



Illinois Department of Financial and Professional Regulation
Division of Financial Institutions

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Division of Financial Institutions

October 26, 2020

Michelle Sullivan
Chief Risk & Compliance Officer
Dama Technology, Inc. dba Dama Financial

Re: Dama Technology, Inc.

VIA ELECTRONIC MAIL

Non-Binding Statement Request 2020-10

Dear Ms. Sullivan:

Thank you for your letter and supplemental responses. You requested a non-binding opinion pursuant Title 38, Section 200.310 of the Illinois Administrative Code addressing whether Dama Technology, Inc., dba Dama Financial (“Dama”), is required to obtain a license under the Illinois Transmitters of Money Act (“TOMA”). You have not requested confidential treatment.

Please be advised that consistent with governing law, the Illinois Department of Professional and Financial Regulation, Division of Financial Institutions (“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, 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

Dama proposes to provide financial services for licensed cannabis-related businesses (“CRBs”) by partnering with an FDIC insured, state chartered or national bank (the sponsor “Bank”) which will allow licensed CRBs to deposit funds at the Bank. Pursuant to a Program Management Agreement (“Agreement”), Dama will be appointed as a program manager for the Bank, and provide services which include, marketing and promotion, account applications processing, accounting, coordination of currency transportation services, regulatory compliance functions and customer service. Banking services are provided by the Bank and Dama represents that it acts only in the capacity of an agent of the Bank. In support the Agreement expressly provides:

Bank further appoints Program Managers as its agent of authorized delegate, as the case may be, for the purpose of compliance with state money transmitter statutes and the Bank Secrecy Act. In particular, to the extent that Program Manager may receive or handle Account Holder funds as part of the Program, it does so as Bank's agent, and the delivery of funds by an Account Holder to Program Manager shall constitute receipt of those funds by Bank.

The following disclosures to prospective account holders also define the nature of the relationship between the Bank and Dama as follows:

Thank you for applying for a deposit account...offered by our financial institution partner (the "Bank"), which will be serviced by Dama Financial, as agent of the Bank.¹

...

These are the Terms and Conditions applicable to your use of the Services offered by Dama Financial, and your Bank Account. Your Bank Account is serviced by Dama Financial, as agent for the Bank.²

In order to deposit funds at the Bank, the CRB must submit an application for an account through the Dama website. The application is processed and determined for eligibility by Dama, however, it is the Bank who has ultimate authority regarding approval of any application. Once an account is established, the CRB can deposit funds and the Bank will hold funds in trust for the benefit of the account holders. The account will be titled "Bank FBO Participants in the Program Managed by Dama." The Bank offers two types of accounts, Premier and CashToTax, both of which are limited to business-related transactions and not for personal, family or household purposes. Premier customer account holders can (1) make direct payments to vendors that are screened and approved by Dama on behalf of the Bank; and (2) receive electronic deposits into their accounts from Dama approved partners, other account holders managed by Dama, by check and through cash pick-ups from their locations. CashToTax account holders are limited to paying taxes or license fees and can only receive electronic deposits from governmental agencies (*i.e.* tax refund).

To enable and ensure CRBs are able to securely deposit cash, Dama will arrange and coordinate for cash pickups between the CRB and an armored car courier retained by the Bank. Dama represents that it does not take actual or constructive receipt of the deposited funds at any time and that the cash remains the property of the depositing CRB until it is verified pursuant to a separate cash vault agreement, at which point it becomes property of the Bank. In addition to providing access to account information, online and mobile access will allow electronic transfers to be made to or from a CRB's account, the requisite transaction information of which is received by Dama and then communicated to the Bank for transfer and processing. CRBs may also mail checks to a P.O. Box maintained by Dama, which are then scanned and sent to the Bank for deposit.

¹ See "Terms and Conditions Applicable to the Account Application."

² See "Terms and Conditions Applicable to your Bank Account."

Finally, CRBs will have the ability to accept consumer payments from a prepaid electronic wallet (“Paytender”) issued by the Bank. Dama is responsible for capturing all Customer Identification Program (“CIP”) information to verify the identity of the consumer and will also perform the services necessary to support the Paytender program. Dama represents that funds to be loaded are transferred directly from the external accounts to a master pooled account maintained at the Bank for this purpose. The funds transferred as part of a Paytender purchase transaction are moved from the consumer’s Paytender account or from the consumer’s external account to the participating CRB account via intra-bank and inter-bank transfers.

Dama represents the Bank has all the information that Dama gathers to perform necessary due diligence necessary to maintain proper books and records on all customers. Dama also represents that Bank will ensure all funds are covered by FDIC insurance.

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.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

Banks, trust companies, building and loan associations, savings and loans associations, savings banks, or credit unions, licensed or organized under the laws of any state or of the United States and any foreign bank maintaining a branch or agency licensed or organized under the laws of any state of the United States are exempt from TOMA licensing requirements.⁶

³ 205 ILCS 657/5

⁴ *Id.*

⁵ *Id.*

⁶ 205 ILCS 657/15.

CONCLUSION

If all of the facts provided by Dama to the Division are true and correct, the Division would not recommend that enforcement action be initiated against Dama Technology 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/ Helen Kim
Helen Kim
Associate General Counsel