



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

April 20, 2022

VIA ELECTRONIC MAIL

Amended Non-Binding Statement 2021-5

Dear _____:

Thank you for your second request¹ for a non-binding statement emailed on February 22, 2021. You requested a second non-binding statement pursuant to Title 38, Section 200.310 of the Illinois Administrative Code regarding 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 Financial and Professional Regulation, Division of Financial Institutions (“Department” or “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

_____ ² intends to offer three services to Illinois consumers (“Users”), either independently of each other or integrated by a combination thereof.

Service 1: Hosted Wallet Service³

Users will be able to open a hosted virtual currency wallet (“Hosted Wallet”) pursuant to a User Agreement which will allow users to securely deposit, hold and send Digital Assets⁴. The Hosted Wallet

¹ The Department previously issued Non-Binding Statement 2020-09 in response to _____’s first request for a non-binding statement. The Department declined to make any findings with respect to the DDA Platform and the P2P Exchange services for lack of material information.

² _____ is a FinCEN registered money services business and operates pursuant to a BSA compliance AML policy.

³The Department addressed the Hosted Wallet Service in a previously issued non-binding statement, Non-Binding Statement 2020-9.

⁴ _____ supports Bitcoin, Ethereum, and Litecoin Digital Assets.

is used to: (1) receive Digital Assets from user's external Digital Asset wallets; (2) send Digital Assets to user's external wallets; (3) transfer Digital Assets to another User's Hosted Wallet, either by ordinary peer-to-peer transaction, where the receiving User simply shares their Hosted Wallet address with another User, as is the case in any Digital Assets transaction; or (4) transfer Digital Assets to another user as part of another service, the P2P Exchange Transaction (discussed below). _____ has control of the digital assets deposited into the Hosted Wallet. A third-party provider will provide the software for _____ to create and administer the private keys to the Hosted Wallet and serve as holder of one key of a multi-signature wallet. Two keys are required to initiate a transaction.

Service 2: DDA Platform

The DDA Platform, through technical integration provided by _____ ("Third Party Provider")⁵, will allow Users to open a FDIC insured demand deposit account ("DDA") with _____, member FDIC ("DDA Bank") through _____'s mobile app or website. Subject to the terms as set forth in agreement between the User and the DDA Bank ("User DDA Agreement"), a User can: (1) receive Fiat from a bank account of the User with another bank ("External DDA"); (2) send Fiat to an External DDA; or (3) send or receive Fiat from the User DDA bank account of another User as part of a P2P Exchange Transaction (as discussed below). For purposes of receiving or sending Fiat the User authorizes the DDA Bank to accept all instructions provided to the DDA Bank. For example, when a User wants to move funds from an External DDA to the User's DDA, the User delivers transactional instructions to _____, who then forwards the same instructions to the DDA Bank, via the bank's agent, Third Party Provider, to carry out. Additionally, pursuant to the terms of the agreement between User and _____ ("User Agreement"), the User expressly authorizes _____ to send and receive transactional data between User and DDA Bank to move funds. _____ emphasizes that it serves as a conduit of only data from Users to and from the DDA Bank, via Third Party Provider, and that _____ does not take possession of or transmit any Fiat as part of the DDA Platform service.

Service 3: P2P Exchange

_____ also proposes to offer a peer-to-peer Digital Assets exchange ("P2P Exchange") which will allow Users to buy or sell Digital Assets in transactions directly with each other. The P2P Exchange is hosted by _____ and will allow Users to buy and sell specific quantities of Digital Assets, the orders of which are then matched by _____ so Users can automatically complete their transaction. Users can: (1) buy digital assets for Fiat and/or (2) buy digital assets for digital assets. To the extent Fiat is used for a transaction, _____ emphasizes that it serves only as a conduit of User instructions to the DDA Bank, via the bank's agent, Third Party Provider, and that DDA Bank is the entity holding and transferring Fiat value.

LAW

Pursuant to Section 5 of the Transmitters of Money Act ("TOMA") a money transmitter is:

⁵ _____ is a third-party software provider offering a banking platform that enables companies such as _____ to provide financial products to their customers. The Bank Services Agreement between _____ and DDA Bank expressly "appoints _____ as its authorized agent solely to market the Services to Platforms and Users, and to perform such operational and customer support services hereunder to support the Services in accordance with the terms of this Agreement." See Section 3 regarding "Grant of Right" as set forth in the Bank Services Agreement.

[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 of the facts provided in _____’s request and supplemental information provided by the third-party provider are true and correct, the Division would not recommend that enforcement action be initiated against _____ if it proceeded with the proposed services without a TOMA license. Additionally, 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

⁶ 205 ILCS 657/5

⁷ *Id.*

⁸ *Id.*