



IDAHO
DEPARTMENT OF FINANCE

BRAD LITTLE
Governor

PATRICIA R. PERKINS
Director

August 27, 2020

Re: – Applicability of the Idaho Money Transmitters Act (IMTA)

Dear _____ :

The Department of Finance (“Department”) is in receipt of your correspondence dated June 1, 2020 wherein your firm representing _____ (“_____”) requested the Department’s view on the applicability of the IMTA to a new interactive software product _____ Game (“Game”). The Game consists of players acquiring _____ Assets (“Assets”) by purchase of an Asset or earning them through playing the Game.

The Department has reviewed of the background information and the Terms of Use Agreement provided and determined the IMTA applies to this service and an Idaho money transmitter license is required to offer these services to Idaho consumers.

It is the Department’s understanding when a player purchase an Assets using one or two virtual currencies crated by _____, the Assets may only be used within the game. Based upon the Department’s analysis, the transactions conducted in the third part secondary market is where money transmission, as defined by the IMTA, will occur. Your correspondence outlines that “_____ acts on behalf of the Seller... as the agent of the Seller in accepting payment into a separate _____ Paypal account then forwards the proceeds of the sale net of sales commissions.” The Department’s review and understanding of the Terms of Use Agreement is such that _____’s liability to transmit funds is not extinguished until the funds are remitted to the seller.

This decision is based solely on the circumstances of the activities described. Different circumstances may result in a different answer. This letter should not be construed as a finding that licensure is not required in other jurisdictions.

If you require further assistance with respect to this matter, please contact the undersigned at Jeff.Flora@finance.idaho.gov or at (208)332-8045.

Sincerely,

Jeff Flora
Financial Examiner/Investigator
Idaho Department of Finance

SECURITIES BUREAU

Patti Highley – Securities Bureau Chief
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>

June 1, 2020

Ms. Jennifer Biretz
Investigations Supervisor
Idaho Department of Finance
Securities Bureau
800 Park Blvd., Suite 200
Boise, Idaho 83712

Re:

Dear Ms. Biretz:

We are writing on behalf of our client _____ (“_____” or the “Company”) to request the views of the Idaho Department of Finance regarding the applicability of the Idaho Money Transmitter Act¹ to a new interactive entertainment software product it is developing. Specifically, we request the Idaho Department of Finance confirm the company’s conclusion that _____ is not engaged in the business of money transmission as a result of offering the software product and is not required to be licensed pursuant to the Idaho Money Transmitter Act.

Background. _____ is a video gaming technology company headquartered in Los Angeles, California. It specializes in developing interactive entertainment software products and games. Its team of veteran game and platform developers is launching a new generation of interactive games using distributed ledger technology (“DLT”). The DLT developed by _____ enables players of a game to acquire, own, and sell digital assets that they use in the game.

Interactive Game. The first interactive game _____ is offering is “_____” (“Game”).² As noted above, the Game is an interactive entertainment software product operating on _____’s proprietary DLT-architected platform. Specially developed computer programs referred to as “smart contracts” (“Smart Contract(s)”), enable the Game’s players (“Players”) to acquire, own, transfer, and generate unique digital characters and other digital assets.³

The original, first generation _____ characters (which are digital avatars used by Players to play the Game), purchased by Players, have been created by _____ (“Original _____”). Thereafter, _____ may create and sell Players additional Original _____.

The Game also permits Players to combine or “blend” Original _____ characters they own to create new and unique _____ characters (“Blended _____”), as well as customize their _____.

¹ Idaho Code Ann. §§ 26-2901 to -2928.

² See _____.

³ A smart contract is simply a computer program deployed on distributed ledger technology. Typically, smart contracts are used to track digital assets, to facilitate the purchase and sale of the digital asset including recording the change of ownership, and to enforce certain restrictions that may be defined by the creator of the smart contract.

characters with various assets, features, accessories, and/or attributes (such as characters and customizations are collectively “Assets”).

Players may acquire Assets either by purchasing them from through its in-game store or earning them through playing the Game and/or completing certain tasks, levels, or achievements within the Game. To purchase Assets, Players may use either of two “in-game” virtual currencies created by . The first, , is “grindable” in that Players may obtain the currency only by earning it through playing the Game. The second, Virtual Currency (“BVC”), can be purchased with US dollars or other fiat.⁴

Like other virtual game currencies, both and BVC can only be used in-game and only to purchase Assets from . Neither virtual currency has any real-world monetary value, neither is transferable, and neither can be used in any way outside the game. In addition, neither virtual currency is convertible, i.e. will not redeem either currency for fiat or other virtual currency. This aspect of the Game is like those of other interactive video games.

The Game differs from earlier generations of video games in that it operates on a DLT-based platform that permits Players greater flexibility in owning, managing, and transferring their . Ownership, purchases, and sales of the Assets are governed and mediated entirely by the terms of the Smart Contract. The Smart Contract, which also governs the functionality of the Assets, contains the terms associated with purchases and sales of a Asset, including commissions payable to on sales; fees payable to third-party platforms on which the Game is offered and played (e.g., PC, console, and mobile); and any specific restrictions or prohibitions that may be imposed on the sale or transfer of a Asset.

has also created a Secondary Marketplace (“SM”) where Players can interact directly with other Players to sell and buy Assets using US dollars or another fiat. ’s role in the transaction differs depending on whether these secondary sales transactions occur in the marketplace hosted by (“Hosted SM”) or on a marketplace hosted by a third party (“TPSM”), such as e-Bay. Regardless of whether a Player decides to sell a Asset in the Hosted SM or TPSM, the Player must open an account with Hyperwallet, a third-party licensed money transmitter, to receive and hold the proceeds of the sale.

In the Hosted SM, provides the platform that facilitates the sale and transfer of ownership of the Assets from the Seller to the Buyer but is not involved in the transaction. The Buyer buys the Asset with a credit card, debit card, or funds in a PayPal account. Braintree, a division of PayPal, processes the transaction and transfers the funds directly to the Seller’s Hyperwallet account. The Asset itself is transferred automatically from the Seller to the Buyer in accordance with the instructions contained in the Smart Contract, which also provides for the automatic transfer of fees/commissions on the sale to .

In a TPSM, acts on behalf of the Seller as a reseller of the Asset. The Buyer may use the forms of payment accepted in the TPSM. The TPSM’s processor settles the funds

⁴ Players may use credit cards, debit cards, or funds in their PayPal accounts to purchase BVC. Braintree, a division of PayPal Inc., is the payment processor for these transactions.

from these transaction into a separate Paypal account. , then, as part of its sales efforts, pays the Seller the proceeds from the sale, net of 's sales commission. Like a Hosted SM transaction, the Asset itself is transferred automatically from the Seller to the Buyer based on the instructions contained in the Smart Contract.⁵

Regardless of whether the transaction occurs in the Hosted SM or the TPSM, once the Seller receives the fiat payment, the Seller has the option to retain the funds in the Hyperwallet account and use them to buy additional BVC to make in-game purchases of Assets. Alternatively, the Seller may request a disbursement of the funds from the Hyperwallet account. Hyperwallet is responsible for transferring all funds out of the account.

Confirmation Request. As noted above, is requesting confirmation of its conclusion that it is not engaged in the business of money transmission as a result of offering the software product and ancillary services described in this letter and, as a result, it is not required to be licensed pursuant to Idaho Money Transmitter Act. At all times, it is not engaged in the "business of money transmission" in connection with any of the following:⁶

1. **Virtual Game Currency.** and BVC are virtual currencies created by solely for use in an interactive video game created by . Players can only earn by playing the Game. Players can obtain BVC only by purchasing it from . Players can only use and BVC to buy digital assets from in the Game.⁷ Neither nor BVC can be transferred to other Players, used outside the Game, or redeemed for fiat or other virtual currencies.
2. **Secondary Marketplace ("SM").** When a Player decides to sell a Asset in the SM, the Player must first set up an account with Hyperwallet, a licensed money transmitter. All proceeds of a sales transaction, less sales commissions, are paid into the Player's Hyperwallet account. does not hold the funds on behalf of the Seller after the transaction or facilitate any subsequent disbursement of funds from the Seller's Hyperwallet account.
 - a. **Hosted SM.** In a Hosted SM transaction, the Buyer uses a credit card, debit card, or funds in a PayPal account to buy a Asset, the transaction is processed by an unaffiliated third-party payment processor, and the resulting funds are settled into the Seller's Hyperwallet account. is not involved in the transfer of the funds from the Buyer to the Seller. 's fee/commission on the sale of the Asset is automatically sent to 's PayPal account once the

⁵ While all Sellers and Buyers in the Hosted SM are Players, the Buyer in the TPSM does not have to be a registered Player at the time the Asset is acquired. However, ownership of the acquired Asset will not transfer (and the Asset cannot be claimed or otherwise used) until the Buyer sets up a Game account and registers with as a Player.

⁶ Idaho Code Ann. § 26-2903(1).

⁷ As noted, uses a third-party payment service provider to process all fiat payments made by the Player to acquire BVC.

transaction is finalized. does not otherwise touch the sales proceeds which go directly to the Seller's Hyperwallet account.

b. **TPSM.** acts on behalf of the Seller as a reseller of the Asset in the TPSM and, as part of that, acts as the agent of the Seller in accepting payment from the TPSM. When the Asset is sold in the TPSM, the funds from the sale are paid by the operator of the TPSM to as the reseller and, in its role as the reseller, disburses the proceeds of the sale to the Seller. At all times, is acting pursuant to a written agreement on behalf of the Seller as part of the transaction to sell the Asset, and the TPSM's payment to satisfies the Buyer's obligation to the Seller. While retains a fee/commission for selling the Asset on behalf of the Seller, is not engaged in the business of transmitting money and it is not advertising, soliciting, or otherwise holding itself out as providing money transmission. receives and disburses funds to the Seller only as an ancillary part of selling the asset on behalf of the Seller, and is not paid any commission for transferring the sales proceeds to the Seller.

3 **Assets.** Assets are not money and have no monetary value. They are created by to be used for playing the Game; they are unique, nonfungible assets; and they are not used as a medium of exchange. Moreover, the transfer of the digital asset—from the Seller to the Buyer in either the Hosted SM or TPSM—occurs on the DLT platform built by with the terms of the transfer entirely governed and processed by the Smart Contract. Thus, is not involved in the digital asset transfer.

We appreciate your review of these above facts and consideration of the Company's conclusion. In the event you do not agree with the Company's conclusion, please let us know at your early convenience to permit the Company to take appropriate action as it is prepares to launch the Game by July 1, including not offering part or all of the Game to residents in your state.

requests that this letter be afforded confidential treatment as it contains proprietary business information the release of which to the public could be damaging to 's competitive position. Should a request for such information be made, we request notice 10 days prior to the release of any of this information to afford us time to take action to protect the information.

If you require any additional information, please contact me at or

Sincerely,

Mary Harper

From:
Sent: Thursday, June 18, 2020 10:18 AM
To: Jeff Flora
Cc:
Subject: RE: Opinion Letter
Attachments: 3 - Player - Draft Terms of Use.docx

Follow Up Flag: Follow up
Flag Status: Completed

Hello Jeff:

Please find attached a draft of the basic agreement between [redacted] and its players, who will also be the sellers of the [redacted] Assets. This agreement would cover the sale of [redacted] Assets on the third-party secondary marketplace. Please note that aspects of the game are still being finalized. As such, the agreement may also undergo minor changes before it reaches its final form.

Please let us know if there is any additional information that we can provide.

Thank you,

From:
Sent: Wednesday, June 3, 2020 13:26
To: Jeff Flora <Jeff.Flor@finance.idaho.gov>
Cc: >
Subject: RE: Opinion Letter

Jeff, thanks for your note. I have reached out to our client to get the terms of use, which is the basic agreement with the Player/Seller. The last version I saw was still in draft and I am not sure I have the latest draft.

We will send it to you as soon as possible.

From: Jeff Flora <Jeff.Flora@finance.idaho.gov>

Sent: Wednesday, June 3, 2020 11:59 AM

To:

Subject: Opinion Letter

[External Email]

Good Morning , your letter regarding . has been forwarded to me for review.

I would like to make one request, may I obtain a copy of the written agreement between and seller of a Assets on the Third Party Secondary market (TPSM)?

Thank you in advance for your assistance.

Jeff

Jeff Flora – CFE & CAMS
Investigator & Examiner
State of Idaho – Dept of Finance
800 Park Blvd. Suite 200
Boise, ID 83712
Jeff.flora@finance.idaho.gov

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