



# Illinois Department of Financial and Professional Regulation

## Division of Financial Institutions

JB PRITZKER  
Governor

DEBORAH HAGAN  
Secretary

FRANCISCO MENCHACA  
Director  
Division of Financial Institutions

July 9, 2020

### Non-Binding Statement 2020-5

Dear \_\_\_\_:

Thank you for your letter emailed on March 16, 2020. You requested a non-binding statement pursuant to Title 38, Section 200.310 of the Illinois Administrative Code addressing whether \_\_\_\_ (“\_\_\_\_”) is required to obtain a license under the 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. The Division has not independently verified any represented facts, and instead has relied upon the statements and representations contained in your correspondence.

#### FACTS

\_\_\_\_<sup>1</sup> provides “bank-like services that allow for exchange of cash or credit/debit funds for \_\_\_\_ Credit.” \_\_\_\_ Credit is the term used by \_\_\_\_ to describe the value an \_\_\_\_ member receives in exchange for U.S. dollars. The value of an \_\_\_\_ Credit to a U.S. dollar is always one-to-one (*i.e.* one \_\_\_\_ Credit is always equal to one U.S. dollar). Each \_\_\_\_ member has a unique sixteen-digit account number.

All U.S. dollars provided to \_\_\_\_ by its members are deposited in a U.S. “encumbered” bank account.<sup>2</sup> The account is held in \_\_\_\_’s name.

\_\_\_\_ is a membership-only network. \_\_\_\_ business members must accept \_\_\_\_ Credit from another \_\_\_\_ business member or \_\_\_\_ consumer member. \_\_\_\_ members can exchange \_\_\_\_ Credit for “member-only” products and services by logging onto their \_\_\_\_ account on a mobile device or computer.

<sup>1</sup> \_\_\_\_ is registered with the Financial Crimes Enforcement Network, a bureau of the United States Department of Treasury (FinCEN). \_\_\_\_ represents its member approval process is consistent with FinCEN and state guidelines and meets or exceeds Bank Secrecy Act requirements and Anti-Money Laundering regulations.

<sup>2</sup> \_\_\_\_ has not defined the term “encumbered account” but based on \_\_\_\_’s description of the proposed transaction, the Division believes the account would be unencumbered for purposes of TOMA (*i.e.* \_\_\_\_<sup>TM</sup> would own the fiat currency free and clear of the members’ creditors). 205 ILCS 657/50 (a) (“Permissible investments include, but are not limited to, all of the following unencumbered items: (1) Cash on hand or on deposit in the name of the licensee . . .”).

\_\_\_\_\_ members can also exchange their \_\_\_\_\_ Credit to pay bills outside the \_\_\_\_\_ network using ACH, eCheck or wire transfers. Members use their \_\_\_\_\_ account to send instructions to \_\_\_\_\_'s bank. \_\_\_\_\_'s software verifies that \_\_\_\_\_ Credit is available in the member's account and then the member's \_\_\_\_\_'s Credit and corresponding funds in \_\_\_\_\_'s "encumbered account" are reduced by the amount of the transaction.

Consumer members open and maintain their account at no cost. However, consumers are charged fees to initiate exchanges of \_\_\_\_\_ Credit outside of the \_\_\_\_\_ network. Business members pay an application fee and monthly membership fee. Businesses related to \_\_\_\_\_ must pay an additional compliance fee and maintenance fee.

## **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.<sup>3</sup>

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."<sup>4</sup> Bill payment service "means the business of transmitting money on behalf of an Illinois resident for the purpose of paying the resident's bills."<sup>5</sup> 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."<sup>6</sup> TOMA defines payment instrument as follows:

[A] check, draft, money order, traveler's check, stored value card, or other instrument or memorandum, written order or written receipt for the transmission or payment of money sold or issued to one or more persons whether or not that instrument or order is negotiable. Payment instrument does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit. A written order for the transmission or payment of money that results in the issuance of a check, draft, money order, traveler's check, or other instrument or memorandum is not a payment instrument.<sup>7</sup>

Finally, TOMA defines "stored value card" as follows:

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<sup>3</sup> 205 ILCS 657/5

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

[A]ny magnetic stripe card or other electronic payment instrument given in exchange for money and other similar consideration, including but not limited to checks, debit payments, money orders, drafts, credit payments, and traveler's checks, where the card or other electronic payment instrument represents a dollar value that the consumer can either use or give to another individual.<sup>8</sup>

## **ANALYSIS**

The Division finds that \_\_\_\_'s proposed business activities require \_\_\_\_ to obtain a TOMA license because: (1) \_\_\_\_ would be engaging in the business of receiving money for transmission or transmitting money and (2) \_\_\_\_ would be issuing payment instruments.

### **1. Engaging in the Business of Receiving Money for Transmission or Transmitting Money**

TOMA's definition of "transmitting money" expressly encompasses bill payment services. As explained above, \_\_\_\_ members can use \_\_\_\_'s software platform to pay bills outside of the \_\_\_\_ network with U.S. dollars for a fee. Therefore, \_\_\_\_ engages in the business of receiving money for transmission or transmitting money.

\_\_\_\_ asserts that its bill payment service does not constitute "transmission money" because it "is entirely an \_\_\_\_ member-controlled process" and the ACH, wire, or eCheck is issued by the bank where the \_\_\_\_ secured funds are held only after the bank receives instructions from the \_\_\_\_ member. The Division disagrees. The U.S. dollars provided by \_\_\_\_ members are deposited into a bank account in \_\_\_\_'s name. \_\_\_\_ has not represented or provided any documentation reflecting that an \_\_\_\_ member can access these funds in any way except through \_\_\_\_'s software platform. Most, if not all, money transmitters are dependent on the financial institutions in which they maintain their accounts to complete the settlement process. When accounts are held in a person or entity's own name, such person or entity is engaging in money transmission, irrespective of the involvement of the person's or entity's financial institution in handling the settlement funds.

### **2. Selling or Issuing Payment Instruments**

TOMA defines payment instrument broadly. A payment instrument includes a "stored value card, other instrument or memorandum, written order or written receipt for the transmission or payment of money sold or issued to one or more persons."<sup>9</sup>

\_\_\_\_ asserts that an \_\_\_\_ Credit does not meet the definition of a payment instrument because an \_\_\_\_ Credit is not "money" as defined by TOMA. However, U.S. Dollars are 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. As explained above, \_\_\_\_ issues one \_\_\_\_ Credit for every U.S. dollar it receives from a member. An \_\_\_\_ Credit can be used to buy goods and services within \_\_\_\_ network and may be used to pay bills in U.S. dollars outside of the \_\_\_\_ Network in U.S. dollars at any time. Therefore, an \_\_\_\_ Credit is the functional equivalent of a U.S. dollar. The definition of "store value card" expressly encompasses "where the card or other electronic payment instrument *represents a dollar value* that the consumer can either use or give to

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<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

another individual.<sup>10</sup> The Division does not believe that \_\_\_\_ relabeling U.S. dollars as \_\_\_\_ Credits makes TOMA inapplicable to \_\_\_\_'s business activities. The Division finds that an \_\_\_\_ Credit constitutes money as defined by TOMA.

The Division recognizes that a “[p]ayment instrument does not include an instrument that is redeemable by the issuer in merchandise or service.”<sup>11</sup> However, \_\_\_\_ Credits are not only redeemable for merchandise or services because \_\_\_\_ Credits can be used to pay bills outside of the \_\_\_\_ network. Furthermore, the issuer of an \_\_\_\_ Credit is \_\_\_\_ itself and not \_\_\_\_'s business members. Therefore, \_\_\_\_ Credits are not redeemable *by the issuer* for merchandise or services as required for the exception to apply. For these reasons, an \_\_\_\_ Credit is a payment instrument pursuant to TOMA.

## **CONCLUSION**

If all of the facts provided in \_\_\_\_'s March 16, 2020 letter are true and correct, \_\_\_\_ would be required to have a TOMA license. Therefore, \_\_\_\_ should not conduct the described activities in Illinois unless and until it has obtained a TOMA license from the Division. The Division would recommend that enforcement action be initiated against \_\_\_\_ 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.

Respectfully,

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David Berland  
Deputy General Counsel

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<sup>10</sup> *Id.*(emphasis added).

<sup>11</sup> *Id.*