



IDFPR

Illinois Department of Financial and Professional Regulation

Division of Financial Institutions

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JB PRITZKER
Governor

MARIO TRETO, JR.
Acting Secretary

FRANCISCO MENCHACA
Director

November 29, 2021

VIA ELECTRONIC MAIL

Non-Binding Statement 2021-06

Dear _____:

Thank you for your letter emailed on September 20, 2021. You requested a non-binding opinion pursuant to Title 38, Section 200.310 of the Illinois Administrative Code addressing whether your client, _____ is required to obtain a license under the Illinois Transmitters of Money Act (“TOMA”). You have requested confidential treatment.

Please be advised that consistent with governing law, the Division of Financial Institutions does not render formal legal opinions or interpretations and non-binding statements do not have precedent value.

In addition, facts or conditions different than those presented will require different conclusions. Persons other than those requesting the statement should not rely on this statement. The Division has not independently verified any represented facts, and instead has relied upon the statements and representations contained in your correspondence.

FACTS

_____ ¹ is a virtual currency proprietary trading firm who proposes to transact as principal for its own account, using its own capital with Counterparties who are onboarded using a Know Your Customer screening process developed and implemented by _____. _____ represents that it transacts exclusively with institutional clients.

Pursuant to the Client Trading Master Agreement (“Agreement”) the trading relationship is as follows:

¹ _____ is a subsidiary of _____. _____ represents it is registered as a Money Services Business with FinCEN.

- Counterparties submit requests for quotes² to _____ for purchase and sale of a limited collection of virtual currencies³.
- _____ provides quote⁴ to Counterparty.
- Counterparty submits an order to _____ for its acceptance.
- Confirmation to memorialize the order is sent to Counterparty if order accepted.
- Counterparty sends virtual currency to _____’s digital wallet address or transfers fiat currency via wire or intra-bank transfer to _____. Transactions typically settle within one day.⁵
- Upon receipt of virtual currency or fiat, _____ will transmit virtual currency to Counterparty’s digital wallet address or fiat currency to Counterparty’s bank account.

_____ represents that they will not accept or transfer digital assets or fiat from third parties on behalf of Counterparties, or transfer digital assets or fiat to third parties on behalf of Counterparties. _____ further represents that it will not have custody of any Counterparty’s or third party’s virtual currency or other funds, nor will it offer custodial wallets or services. _____ further represents that each time it transacts with a Counterparty, it will accept virtual currency or fiat currency from its Counterparty only for purposes of settling the transaction.

LAW

Pursuant to Section 5 of TOMA a money transmitter is:

[A] person who is located in or doing business in this State and who directly or through authorized sellers does any of the following in this State:

- (1) Sells or issues payment instruments.
- (2) Engages in the business of receiving money for transmission or transmitting money.
- (3) Engages in the business of exchanging, for compensation, money of the United States Government or a foreign government to or from money of another government.⁶

TOMA applies to the “transmission of money by any means, including transmissions to or from locations within the United States or to and from locations outside of the United States by payment instrument, facsimile or electronic transfer, or otherwise, and includes bill payment services.”⁷ TOMA defines money as “a medium of exchange that is authorized or adopted by a domestic or

² Requests may also be made through electronic messaging via _____’s application programming interface.

³ Supported assets, which may be amended occasionally currently include: BTC, BCH, DOGE, DOT, ADA, XRP, EOS, ETH, XLM, LTC, LINK, USDC, and USDT.

⁴ _____ represents that it also supports certain order types where a quote is not necessary before _____ chooses to accept an order.

⁵ The settlement period may extend up to three business days to aggregate transactions for commercial convenience.

⁶ 205 ILCS 657/5.

⁷ *Id.*

foreign government as a part of its currency and that is customarily used and accepted as a medium of exchange in the country of issuance.”⁸

CONCLUSION

If all of the facts provided in _____’s request and supplemental information are true and correct, the Division would not recommend that enforcement action be initiated against _____ if it commenced the described activities without a TOMA license. The Division expressly disclaims any obligation to advise you of any changes in the circumstances, laws or events that may occur after this date or otherwise update this response. This letter does not address the applicability of any law except TOMA.

Sincerely,

Francisco Menchaca
Director, Division of Financial Institutions

By,

s/Helen Kim
Helen Kim

⁸ *Id.*