



Illinois Department of Financial and Professional Regulation

Division of Financial Institutions

JB PRITZKER
Governor

DEBORAH HAGAN
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FRANCISCO MENCHACA
Director
Division of Financial Institutions

March 3, 2020

Non-Binding Statement Request 2020-01

Dear _____:

Thank you for your letter dated December 11, 2019, and your supplemental email dated February 3, 2020. You requested a non-binding opinion 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 have 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. 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

_____ (“_____”) seeks to engage in two types of transactions involving decentralized convertible virtual currency (“CVC”): (1) _____ -as-seller transactions; and (2) _____ -as-buyer transactions. Each type of transaction is explained below.

_____ -as-Seller Transaction:

- Step 1: A buyer agrees to buy a precise type and amount of CVC from _____ at an agreed upon purchase price. The buyer pays the agreed upon purchase price and an additional fee to _____ through a payment processor. The payment processor subsequently holds the money.
- Step 2: Subject to _____’s Anti-Money Laundering (“AML”) and risk policy, _____ transfers the quantity of CVC purchased by the buyer from a “Cold Wallet” to a “Hot Wallet” that will be used to transfer the CVC to the buyer.
- Step 3: _____ transfers the CVC to the buyer’s wallet.
- Step 4: The payment processor processes the payment by sending the buyer’s payment to _____’s bank account.

_____ -as-Buyer Transaction

- Step 1: _____ agrees to buy a precise type and amount of CVC from a seller at a specified price. _____ creates a “Hot Wallet” to receive the CVC from the seller.
- Step 2: After confirmation that the CVC has been received, _____ pays the seller using a money transmitter.¹
- Step 3: _____ transfers the CVC from its “Hot Wallet” to its “Cold Wallet” for storage in its own inventory and possible later sale.

LAW

Pursuant to Section 5 of the Transmitters of Money Act² (“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.³

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.”⁴ 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.”⁵

ANALYSIS

Based on _____’s representations, _____ would not require a license pursuant to TOMA.

_____ represents that each transaction involves only two parties: (1) _____; and (2) the customer. In other words, each exchange is an exchange of digital currency for money directly between two parties. Pursuant to the Department’s existing guidance, this does not qualify as money transmission.⁶ _____ does not otherwise meet TOMA’s 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 CVC is not money because it is not “a medium of exchange that is authorized or adopted by a

¹ _____ represents it “will use a UK or EU money transmitter that will be responsible for the whole of the process of delivering fiat to the Illinois seller. After collecting fiat from _____ under its UK or EU license, that UK or EU money transmitter will use a U.S. correspondent bank or duly licensed money transmitter to carry the fiat the ‘last mile’ within the U.S. to the Illinois seller.”

² 205 ILCS 657/1 *et. seq.*

³ 205 ILCS 657/5.

⁴ *Id.*

⁵ *Id.*

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

⁷ 205 ILCS 657/5.

domestic or foreign government as part of its currency.” _____ is also not acting as “third-party exchange” or “escrow-like intermediary.”⁸

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. This memorandum also does not address whether the payment processor used by _____ must have a TOMA license.

Sincerely,

Francisco Menchaca
Director, Division of Financial Institutions

By,

David Berland
Deputy General Counsel

⁸ See Digital Currency Regulatory Guidance at P. 6 available at <https://www.idfpr.com/Forms/DFI/CCD>IDFPR%20-%20Digital%20Currency%20Regulatory%20Guidance.pdf>