



Illinois Department of Financial and Professional Regulation
Division of Financial Institutions

JB PRITZKER
Governor

DEBORAH HAGAN
Secretary

FRANCISCO MENCHACA
Director
Division of Financial Institutions

September 30, 2020

Re: ___ Request for Non-Binding Statement

VIA ELECTRONIC MAIL

Non-Binding Statement 2020-9

Dear _____:

Thank you for your revised request for a non-binding statement and supplemental information emailed on June 24, 2020. You requested a 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

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

Service 1: Hosted Wallet Service

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 Assets¹. The Hosted Wallet 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

¹ Digital Assets include Bitcoin, Ethereum, Litecoin, and Bitcoin Cash.

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 also 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 will allow Users to open a demand deposit account (“DDA”) with a DDA Bank (_____, member FDIC). The account application is offered by the DDA Bank’s agent, _____. Users can access their DDA through the mobile app or website. Pursuant to the agreement between the User and the DDA Bank, a User can: (1) receive Fiat from a User’s external bank account; (2) send Fiat to a User’s external bank account; or (3) send or receive Fiat from the DDA bank account of another User as part of a P2P Exchange transaction.

_____ represents that its role is limited to serving as a conduit of data from Users to and from DDA Bank, via the agent of the bank, and does not take possession of any Fiat as part of the DDA Platform. Under the terms of the User Agreement, User specifically authorizes _____ to send and receive data between the User and the User’s DDA Bank. For example, when a User wishes to move funds from an external bank account to the User’s DDA bank account, the User delivers instructions to _____, who then forwards the same instructions to the DDA Bank, via the bank’s agent, to carry out.

Service 3: P2P Exchange

A peer-to-peer Digital Assets exchange (“P2P Exchange”), hosted by _____, will allow Users to buy or sell Digital Assets directly with each other. Users can submit orders to buy and sell specific quantities of Digital Assets which are then matched 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, _____ represents it serves only as a conduit of User instructions to the DDA Bank, via the bank’s agent. The 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:

[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.²

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.”³ TOMA

² 205 ILCS 657/5

³ *Id.*

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.”⁴

ANALYSIS

Service 1: Hosted Wallet

Whether or not an Illinois money transmitter license is required for an entity to engage in the transmission of digital currency turns on the question of whether the Digital Assets are considered "money" as defined in TOMA. Although the Digital Assets are a representation of value that is used as a medium of exchange, store of value, or unit of account, for the purposes of TOMA they are not considered money since digital currencies have not been “authorized or adopted by a domestic or foreign government as a part of its currency.”⁵ Therefore, consistent with TOMA and the Department’s Digital Currency Guidance, _____ is not engaged in the business of receiving money for transmission or transmitting money and would not be required to obtain a license pursuant to TOMA.

Service 2: DDA Platform

The DDA Platform will allow users to access their bank accounts with the DDA Bank through a mobile app or website. _____ states that it would not take possession of any Fiat as part of the platform and only serve as a conduit of data from Users to and from DDA Bank, via the agent of the bank.

On August 13, 2020, the Division requested additional information regarding the relationship between the DDA Bank and its agent to evaluate _____’s request for a non-binding statement. Specifically, the Division requested the contractual agreement between the DDA Bank and the third-party provider. On August 19, 2020, _____ indicated via email that the third-party provider would reach out directly to the Division to discuss its relationship with the DDA Bank. As of the date of this letter the Division has not heard from the third-party provider. The requested document is material to the Department’s non-binding statement. Therefore, pursuant to Title 38, Section 200.310(b)(2) of the Illinois Administrative Code, the Department is declining to issue findings with respect to the DDA Platform.

Service 3: P2P Exchange

The P2P Exchange allows Users to make transactions with Digital Assets and also Fiat. Pursuant to the Department’s Digital Currency Guidance, transmission of digital currencies which involve Fiat in a transaction may be considered money transmission depending on how the transaction is organized.⁶ _____ represents that to the extent Fiat is used, _____ is acting only as a conduit of User instructions to the DDA Bank, via the bank’s agent. As stated above, on August 13, 2020, the Division requested additional information regarding the relationship between DDA Bank and its agent to evaluate _____’s request for a non-binding statement. On August 19, 2020 _____’s counsel indicated via email that the third-party provider would reach out directly to the Division to discuss its relationship with the DDA Bank. As of the date of this letter the Division has not heard from the third-party provider. The requested document is material to the Department’s non-binding statement. Therefore, pursuant to Title 38,

⁴ *Id.*

⁵ See Digital Currency Regulatory Guidance at P. 5 available at <https://www.idfpr.illinois.gov/Forms/DFI/CCD/IDFPR%20-%20Digital%20Currency%20Regulatory%20Guidance.pdf>

⁶ *Id.*

Section 200.310(b)(2) of the Illinois Administrative Code, the Department is declining to issue findings with respect to the P2P Exchange.

CONCLUSION

Based on _____'s representations, available information and the analysis above, _____ would not require a TOMA license with respect to the services for the Hosted Wallet because the Digital Assets are not considered money for purposes of TOMA. Therefore, consistent with TOMA and the Department's Digital Currency Guidance, _____ is not engaged in the business of receiving money for transmission or transmitting money.

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.

Sincerely,

Francisco Menchaca
Director, Division of Financial Institutions

By,

s/Helen Kim
Helen Kim
Associate General Counsel