



STATE OF CALIFORNIA

Department of Financial Protection and Innovation

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

IN REPLY REFER TO:
FILE NO: OP 8393

VIA EMAIL ONLY

Re: _____ – Request for Interpretive Opinion

Dear _____:

Thank you for your letters to the Commissioner of Financial Protection and Innovation, Clothilde V. Hewlett, dated _____ and _____. In your letter, you request an interpretive opinion from the Department regarding whether _____ (the “Company”) will require a license under the Money Transmission Act for its proposed business activities in California.

Factual Background

In your letter you explain that the Company will offer the purchase, sale, and trading of various cryptocurrencies using a platform provided by its affiliate and in conjunction with another affiliate that is a _____ and _____ registered broker-dealer.

Transactions on the platform will involve the use of the Company’s tokenized version of the U.S. Dollar, the “_____,” and each _____ is equal to one U.S. Dollar held in the Firm’s _____ account. Once a customer deposits funds into the Company’s _____ account, an equivalent amount of _____ will be created and used to facilitate a trade for cryptocurrency. After the transaction, or upon request, the _____ can be exchanged for U.S. Dollars. Alternatively, the customer can hold the _____ in their wallet.

You state that the company does not take custody of its client’s currencies or offer digital wallets. Rather, the client’s digital wallet is directly linked to the platform and transacts on a peer-to-peer basis with other clients.

You also explain that in addition to trading cryptocurrencies such as Bitcoin, Ethereum, USDC, or USDT, a customer can also trade in cryptographic representations of publicly listed securities (“_____ Tokens”). When a customer buys a security, the Company holds the security in its _____ brokerage account and mints and gives the customer one _____ Token representing that share. The customer will then be able to transact using the _____ Token on the platform

in the same manner as cryptocurrency such as Bitcoin (e.g. purchase, sell, trade). If a customer wants to retrieve their actual share or remove the share from the platform, you state that the Company will transfer the share to the customer's traditional brokerage account. You also explain that transactions of the _____ Tokens, as securities, will be covered by the Company's affiliate's broker-dealer license.

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 receiving money for transmission and 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.¹

Analysis

The Department has not determined whether the issuance of tokenized versions of the U.S. Dollar or securities, or their use to trade cryptocurrencies, is money transmission. Therefore, Department does not currently require the Company to obtain a license under the MTA to perform the described platform trading services or to issue tokenized versions of the U.S. Dollar or securities.

Please be aware, however, these conclusions are subject to change. 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. In addition, this letter does not address whether your proposed activities require licensure or registration under other laws, such as the Corporate Securities Law of 1968.²

Please also note, the Department recently invited the public to comment on developing guidance and regulation of crypto asset-related financial products and services in California.³ To receive notices of future rulemaking or invitations for comments, please sign up here:

<https://public.govdelivery.com/accounts/CADFI/subscriber/new>.

¹ Fin. Code, § 2003, subd. (x).

² Corp. Code, § 25000 et seq.

³ <https://dfpi.ca.gov/wp-content/uploads/sites/337/2022/06/DFPI-crypto-invitation-for-comment-5-31-22.pdf>

If you have any questions, please feel free to 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