



Illinois Department of Financial and Professional Regulation

Division of Financial Institutions

JB PRITZKER
Governor

DEBORAH HAGAN
Secretary

FRANCISCO MENCHACA
Director
Division of Financial Institutions

March 5, 2020

Non-Binding Statement 2020-04

Dear _____:

Thank you for your letter emailed on February 21, 2020. You requested a non-binding statement pursuant 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 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, 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 will soon engage in business as a virtual currency liquidity provider with whitelisted third parties (“Counterparties”) located in Illinois on behalf of its own accounts as a principal market-maker. _____ represents that it will “always transact as principal for its own account, with its own capital, and its own risk with Counterparties.”¹ _____ will exchange virtual currency or U.S. Dollars for either virtual currency or U.S. dollars for prices posted to their website. All transactions will settle within two (2) business days of the Counterparty transferring fiat or virtual currency to _____ by _____ transmitting virtual currency to the Counterparty’s digital wallet address or U.S. dollars to the Counterparty’s bank account.

_____ represents that it will not charge any fees. _____ will “instead capture a spread on these transactions” by further trading activity. However, _____ represents that it will pre-fund all exchange accounts “such that transfers to and from exchange custodial wallets will not correspond directly with Counterparty transactions. _____ represents that it will keep records of its pre-funding activity demonstrating that the pre-funding does not directly correspond with Counterparty transactions, and “instead accounts for the needs and overall variance of _____’s business.” _____ expressly stated it would make these documents available to the Department upon request demonstrating that the pre-funding does not directly correspond with the Counterparty transactions and the Department has materially relied on this representation in issuing this non-binding statement.

¹ _____ represents that these Counterparties will be properly vetted and will, at a minimum, qualify as a “accredited investor” as defined in Rule 501 of Regulation D.

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.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 representations, it does not require a license pursuant to TOMA. In the instant case, _____ is not acting as “third-party exchange” or “escrow-like intermediary.”⁵ _____ represents that it will pre-fund all of its exchange accounts and that any transfers to and from exchange custodial wallets will not correspond directly with Counterparty transactions. Each exchange is an “[e]xchange of digital currency for money directly between two parties” and therefore does not qualify as money transmission.⁶ _____ does not otherwise meet the definition of a money transmitter. _____ is not selling or issuing payment instruments because payment instruments must be “for the transmission or payment of money.”⁷ Virtual currency is not money because it is not “a medium of exchange that is authorized or adopted by a domestic or foreign government as part of its currency.”

² 205 ILCS 657/5

³ *Id.*

⁴ *Id.*

⁵ See Digital Currency Regulatory Guidance at P. 6 available at <https://www.idfpr.com/Forms/DFI/CCD/IDFPR%20-%20Digital%20Currency%20Regulatory%20Guidance.pdf>

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⁷ 205 ILCS 657/5.

The Department 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,

David Berland
Deputy General Counsel