



IDAHO
DEPARTMENT OF FINANCE

C. L. "BUTCH" OTTER
Governor

GAVIN M. GEE
Director

March 5, 2015

Re: Virtual Currency Inquiry

Dear :

You have requested guidance relative to the Idaho Money Transmitters Act for a proposed business model associated with . The Department has reviewed information submitted by you on behalf of on November 12, 2014 and February 26, 2015. In connection with your request we provide the following.

Payment Processor – Based solely upon the representations and information submitted with your request, it does appear that the "payment processor" is conducting a money transmission business as contemplated under the Idaho Money Transmitters Act. Before conducting business in Idaho, you are encouraged to verify that the payment processor is properly licensed. To the extent that a payment processor's activities or representations are escrow related, the payment processor AND should consider whether the described business model constitutes a licensable activity pursuant to the Idaho Escrow Act.

Issues Associated with While has represented that it does not receive, hold, or otherwise distribute fiat currencies - we note that the platform provides most, if not all of the control and transfer instructions for funds held and transmitted by the payment processor. Moreover, provides proprietary e-wallets for crypto-currencies and has control over such e-wallets by controlling customer public and private keys.

While the above controls/activities may later be determined to constitute money transmission or escrow activities under Idaho law, the Department has not reached any definitive conclusions and does not anticipate regulatory action before issuing guidance or legal opinions in that area.

Based solely upon your representations, the Department does not view business processes as money transmission. Should any of the facts be different from those described in your communications, a different conclusion could be reached.

Should you wish to discuss this matter, please feel free to contact me at (208) 332-8080.

Sincerely,

James A. Burns

SECURITIES BUREAU
800 Park Blvd., Suite 200, Boise, ID 83712
Mail To: P.O. Box 83720, Boise ID 83720-0031
Phone: (208) 332-8004 Fax: (208) 332-8099
<http://finance.idaho.gov>

PROTECTING THE INTEGRITY OF IDAHO FINANCIAL MARKETS

PROPRIETARY BUSINESS INFORMATION-CONFIDENTIAL TREATMENT REQUESTED

February 26, 2015

Via Email (jim.burns@finance.idaho.gov)
and Federal Express

James A. Burns
Acting Securities Bureau Chief
Department of Finance
800 Park Blvd., Suite 200
Boise, ID 83720-0031

RECEIVED
FEB 27 2015
DEPARTMENT OF FINANCE
STATE OF IDAHO

RE: Digital Currencies

Response to Inquiry

Dear Mr. Burns:

We provide the following responses on behalf of our client, _____ or the "Company"), in response to your February 4, 2015 letter, requesting certain information as identified below.

We respectfully request that this letter, along with any attachments and supplementary material (the "Confidential Material"), be treated confidentially by the Department and not be made available for inspection or copying. The Confidential Material includes sensitive nonpublic commercial, financial and other information that is proprietary, privileged or confidential which, if disclosed, would cause _____ significant financial harm, undermine its financial viability, and hamper its ability to continue providing services.

Payment Processor Request: Based solely upon the information presented in your letter, we are of the formative view that the payment processor is most likely a money transmitter for purposes of the Idaho Money Transmitters Act. However, we would be interested to know if there is any direct or indirect common ownership or control between _____ and the payment processor?

There is no direct or indirect common ownership or control between _____ and the payment processor.

Requests

1. Please confirm that _____ allows for the entry of orders for the purchase and sale of crypto currencies and that at least a portion of the _____ business model

is an order matching system between discreet buyers and sellers that are not

Yes, _____ allows for the entry of orders for the purchase and sale of bitcoin only. At least a portion of _____ business model is an order matching system between discreet buyers and sellers that are not _____.

2. Please verify that _____ will own and control crypto currencies for its own account or control affiliates or principals associated with _____. Will _____ ever purchase or sell crypto currencies for or from its own corporately owned inventory?

_____ will not own and control bitcoin for its own account on the Platform, but it does make the _____ Platform available for its principals to use for their own account. _____ does not offer its own corporately owned inventory for use on the Platform.

3. Does _____ allow for the entry of “market” orders for the purchase of crypto currencies? Please describe how such transactions are handled. Will _____ ever use any of its own inventory to fill such purchase or sale orders?

Yes, _____ does allow for the entry of “market” orders for the purchase of bitcoin. Please find attached as Attachment A a funds flow chart that describes the process of buying and selling bitcoin on the _____ Platform. _____ will not use its own inventory to fill purchase or sale orders.

4. Please confirm that the _____ platform is only for trading crypto currencies, and not as a general alternative payment methodology (e.g., PayPal). Your letter states that “The Platform is designed for high volume trades typically requested by business customers.” You also wrote that “_____ ... processes transactions for such seller and the associated buyer for the purchase of goods or services.”

The _____ Platform is only for buying and selling bitcoin. As such, the Platform is not used for making consumer payments similar to PayPal.

5. We would like more detail or confirmation of the processing methodology. It appears that _____ accepts electronic instructions to purchase or sell and then transmits payment processing instructions to the processor at the time of an order execution. Is there a lag time between when a seller executes a transaction and when they receive their payment from the processor? What is the maximum lag time between when a user inputs a sell instruction in the _____ platform and when the bitcoin is actually sold? Also, what is the maximum lag time between when the user’s bitcoin “sells” and the user receives the fiat currency from the sale?

After a seller successfully sells their bitcoins, the seller will receive their payment in fiat currency (U.S. dollars) immediately on the Platform. The seller will receive payment

into its own bank account from the payment processor anywhere from that same day to two days after requesting such payment.

The maximum lag time between when a seller inputs a sell instruction in the Platform and when the bitcoin is actually sold depends on how long it takes the Platform to match a buyer with a seller. Generally, the Platform matches a buyer with a seller more quickly for market price orders than for limit orders. Once the Platform makes a match between a buyer and a seller, the associated bitcoin will be received in the buyer's wallet in less than one second.

6. Since provides a wallet service to facilitate the purchase and sale of crypto currencies, please provide more information regarding the various uses of the wallet mechanism. Can it be used by consumers to purchase goods and services from their mobile device or via the web?

The wallet is used to hold bitcoin and to facilitate the purchase and sale of bitcoin primarily for business Users. does not offer the ability to process online payments or mobile purchases for goods and services.

7. Describe more fully the process when a User sends buy or sell instructions to the Payment Processor (PP). It appears that the User instructs the PP to buy or sell; PP then conveys that instruction to ; then executes the order; once executed informs PP that the transaction is complete (and at this point, has either more or less of the User's bitcoin); PP then either collects or sends funds to or from the purchaser and informs of this transaction. Are any of those steps incorrectly described? Are any steps missing?

Please find attached as Attachment A a funds flow chart for the Platform, which may better assist with these questions.

Should you have any further questions, please don't hesitate to contact me.

Very truly yours,

Enclosure

cc:



IDAHO
DEPARTMENT OF FINANCE

C. L. "BUTCH" OTTER
Governor

GAVIN M. GEE
Director

February 4, 2015

Re: Virtual Currency Inquiry

Dear :

You have requested guidance relative to the Idaho Money Transmitters Act for a proposed business model associated with . In connection with your request we provide the following.

Payment Processor Issues – Based solely upon the information presented in your letter, we are of the formative view that the payment processor is most likely a money transmitter for purposes of the Idaho Money Transmitters Act. However, we would be interested to know if there is any direct or indirect common ownership or control between and the payment processor.

Issues Associated with – In connection with our review, we seek further clarification regarding certain aspects of the business model.

1. Please confirm that allows for the entry of orders for the purchase and sale of crypto currencies and that at least a portion of the business model is an order matching system between discreet buyers and sellers that are not .
2. Please verify that will own and control crypto currencies for its own account or control affiliates or principals associated with . Will ever purchase or sell crypto currencies for or from its own corporately owned inventory.
3. Does allow for the entry of "market" orders for the purchase of crypto currencies? Please describe how such transactions are handled. Will ever use any of its own inventory to fill such purchase or sale orders?
4. Please confirm that the platform is only for trading crypto currencies, and not as a general alternative payment methodology (e.g. PayPal). Your letter states that "The Platform is designed for high volume trades typically requested by business customers." You also wrote that ... processes transaction for such seller and the associated buyer for the purchase of goods or services."
5. We would like more detail or confirmation of the processing methodology. It appears that accepts electronic instructions to purchase or sell and then transmits payment processing instructions to the processor at the time of an order execution. Is there a lag time between when a seller executes a transaction and when they receive their payment from the processor? What is the

SECURITIES BUREAU

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maximum lag time between when a user inputs a sell instruction in the _____ platform and when the bitcoin is actually sold? Also, what is the maximum lag time between when the user's bitcoin "sells" and the user receives the fiat currency from the sale?

6. Since _____ provides a wallet service to facilitate the purchase and sale of crypto currencies, please provide more information regarding the various uses of the _____ wallet mechanism. Can it be used by consumers to purchase goods and services from their mobile device or via the web?

7. Describe more fully the process when a User sends buy or sell instructions to the Payment Processor (PP). It appears that the User instructs the PP to buy or sell; PP then conveys that instruction to _____; _____ then executes the order; once executed _____ informs PP that the transaction is complete (and at this point, _____ has either more or less of the User's bitcoin); PP then either collects or sends funds or to from the purchaser and informs _____ of this transaction. Are any of those steps incorrectly described? Are any steps missing?

We look forward to your response to our questions. Should you wish to discuss this matter more directly, please feel free to contact the undersigned directly at (208) 332-8080.

Sincerely,



James A. Burns

PROPRIETARY BUSINESS INFORMATION-CONFIDENTIAL TREATMENT REQUESTED

November 12, 2014

Via Federal Express

Mr. Gavin M. Gee
Director of Finance
Department of Finance
800 Park Blvd Suite 200
Boise, ID 83712

RECEIVED
NOV 13 2014
DEPARTMENT OF FINANCE
STATE OF IDAHO

**RE: Request For Confirmation of Applicability
of State Money Transmitter Licensing Requirements to Certain Activities
Involving Virtual Currency**

Dear Director Gee:

On behalf of our client _____ ”
or the “Company”), we request confirmation as to whether the state’s licensing
requirements regarding money transmission or similar activities are applicable to
services as described herein.

_____ currently offers a digital marketplace and technology platform (the
“Platform”) that allows users (“Users”), who are primarily business customers, to
exchange bitcoins for U.S. Dollars pursuant to strict policies and controls to identify
fraud and comply with anti-money laundering (“AML”) obligations. Given the varied
interpretations and considerations inherent in evaluating each virtual currency business,
we request confirmation as to whether _____ would be required to obtain a license
for the Platform, as the Platform as described below does not fit comfortably within state
money transmitter license laws.

Because this letter and its attachments contain business proprietary information, the
release of which could be harmful to the competitive position of _____, we request
confidential treatment of this letter and its attachments.

I. OVERVIEW

A. Corporate Overview

is a Delaware corporation incorporated in May 2013 and headquartered in Palo Alto, California. The Company was founded by developers and , and has received seed funding from numerous venture capital funds including

. The Company has spent the last year and a half improving its policies and procedures to develop its Platform to allow U.S. bitcoin businesses to sell bitcoins and receive payment in one business day.

B. Policies and Procedures

In an effort to avoid the execution of illicit transactions using its services, and in light of expanding guidance by the Financial Crimes Enforcement Network (“FinCEN”) as to the applicability of its regulations implementing the Bank Secrecy Act (“BSA”) to persons creating, obtaining, distributing, exchanging, accepting, or transmitting digital currencies,¹ has registered as a money services business (“MSB”) with FinCEN and implemented BSA/AML policies and procedures and Office of Foreign Assets Control (“OFAC”) policies and procedures. These policies and procedures include policies for customer identification, transaction monitoring, suspicious activity reporting, and customer risk scoring. As part of these policies and procedures, all Users are required to provide identifying information and are verified by third-party verification service providers.

II. SERVICES

currently offers the Digital Marketplace and Trading Platform.

A. Digital Marketplace and Trading Platform

The Platform allows Users in the United States to convene and openly bid for and offer bitcoins in real-time. Purchases and sales of bitcoin may only be made in U.S. Dollars and not in any other currency (digital/virtual or fiat), and may only be made among registered Users. The Platform is designed for high volume trades typically requested by business customers.

To begin using the Platform, Users must first establish an account through account creation process, which includes customer identification elements pursuant to BSA/AML policies and procedures, as well as authentication procedures as described below. Once authenticated, Users may input buy or sell instructions and the

¹ FIN-2013-G0001, “Application of FinCEN’s Regulations to Persons Administering, Exchanging, or Using Virtual Currencies,” March 18, 2013, available at: http://fincen.gov/statutes_regs/guidance/html/FIN-2013-G001.html.

Platform lists these bids and offers in both a simple and detailed order book, visible to all Users.

When a match between a bid and an offer is identified, the Platform will notify the appropriate buyer and seller that their order has been executed. A transaction fee is deducted from both the buyer's payment and the seller's proceeds and paid to . Users can also set advance options to buy and sell at a later time upon reaching certain criteria (price, time, etc.). All pending, completed and cancelled transactions of a User can be viewed by the User in real time. is thus acting as a marketplace for buyers and sellers to post their bids and offers publicly.

Before engaging in transactions on the Platform, however, Users must first fund their account(s). To do so, Users can either add bitcoins into a "wallet,"² or add U.S. Dollars from the User's bank account via ACH.³ The Company works with a third party payment processor ("Payment Processor") to complete transactions in U.S. Dollars.

For "adds" in U.S. Dollars, the Payment Processor receives instructions directly from the User through an interface on the website. Pursuant to the User's instructions, the Payment Processor will process the transaction by debiting the appropriate amount from the User's designated bank account and crediting the Payment Processor's bank account at a U.S. bank (the "Payment Processor Account"). The Payment Processor Account is owned and controlled by the Payment Processor and is maintained at a U.S. bank for the benefit of the User. When a User wants to sell bitcoin and receive a "payout" in U.S. Dollars, the User inputs those instructions on the website, which the Payment Processor receives directly and processes by making a debit from the Payment Processor Account and a corresponding credit to the User's bank account.

Instructions from Users are issued directly to the Payment Processor – does not receive User funds or instructions from the User. is notified by the Payment Processor after the payment instructions are delivered to the Payment Processor that the appropriate debits and credits have been made so that .can issue or receive the appropriate amount of bitcoin to or from the User.

When a User adds bitcoins to his or her account, the bitcoins are held in the User's wallet hosted on the servers. Users may link one outside bitcoin wallet, such as an account maintained by another bitcoin storage service like to the Platform to fund their account. Likewise, withdrawals of bitcoins are completed by transferring bitcoins from the wallet to the wallet linked by the User (and not maintained by).

² A I wallet is a cloud-based "account", hosted on exchange servers, that stores the public and private keys associated with bitcoins owned by each User, except as noted under Multi-signature Service, below.

³ The Platform only accepts U.S. customers (identified by IP address) and funding in U.S. Dollars from the User. Third parties are unable to fund other User's accounts.

B. Multi-signature Service

The Multi-signature Service is a technology offering by that allows users of the service (the “Multisig Users”) to access their bitcoins in a more secure manner.⁴ Multisig Users are given control over their account “keys” and therefore more control over the security of their bitcoins. The Multisig User’s account is given three keys, one of which the Multisig User retains, one of which retains, and the third is shared and encrypted with the Multisig User’s passphrase. The Multi-signature Service is designed to ensure that Multisig Users’ bitcoins are protected from hacking attacks because cannot access and move those bitcoins by itself – authentication of the transaction must be made by other parties.

The service does not involve the flow of any funds through or involving . Instead is simply offering a technology service to Multisig Users, who would be charged on a fee per use basis. The resulting fee would be deposited into a Buttercoin account; however, at no time will “touch” or otherwise hold Multisig User funds under this service offering.

III. ANALYSIS

A. Platform Is For Business Users

customer base constitutes business Users and is not intended to serve individual customers. The intent of many money transmitter laws is to protect individual consumers. Platform does not target individual consumers or advocate use of the Platform for personal, family, or household purposes.

B. Bitcoins Are Neither Money Nor Currency Regulated by Typical Money Transmitter Laws

Bitcoins are computer-generated algorithms that are typically used on digital platforms. While bitcoin has been used as a form of payment, it is not government-issued, government-sanctioned, nor deemed to be legal tender, unlike the coin or paper money issued by the United States or other sovereign governments. Bitcoins are a purely digital medium of exchange outside the typical definition of “money” or “currency.” Thus, traditional methods of regulating money transmission or currency exchange do not translate consistently or appropriately to the purely digital medium of bitcoin. Further, attempting to classify bitcoins as “stored value” or “payment instruments” or “prepaid access” presents obstacles to common understandings of those terms, as bitcoins are not created or issued by a central authority that holds funds paid in advance and makes them available at a later time.

In its guidance on the “Application of FinCEN’s Regulations to Persons Administering, Exchanging or Using Virtual Currencies”, FinCEN recognized this distinction:

⁴ Multisig Users may or may not also be Users. The two services are not dependent upon each other, and a Multisig User does not have to be enrolled in the Platform to use the Multi-signature Service.

FinCEN's regulations define currency (also referred to as "real" currency) as "the coin and paper money of the United States or of any other country that [i] is designated as legal tender and that [ii] circulates and [iii] is customarily used and accepted as a medium of exchange in the country of issuance." In contrast to real currency, "virtual" currency is a medium of exchange that operates like a currency in some environments, but does not have all the attributes of real currency. In particular, virtual currency does not have legal tender status in any jurisdiction.⁵

At a prior conference, FinCEN Director Jennifer Shasky Calvery stated that FinCEN needed to amend its definitions to include "other value that substitutes for currency" before it could regulate a medium such as bitcoin.

State regulators have also acknowledged the problems that the innovative nature of bitcoins causes when attempting to regulate the digital currency. At least one state has recognized that digital currency does not meet the statutory definition of "currency" or "money" for purposes of money transmission licensing.⁶ In its guidance on the issue, the Texas Department of Banking stated that, because digital currencies such as bitcoins are not the "coin and paper money issued by the government of a country, they cannot be considered currencies" under Texas's regulations. Indeed, Texas further clarified that "unlike fiat currencies, there is no governmental authority or central bank establishing its value through law or regulation. Its value is only what a buyer is willing to pay for it." In addition, Benjamin Lawsky, Superintendent of the New York Department of Financial Services, acknowledged during the Department's hearings on the subject that digital currency "is not easily categorized within the divisions we traditionally think about when it comes to the financial system (such as banks, insurers, or money transmitters). It's neither fish nor fowl."⁷ New York has since proposed legislation to address the difficulty of regulating virtual currency under its current statutes.⁸

⁵ FIN-2013-G0001, "Application of FinCEN's Regulations to Persons Administering, Exchanging, or Using Virtual Currencies," March 18, 2013, *available at*: http://finccn.gov/statutes_regs/guidance/html/FIN-2013-G001.html.

⁶ *See, e.g.*, Supervisory Memorandum – 1037, "Regulatory Treatment of Virtual Currencies Under the Texas Money Services Act," April 3, 2014, *available at*: <http://www.dob.texas.gov/public/uploads/files/Laws-Regulations/New-Actions/sm1037.pdf>.

⁷ Opening Remarks of Benjamin M. Lawsky, Superintendent of Financial Services, New York State Department of Financial Services, Hearings on the Regulation of Virtual Currency, January 28, 2014, *available at*: http://www.dfs.ny.gov/about/hearings/vc_01282014/lawsky_vc_hearing.pdf

⁸ Tit. 23, Ch. I, Part 200, Proposed New York Codes, Rules and Regulations, New York State Department of Financial Services, July 17, 2014, *available at*: <http://www.dfs.ny.gov/about/press2014/pr1407171-vc.pdf>.

C. *Services Do Not Clearly Fall Within the Scope of State Money Transmitter Laws*

When analyzing [redacted] services under current state regulatory regimes, we do not believe that the Platform's functions generally fall within the scope of state money transmission laws.

First, the Platform does not operate as a money transmission or currency exchange service because it does not involve the transfer of "money" or "currency" from one person to another person as those terms are typically defined by state law. Bitcoins are a purely digital medium of exchange outside the typical definitions of "money" or "currency" and thus present difficult questions under traditional money transmitter regulations.

To the extent that bitcoin is deemed to be money or currency or otherwise have value and is therefore deemed to be covered under your state's money transmitter law, it is accepted and transmitted by the Platform for the buyer or seller, both Users of the Platform, in connection with the execution and settlement of a specific transaction—the buying and selling of bitcoins. Such acceptance and transmission is done on behalf of both parties, is integral to the transaction, and done solely for the purpose of affecting a bona fide purchase and sale of bitcoins for such buyer and seller. As such, the Platform's sole function is to provide a transaction service for the buyers and sellers of bitcoin.

[redacted] acts pursuant to a contract with the seller and processes transactions for such seller and the associated buyer for the purchase of goods or services.

Furthermore, the Platform is neither selling nor issuing stored value or payment instruments. Bitcoins are a decentralized digital currency wholly independent from the Platform that are generated through a complex process by "miners." Thus, in our view, the Platform cannot be said to be "issuing" bitcoins but rather is a marketplace for the purchase of bitcoins. Moreover, the Platform is not "selling" bitcoins, but instead operates as a technology platform that convenes buyers and sellers and facilitates purchases and sales of bitcoin between them.

In addition, we believe the Multi-signature [redacted] Service does not involve money transmission or currency conversion. It is purely a technology offering that allows Multisig Users to authenticate instructions relating to a bitcoin transaction under a more secure system. In fact, the Multi-signature [redacted] Service is not limited to bitcoins or other digital currency transactions; its implications would allow Multisig Users to require multi-user authentication for numerous transactions, for example, those involving contracts for goods and services that may require certain conditions precedent.

D. *Platform Falls Outside the Intended Public Policy Purposes of State Money Transmitter Laws*

Finally, [redacted] should not require a license to offer the Platform to Users on public policy grounds. Along with the need to protect the public and the integrity of financial

institutions from a failure to fulfill obligations, the intended purpose of money transmission laws is to guard against any financial institution being used to further illegal activity.

As stated above, [redacted] has BSA/ AML and OFAC policies and procedures in place that make the Platform an unattractive and unlikely vehicle for money laundering or terrorism finance—the prevention of which is another underlying policy rationale motivating money transmission laws. All Users have their identity independently verified and [redacted] has ongoing customer risk scoring and transaction monitoring. Additionally, [redacted] provides Users with disclosures regarding the general risks of virtual currency, in particular its current market volatility and the fact that it is not FDIC insured. Thus, for public policy purposes, we believe [redacted] should not require a license.

IV. CONCLUSION

While we do not believe that [redacted] services constitute money transmission as described in state money transmission laws, in light of the current regulatory uncertainty surrounding virtual currencies we are requesting confirmation as to whether [redacted] requires a license to operate its services in your state. If you disagree with our view and find that [redacted] services do constitute money transmission, please consider this letter an initial notification by [redacted] to submit a license application. [redacted] has asked us to convey to you that it is committed to compliance with all applicable laws and regulations and will work with you to achieve compliance with state money transmitter laws as required. We will follow up with more detailed documentation upon request.

I appreciate your attention and consideration, and thank you in advance for your assistance with this matter. Please do not hesitate to contact me at [redacted] or [redacted] or my colleague [redacted] or [redacted] with any questions.

Very truly yours,

cc: