



IDFPR

Illinois Department of Financial and Professional Regulation

Division of Financial Institutions

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Governor

MARIO TRETO, JR.
Secretary

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Director

October 7, 2022

VIA ELECTRONIC MAIL

Non-Binding Statement 2022-8

Dear _____:

Thank you for your letter emailed on April 21, 2022, and your supplemental responses. 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 Illinois Transmitters of Money Act, 205 ILCS 657 *et seq.* (“TOMA”). You have 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. 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

_____ is a registered MSB¹ that intends to offer consumers holding cryptocurrencies the ability to sell their crypto assets² with _____ by presenting an electronic voucher/QR Code to be redeemed for cash at FinCEN (MSB) registered and licensed check cashing partners (“Merchant”). _____ represents that the transaction is a direct one-way sale and does not involve a third-party.

_____ represents that it will partner with Company A³, a check cashing merchant package and technology provider in order to utilize its proprietary software system which will allow for

¹ The MSB registration effective date is _____.

² _____ represents that it supports the sale of the following cryptocurrencies: Bitcoin, Ethereum, Litecoin, Solana, Cardano, Polkadot, Terra and Dogecoin; they do not support ICOs, or derivatives and do not allow the sale of stablecoins.

³ Company A is the parent organization of Company B (*i.e.* the POS system company for the check cashing partners) and also owner of the X application.

financial obligations to be paid by _____ to end-user customers at Merchant locations. _____ represents that Merchants will integrate the software system into their existing business operations pursuant to a merchant agreement.

_____ represents that consumers can sell their crypto assets directly through the _____ website or via the X website/mobile application. Each customer⁴ must go through an enrollment process by creating a profile through _____'s website and be successfully onboarded using _____'s Know Your Customer ("KYC") screening process. The customer sells crypto assets in the following manner:

- Customer initiates sale of cryptocurrency online or via mobile app. Customer is presented with a receiving wallet in which to send crypto assets to _____.
- After cryptocurrency is identified and accepted on the blockchain, _____ initiates an electronic trade order with its designated liquidity provider to sell the designated amount of cryptocurrency.
- _____ provides X with the sales total and requests creation of an electronic voucher/QR Code ("QR Code"). X generates the QR Code.
- _____ issues the QR Code to the consumer via text.
- The consumer presents the QR Code to a participating merchant for redemption into fiat. The consumer is made whole at time of redemption.
- Settlement occurs between _____ and the liquidity provider and the fiat is settled into _____'s bank account.

Pursuant to the definitions identified in Company A's individual agreements with _____ and participating Merchants, an "Electronic Voucher or e-Voucher means a: (a) secure, electronic financial payment instrument that is made/issued at the direction of and based upon information provided by _____; that (b) complies with the requirements therefor agreed upon by the _____ and Company A; and that (c) is presented to a Merchant by an End-User for negotiation and payment at a Merchant point-of-sale location."

_____ 's proposed agreement with Merchants expressly "appoints [Merchant] as its non-exclusive agent to offer Money Transmission Services on behalf of _____" and provides, inter alia, the following pertinent definitions:

Money Transmission Services shall mean the acceptance of currency, funds, or other value that substitutes for currency from one person and the transmission of currency, funds, or other value that substitutes for currency to another location or person by any means.

Redemption shall mean the process of a Consumer presenting Agent with a QR Code/E-Voucher to be exchanged for Fiat Currency.

⁴ _____ represents that OFAC, SDN (Specially Designated and Blocked Persons List) and PEP (Politically Exposed Person) screening is performed on all customers through its KYC/Transaction Monitoring platform.

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.⁵

Payment instrument means 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.

Stored value card means any 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.*

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.”⁶ 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.”⁷

ANALYSIS

The Division finds that _____’s proposed business activities require _____ to obtain a TOMA license because _____ would be issuing payment instruments. TOMA applies to the

⁵ 205 ILCS 657/5

⁶ *Id.*

⁷ *Id.*

transmission of money by any means, including transmission by *payment instruments*. TOMA defines payment instrument broadly and 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.”⁸

_____ asserts that an electronic voucher/QR Code does not meet the definition of a payment instrument because it is 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. However, electronic vouchers/QR Codes are not “written orders” nor do they “result in the issuance of a check, draft, money order, traveler’s check, or other instrument or memorandum” and therefore are not excluded from the definition of payment instrument. Furthermore, although the Division recognizes that a “[p]ayment instrument does not include an instrument that is redeemable by the issuer in merchandise or service,”⁹ this exception also does not apply because the electronic vouchers/QR Codes are being redeemed for fiat, and not in merchandise or service. Furthermore the electronic vouchers/QR Codes are redeemable by the Merchants, not _____, the issuer.

_____ also represents that a QR Code is synonymous with electronic voucher. Both terms are defined in agreements with Company A as a “secure, electronic financial payment instrument that is made/issued at the direction of and based upon information provided by _____.” TOMA’s 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 another individual.”¹⁰ The purpose of the electronic vouchers/QR Codes is to allow the customer to present it to a participating Merchant for negotiation and payment of fiat at the Merchant location. The Division finds that electronic vouchers/QR Codes are stored value cards within the meaning of payment instruments and therefore constitute money as defined by TOMA.¹¹

CONCLUSION

If all the facts provided in _____’s request and supplemental responses are true and correct, _____ would be required to obtain 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 _____ 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,

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*(emphasis added).

¹¹ Furthermore, to the extent that _____ may be acting as an intermediary when selling the customer’s cryptocurrency to the liquidity provider in exchange for the payment instrument, such activities would also constitute money transmission and require licensure. See page 4 of _____ Business Plan - Flow of Fund Diagram.

Francisco Menchaca
Director, Division of Financial Institutions

By,

s/ Helen Kim
Helen Kim
Associate General Counsel