



Illinois Department of Financial and Professional Regulation
Division of Financial Institutions

JB PRITZKER
Governor

MARIO TRETO, JR.
Acting Secretary

FRANCISCO MENCHACA
Director
Division of Financial Institutions

April 20, 2021

Re: _____

VIA ELECTRONIC MAIL

Non-Binding Statement 2021-02

Dear _____:

Thank you for your letter emailed on April 5, 2021 and supplemental responses. 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 requested confidential treatment.

Please be advised that consistent with governing law, the Illinois Department of Professional and Financial Regulation, Division of Financial Institutions (“Division”), 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

_____ proposes to install bitcoin automated teller machines (“ATMs”) in Illinois. A customer may deposit U.S. dollars into the ATM in exchange for bitcoins. The ATM will not allow a customer to sell bitcoin. The bitcoin purchased from the ATM can be stored in the customer’s digital wallet, which is unaffiliated with _____. There are two digital wallets involved, one for _____ and the other for _____.

the customer. The wallets can be hosted either virtually or by a “paper wallet,” which consists of a physical piece of paper with two QR codes.¹

_____ further represents that it only sells virtual currency from its own supply, it does not link bitcoin buyers and sellers, or serve as a bank or bitcoin exchange.

LAW

Pursuant to Section 5 of Transmitters 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.²

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.”³ TOMA defines money as “a medium of exchange that is authorized or adopted by a domestic or 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.”⁴

ANALYSIS

Based on _____’s representation, _____ is not a money transmitter as defined by TOMA. As outlined in the Department’s prior guidance, if a virtual currency ATM “never involves a third party, and only facilitates a sale or purchase of [virtual] currency by the machine’s operator directly with the customer, there is no money transmission because at no time is money received and neither party is engaging in the “business of receiving money for transmission or transmitting money.”⁵

¹ _____ indicates that one QR code is a private encryption key used to send out bitcoin and the other QR code is a public key used to receive bitcoin. _____ represents that _____ and the customer each have custody and control of their own wallets.

² 205 ILCS 657/5

³ *Id.*

⁴ *Id.*

⁵ See Digital Currency Regulatory Guidance - Illinois Department of Financial & Professional Regulation, page 6 available at <https://www.idfpr.com/Forms/DFI/CCD/IDFPR%20-20Digital%20Currency%20Regulatory%20Guidance.pdf>

CONCLUSION

If all of the facts provided in _____'s request and supplemental correspondence 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
Associate General Counsel