MTA to perform Platform trading services or to issue wallets holding digital currencies.

The Company’s wallets holding fiat currency meet the definition of stored value because they contain monetary value that represent a claim against the Company, is electronically or digitally stored, and are accepted as payment for digital currency sold on the Platform. However, the Company offers fiat currency wallets to customers solely to facilitate the trade of digital currency. Based on these facts, the Department is not requiring the Company to be licensed under the MTA at this time.

² This order book can use a pool of fiat or digital currency (“Liquidity Pool”) to enter into trades.² Each Liquidity Pool would consist of a specific fiat and/or digital trading pair (e.g. Bitcoin and U.S. Dollars). The Company will create separate wallets for each Liquidity Pool. A customer can choose contribute fiat or digital currency to the wallet a Liquidity Pool for the purpose of providing liquidity on the Platform and will earn fees based on their contribution. In a call on January 5, 2022, you explained that transactions related to the Liquidity Pool are securities and will be offered in compliance with state and federal law. You also state that the Liquidity Pool will also be used to facilitate margin financing services, but that those services will not be available in California.

³ Fin. Code, § 2003, subd. (x).

Please be aware, however, these conclusions are 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 the Company 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 whether those activities subject the Company to licensure under the MTA. It does not extend to any other activities in which the Company may engage. 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. Nothing in this letter should be interpreted to relieve the Company from any obligations under the laws administered by FinCEN or any other agency of the federal government.

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

Sincerely,

Clothilde V. Hewlett
Commissioner
Department of Financial Protection and Innovation

By

Senior Counsel

cc: _____ Robert Venchiarutti, Deputy Commissioner, Money Transmitter Division