



IDFPR

Illinois Department of Financial and Professional Regulation

Division of Financial Institutions

<https://idfpr.illinois.gov>

JB PRITZKER
Governor

MARIO TRETO, JR.
Secretary

FRANCISCO MENCHACA
Director

June 29, 2022

Re: Request for Non-binding Opinion

VIA ELECTRONIC MAIL

Non-Binding Statement 2022-6

Dear _____:

Thank you for your letter emailed on January 6, 2022, and your supplemental responses. You requested a non-binding statement pursuant to Title 38, Section 200.310 of the Illinois Administrative Code addressing whether _____ (“Company”) 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 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 precedential 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

The Company is registered as a money services business and proposes to offer a related service to its current business model by allowing customers to purchase bitcoin through the Company’s mobile application (the “App”).

Current Model¹: The Company’s primary business model is to buy and sell cryptocurrency², directly to customers, at Company’s owned automated teller machines (“ATM”) kiosks. When selling cryptocurrency, the Company sells cryptocurrency directly to customers using its own inventory of cryptocurrency; and when buying cryptocurrency, the Company purchases cryptocurrency directly from the customers to fill the Company’s own inventory. Third parties

¹ The Department addressed the Company’s kiosk model in a previously issued letter dated October 25, 2017.

² The cryptocurrencies offered include bitcoin, litecoin and ethereum.

are not involved, and the Company does not host or otherwise take custody of any customer cryptocurrency wallets.³

Current Over the Counter (“OTC”) Model⁴: Customers also have the option to purchase cryptocurrency by contacting Company’s finance department for a price quote. If the quote is accepted the customer pays by initiating an over the counter (“OTC”) wire transfer from the customer’s bank to Company’s bank account. Upon successful wire transfer, the Agreed upon amount of cryptocurrency is transferred from its Company’s inventory to the customer wallet.

Proposed App Model: In lieu of purchasing cryptocurrency at ATM kiosks or via an OTC transaction, the Company intends to offer customers the ability to purchase bitcoin from the App⁵. The Company represents customers must register as a user with the Company and will undergo standard user registration requirements and satisfy “know your customer” compliance requirements. The customer may purchase bitcoin on the App in the following manner:

- Customer opens App and enters an amount of bitcoin to purchase.
- The Company generates a price quote reflecting the current market value and the Company’s applicable fees.
- To continue making a transaction the customer will accept the quote and the App will generate a barcode.
- The customer would then visit a retail point-of-sale location acting as a duly authorized agent of a licensed money transmitter in the customer’s jurisdiction (“Retailer”) and present the barcode to the retail clerk to scan through a retail point-of-sale device, which would generate a confirmation of the fiat currency to be transmitted. The customer gives fiat currency to the retail clerk for transmission to the Company’s bank account. Simultaneously the software used to read the barcode and generate transaction instructions would advise Company of the transmission.
- Upon receipt of customer’s funds in Company’s bank account, a notice of the credit will be conveyed via the App, whereupon the customer may proceed and choose “Purchase Now” in the App. The purchase is completed, and the Company sends the relevant amount of bitcoin from Company’s inventory to the customer’s digital wallet.
- If the customer does not manually initiate the transfer of bitcoin, it will be automatically initiated within 1-2 hours.

The Company makes the following additional representations:

- The sole role of the Retailer and the licensed money transmitter for which it is an agent is to affect the transfer of fiat currency from the customer to the Company’s bank account. Because customers are limited to buying bitcoin through the App and not to sell, the

³ The Company represents that cryptocurrency wallets are hosted or custodied by third-party services chosen by the customers.

⁴ The OTC model was not part of the Company’s initial request and therefore was not addressed in the Department’s letter dated October 25, 2017.

⁵ The Company does not initially intend to offer cryptocurrencies other than bitcoin through the App. Additionally, the App does not allow customers to sell Bitcoin and is limited to purchase only.

Company's relationship with the Retailer and the licensed money transmitter is intended solely as a cash-in solution and not a cash-out solution.

- The Company never guarantees or implies that the cryptocurrency it sells has intrinsic value or redeemable value, or that the holder of the cryptocurrency has a redemption right that permits the holder to redeem the digital asset for currency.
- The Company only conducts direct transactions between customers and itself, utilizing the Company's own inventory.

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 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 the facts provided in counsel's January 6, 2022, and supplemental responses are true and correct, the Company would not be required to obtain a TOMA license. The Division would not recommend that enforcement action be initiated against the Company 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,

⁶ 205 ILCS 657/5

⁷ *Id.*

⁸ *Id.*

Francisco Menchaca
Director, Division of Financial Institutions

By,

s/ Helen Kim
Helen Kim
Associate General Counsel