



# IDFPR

Illinois Department of  
Financial and Professional Regulation  
Division of Financial Institutions

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Governor

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Director

September 24, 2021

The Crypto Lawyers  
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Re: Cyber Hornet, LLC

**VIA ELECTRONIC MAIL**

## **Non-Binding Statement 2021-4**

Dear Mr. Yakobi:

Thank you for your letter emailed on July 20, 2021. You requested a non-binding opinion pursuant to Title 38, Section 200.310 of the Illinois Administrative Code addressing whether your client, Cyber Hornet, LLC (“Cyber Hornet”), is required to obtain a license under the Illinois Transmitters of Money Act (“TOMA”). You did not request 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. 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**

Cyber Hornet<sup>1</sup> proposes to buy and sell virtual currency<sup>2</sup> through its virtual currency ATMs.

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<sup>1</sup> Cyber Hornet represents it is registered as a Money Services Business with FinCEN and has developed and implemented an anti-money laundering compliance program, which includes monitoring and compliance of Cyber Hornet’s operations, the appointment of a chief compliance officer, and other actions necessary to comply with the requirements of the Bank Secrecy Act.

- Cyber Hornet as Seller
  - Cyber Hornet represents that when an Illinois customer buys virtual currency from a Cyber Hornet virtual currency ATM, the customer will insert the required amount of physical dollars into the ATM, and upon receipt, Cyber Hornet immediately sends the virtual currency to the Illinois customer's virtual currency address,<sup>3</sup> minus fees.
- Cyber Hornet as Buyer
  - When an Illinois customer sells virtual currency to Cyber Hornet, the customer transfers their virtual currency to Cyber Hornet, and upon receipt Cyber Hornet immediately dispenses the appropriate amount in physical dollars, minus fees (based on the market price of virtual currency at the time of the transaction) to the Illinois customer from its virtual currency ATM.

Cyber Hornet represents that it will be the counterparty to each and every transaction. Cyber Hornet further represents it only sells virtual currency from its own supply, never posts orders on third party exchanges, and never receives funds, whether fiat or virtual, for transmission.

## **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>4</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>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>

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<sup>2</sup> Specifically, Bitcoin, but may expand to additional virtual currencies not likely to be considered securities by state or federal regulators.

<sup>3</sup> Cyber Hornet's counsel represents that the customer's “virtual currency address” is the address generated by the customer's virtual currency wallet in which the customer has generated and solely controls the private keys.

<sup>4</sup> 205 ILCS 657/5.

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

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

## ANALYSIS

Based on Cyber Hornet's counsel's representation, Cyber Hornet is not a money transmitter as defined by TOMA. As outlined in the Department's prior guidance, if a virtual currency ATM "never involves a third party, and only facilitates a sale or purchase of [virtual] currency by the machine's operator directly with the customer, there is no money transmission because at no time is money received and neither party is engaging in the "business of receiving money for transmission or transmitting money."<sup>7</sup>

As outlined above, Cyber Hornet expressly represents it will be the counterparty to every transaction (*i.e.* every transaction is a two-party transaction between Cyber Hornet and an Illinois customer). Therefore, it is not engaging in the business of receiving money for transmission or transmitting money.

## CONCLUSION

If all of the facts provided in Cyber Hornet counsel's correspondence dated July 20, 2021, are true and correct, the Division would not recommend that enforcement action be initiated against Cyber Hornet 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.

Sincerely,

Francisco Menchaca  
Director, Division of Financial Institutions

By,

s/ John Crees  
John Crees  
Associate General Counsel

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<sup>7</sup> See Digital Currency Regulatory Guidance - Illinois Department of Financial & Professional Regulation, page 6 available at <https://www.idfpr.illinois.gov/Forms/DFI/CCD/IDFPR%20-20Digital%20Currency%20Regulatory%20Guidance.pdf>