



STATE OF CALIFORNIA

Department of Financial Protection and Innovation

GOVERNOR **Gavin Newsom** • COMMISSIONER **Clothilde V. Hewlett**

IN REPLY REFER TO:
FILE NO: _____

February 22, 2022

VIA EMAIL ONLY

Re: _____ – Opinion Request

Dear _____:

Thank you for your letter dated October 13, 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

_____ intends to establish a referral service whereby it will refer customers to banks, trust companies, and other entities (the “Financial Institution”) that are either licensed as money transmitters in California or exempt from licensure. The following describes the customer experience and flow of funds:

- (1) Customers will go to _____ website and the first-time customers will select their usernames and passwords before they are redirected to the Financial Institution’s website, where the Financial Institution will collect contact and other personal information from the customer to comply with KYC (know-your-customer) requirements under the Bank Secrecy Act.¹ It will be clear that the customer is on the Financial Institution’s website and not _____ website.
- (2) The first-time customers will electronically receive the Financial Institution’s account agreement through a web portal while on _____ website and electronically execute the account agreement with the Financial Institution. _____ will not be a party to the account agreements between the Financial Institution and the customers. A customer can then fund their account with the Financial Institution through an ACH transfer of fiat currency from the customer’s bank account to the Financial Institution.

¹ 31 U.S.C. 5311 et seq.

- (3) When a customer wants to buy, sell, or exchange cryptocurrency or fiat currency, the customer will log onto _____ website and use a third party's software platform (the "Platform") to input the order information about the currency that the customer wants to purchase, sell, or exchange.
- (4) The Platform receives the order information and checks to make sure the customer has sufficient assets in the customer's account with the Financial Institution to purchase the currency. _____ is not involved in this process. The Platform, through an arrangement with the Financial Institution, has the ability to electronically view the balances in customer accounts.
- (5) If the customer has sufficient assets with the Financial Institution, the Financial Institution will receive the order information through the Platform pursuant to the arrangement between the Financial Institution and the Platform. After receiving the order through the Platform, the Financial Institution transmits the fiat or cryptocurrency from a digital wallet or bank account in which it holds the currency, to the customer's account with the Financial Institution, and the Financial Institution holds the fiat or cryptocurrency in the customer's account with the Financial Institution.

The Financial Institution is the only party that holds, receives, or transmits all cryptocurrencies in each customer's account. _____ never holds, receives, or transmits cryptocurrencies or fiat currency. Likewise, the Platform never holds, receives, or transmits cryptocurrencies or fiat currency. _____ has a revenue sharing agreement with the Platform, but not with the Financial Institution.

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 instruments³, selling or issuing stored value⁴, or receiving money for transmission⁵.

_____ proposed activities do not meet the definition of money transmission. Based on your description, _____ service entails connecting customers with Financial Institutions from which customers can buy, sell, or exchange cryptocurrency. The transactions between customers and Financial Institutions are not money transmission because the customer is simply exchanging cryptocurrency directly with the Financial Institution. Therefore, the Department agrees that _____ will also not sell or issue payment instruments, sell or issue stored value, or receive money for transmission by conducting the proposed activities.

Please be aware, however, this is subject to change if in the future the Department determines these activities are subject to regulatory supervision.

² Fin. Code, § 2030, subd. (a).

³ Fin. Code, § 2030, subd. (s).

⁴ Fin. Code, § 2003, subd. (x).

⁵ Fin. Code, § 2003, subd. (u).

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 _____ or any other agency of the federal government.

Please contact me at _____ if you have any questions.

Sincerely,

Clothilde V. Hewlett
Commissioner
Department of Financial Protection and Innovation

By

Counsel

cc: Robert Venchiarutti, Department of Financial Protection and Innovation