



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

December 29, 2021

VIA ELECTRONIC MAIL

Non-Binding Statement Request 2021-7

Dear ____:

Thank you for your letter and supplemental responses. You requested a non-binding opinion pursuant Title 38, Section 200.310 of the Illinois Administrative Code addressing whether ____ (“____”), 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 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. In reaching its opinion, the Division has not independently verified any represented facts, and instead has relied upon the statements and representations contained in your correspondence.

FACTS

____ intends to establish a referral service to refer consumers to either entities licensed pursuant to TOMA or entities which are exempt from licensure pursuant to TOMA (the “Custodian”). The process will work as follows:

- **Step 1:** A consumers signs up for an account with ____ and provides their contact information
- **Step 2:** The consumer receives and executes a custodial account agreement with the Custodian through ____’s web portal. ____ represents it will not be a party to the custodial account agreement between the Custodian and consumer.
- **Step 3:** The consumer logs into their ____ account and uses a third party’s software platform (the “Platform”) to buy, sell, or otherwise exchange fiat and cryptocurrency. The consumer enters their order information on the Platform.

- **Step 4:** The Platform receives the order information and verifies the consumer has sufficient assets in their account with the Custodian to fulfill the transaction pursuant to an agreement between the Platform and Custodian. ____ represents it is not involved in this process.
- **Step 5:** If the consumer has sufficient assets, the Custodian will receive the order information from the Platform pursuant to the agreement referenced above. The Custodian will then transmit the fiat or cryptocurrency to the requested party and store any fiat or cryptocurrency received from the requested party in the consumer’s digital wallet or bank account with the Custodian.

____ represents that the Custodian is the only person or entity that holds, receives, or transmits fiat or cryptocurrencies. ____ represents that neither it nor the Platform holds, receives, or transmits fiat or cryptocurrencies. ____ represents it has a revenue sharing agreement with the Platform, but not the Custodian. ____ represents that it solely provides a referral service.

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.¹

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.”² 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.”³

¹ 205 ILCS 657/5

² *Id.*

³ *Id.*

CONCLUSION

If all of the facts provided by ____ to the Division 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.

This non-binding statement applies only to ____ and not to any other person or entity referenced above including, but not limited to the Custodian or Platform. Furthermore, 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/ David Berland _____
David Berland
Deputy General Counsel