



**IDAHO**  
DEPARTMENT OF FINANCE

C. L. "BUTCH" OTTER  
Governor

GAVIN M. GEE  
Director

March 12, 2015

Re: Digital Currency Trading Facility No Action Request

Dear :

We have reviewed and discussed your correspondence of February 26, 2015 regarding a no action request for a digital currency trading facility.

In connection with your request, we are providing some very broad observations and invite you to respond to our observations before making any determination regarding the applicability of the Idaho Money Transmitters Act or the related no action request.

***Present Policy Positions*** - You have stated that the "Department has not yet established a definitive position on digital currencies and money transmission..." For your information, the Department has provided some guidance in this space regarding the receipt and delivery of fiat currency in connection with a digital currency purchase. The Department has also provided some guidance on the use of privately owned crypto-currency ATMs/kiosks. This guidance takes the form of letter responses such as this one. Redacted versions of these communications are available on the Department's website.

Generally speaking, the Department has stated that "if your firm accepts U.S. Funds from Idaho customers and holds those funds to later pay for a virtual currency purchase, it seems intuitive that when a transaction is completed that" the firm "then forwards or otherwise transfers funds to the seller of the virtual currency. Although delays between receipt and delivery (due to order entry and matching) occur, funds are ultimately transmitted to a 3rd party...It has been our formative view that the activity described above is money transmission and regulated pursuant to the Idaho Money Transmitters Act."

***Process Observations*** – You have stated that will effectively be operating a trading facility to initially bring together buyers and sellers of digital currencies. If we understand your description correctly, you have also represented that will only ever act in a principal capacity, thus becoming the counterparty of record for every transaction. While not directly stated in your letter, one might argue that will only ever sell digital currency that it owns and only ever purchase digital currency from its own funds.

**SECURITIES BUREAU**  
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PROTECTING THE INTEGRITY OF IDAHO FINANCIAL MARKETS

Given the speed of bitcoin transaction processing and the speed of technology in general, it seems plausible that an identified buyer of digital currency will simultaneously purchase the currency at the time of the simulation sale of the digital currency from an identified seller in the [redacted] system. It appears that [redacted] status as the official counterparty is merely a design to guarantee transaction performance much like the CBOE and not so much that [redacted] is buying or selling for its own account. One possible structure of the trading facility makes [redacted] status as counterparty a near riskless operation or could certainly be structured as such.

**Scalability Observations** – We had initially hypothesized that a growing and robust trading platform would require an ever growing capital requirement in order for [redacted] to truly act as a buyer and seller for their own account. However, this concern appears diminished given the near simultaneous access to customer deposits held by [redacted]. Can you comment on the potential financial risks for users of the trading platform? Is it correct to presume that [redacted] omnibus accounts holding fiat and digital currency of customers can or will be used in the short term to facilitate the timely settlement of transactions<sup>1</sup>?

**Initial Impressions** - There are aspects of the trading platform proposal that appear similar to the circumstances that have caused us to view such activities as money transmission previously. It remains unclear whether [redacted] is purchasing and selling for its own account or is just utilizing omnibus accounts to facilitate transactions while simultaneously offering to act as a clearinghouse guarantor of all transactions. We are not sure that a brief stop in the [redacted] coffers is different enough to drastically change our prior views, but we are open to further dialogue regarding this matter and further consideration of your no action request.

If you have any questions or wish to discuss this matter directly, please feel free to contact me at (208) 332-8080.

Sincerely,



James A. Burns

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<sup>1</sup> It appears that [redacted] will be operating an omnibus account and wallet that aggregates customer cash and crypto-currency deposits. It would seem counterintuitive that [redacted] is at risk as a counter party if this account operates as we believe it may.

February 26, 2015

**BY E-MAIL & FEDERAL EXPRESS**

**CONFIDENTIAL**

James A. Burns  
Investigations Chief  
Idaho Department of Finance  
800 Park Boulevard, Suite 200  
Boise, Idaho 83712

RECEIVED  
FEB 27 2015  
DEPARTMENT OF FINANCE  
STATE OF IDAHO

Re: No Action Request

Dear Mr. Burns:

We are writing on behalf of our client, \_\_\_\_\_, a Delaware corporation headquartered in New York ("\_\_\_\_\_"), to request a no-action position from the Idaho Department of Finance (the "Department") with respect to the money transmitter licensing requirements of the Money Transmitters Act (Idaho Code §§ 26-2901, et seq.) (the "MT Act") in connection with the activities of \_\_\_\_\_ and its affiliate, \_\_\_\_\_, a Canadian corporation ("\_\_\_\_\_"), set forth in attachments A and B, respectively. \_\_\_\_\_ is in the process of applying for a clearing account from a financial institution and has been asked to provide a no-action letter from the Department as part of its application. We note that \_\_\_\_\_ and \_\_\_\_\_ (collectively, "\_\_\_\_\_") are new companies and still formulating how services will be delivered. It is currently anticipated that services will be delivered to U.S. persons by \_\_\_\_\_, and to non-U.S. persons by \_\_\_\_\_, in the manner set forth on attachments A and B.

Although it does not appear that the money transmitter provisions of the MT Act would apply to \_\_\_\_\_ or \_\_\_\_\_ unless they transmit sovereign or fiat currency from one person to another, we understand the Department has not yet established a definitive position on digital currencies and money transmission, and that the legal issues raised are complex and evolving. Accordingly, we do not seek a legal interpretation of the MT Act; rather, we only seek a no-action letter to the effect that:

*Department will not take action against \_\_\_\_\_ or \_\_\_\_\_ if either entity operates its business in Idaho or with Idaho customers without a*

Mr. Burns  
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*money transmitter license under the MT Act; provided, however, that to the extent that the Department determines at a later date that the operator of such businesses must be licensed (by construing existing law or adopting regulations covering the activities), and will be required to obtain a license and comply with such law or regulations.*

We note that each of and is registered as a money services business, specifically a money transmitter, with the U.S. Department of Treasury's Financial Crimes Enforcement Network for its activity involving the purchase and sale of digital currencies. on behalf of itself and its affiliate, has advised us that each company complies with all federal Bank Secrecy Act requirements and related anti-money laundering regulations.

We respectfully request confidential treatment of this letter and its attachments pursuant to Idaho Public Records Act (Idaho Code §§ 9-337, et seq.) (the "Public Records Act") and Idaho Code § 26-2916(1). The information contained in this letter and its attachments constitutes managerial, financial or commercial information, proprietary in nature, the disclosure of which would likely cause substantial injury to the competitive position of and . Therefore, this information should be exempt from disclosure under both §§ 9-340D(1), (5) of the Public Records Act and Idaho Code § 26-2916(1). If notwithstanding the foregoing you should determine preliminarily to make available to the public any of the information contained in this letter or the attachments, please inform me prior to doing so.

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Thank you for your consideration of this request. Please do not hesitate to contact me if you have any questions or require any additional information regarding the information discussed herein or in attachments A and B.

Very truly yours,

cc: