



**JB PRITZKER**  
Governor

**MARIO TRETO, JR.**  
Acting Secretary

**FRANCISCO MENCHACA**  
Director

March 21, 2022

## Non-Binding Statement 2022-03

Dear \_\_\_\_\_:

Thank you for your letter emailed on January 4, 2022. You requested a non-binding statement pursuant Title 38, Section 200.310 of the Illinois Administrative Code addressing whether \_\_\_\_\_, LLC (“\_\_\_\_\_”) 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 (“Division”) does not render formal legal opinions or interpretations and non-binding statements do not have precedential value. In addition, facts or conditions different than those presented will require different conclusions, and 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

\_\_\_\_\_ represents that it seeks to provide a cash holding service to facilitate the disbursement of cash between digital currency ATMs and banks in Illinois. \_\_\_\_\_ will also exchange digital currency of their own holding to the companies that own the digital currency kiosks.

\_\_\_\_\_ registered with FinCEN on the federal level as a “monetary services business” (“MSB”) in accordance with FinCEN rulings and applicable Bank Secrecy Act (“BSA”) regulations on July 14, 2021.

\_\_\_\_\_ represents their exchange with the digital currency kiosk operators will work as follows:

- The kiosk operator’s cash funds generated from consumer transactions will be placed in secure containers at the customer’s location.
- The kiosk operator’s cash funds will be shipped to \_\_\_\_\_’s secure vault location via armored carrier.
- \_\_\_\_\_ will then electronically transmit from \_\_\_\_\_’s own wallet address directly to the kiosk operator’s own wallet address digital currency in an amount corresponding to the cash funds received from kiosk operator, minus a transaction fee. This shall be done via a highly secure and encrypted electronic transmission.

- All information and transaction activity will be recorded and maintained in the appropriate transaction ledger.
- The cash funds received at \_\_\_\_\_'s vault location will then be deposited into \_\_\_\_\_'s own depository account with its bank.
- \_\_\_\_\_ will purchase additional digital currency assets which it will maintain in its own secure and encrypted digital currency wallet. \_\_\_\_\_ will only replenish the digital currency inventory of kiosks with its own supply in exchange for money from the customers.

\_\_\_\_\_ represents that it will not engage in any third-party fund transfers and will be limited to the acceptance of money from approved kiosk operators sending the equivalent amount of digital currency (minus transaction fees) back to that same customer or sending digital currency (minus transactions) to kiosk operators for money. \_\_\_\_\_ will not act as a repository with respect to the kiosk operator's funds. \_\_\_\_\_ will only be responsible for the transportation of funds from the kiosk to repositories. \_\_\_\_\_ will not engage in the exchange of U.S. dollars for foreign currencies, the exchange of cryptocurrencies for any foreign fiat currencies, or offer any foreign currency exchange services.

## **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.<sup>1</sup>

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."<sup>2</sup>

## **CONCLUSION**

If all of the facts provided in \_\_\_\_\_'s January 4, 2022, letter 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

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<sup>1</sup> 205 ILCS 657/5

<sup>2</sup> *Id.*

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/David Berland  
David Berland  
Deputy General Counsel