



Illinois Department of Financial and Professional Regulation

Division of Financial Institutions

JB PRITZKER
Governor

DEBORAH HAGAN
Secretary

FRANCISCO MENCHACA
Director
Division of Financial Institutions

July 9, 2020

Non-Binding Statement 2020-5

Dear ____:

Thank you for your letter emailed on March 16, 2020. 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 Transmitters of Money Act (“TOMA”). You have requested confidential treatment.

Please be advised that consistent with governing law, the Division of Financial Institutions 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. The Division has not independently verified any represented facts, and instead has relied upon the statements and representations contained in your correspondence.

FACTS

____¹ provides “bank-like services that allow for exchange of cash or credit/debit funds for ____ Credit.” ____ Credit is the term used by ____ to describe the value an ____ member receives in exchange for U.S. dollars. The value of an ____ Credit to a U.S. dollar is always one-to-one (*i.e.* one ____ Credit is always equal to one U.S. dollar). Each ____ member has a unique sixteen-digit account number.

All U.S. dollars provided to ____ by its members are deposited in a U.S. “encumbered” bank account.² The account is held in ____’s name.

____ is a membership-only network. ____ business members must accept ____ Credit from another ____ business member or ____ consumer member. ____ members can exchange ____ Credit for “member-only” products and services by logging onto their ____ account on a mobile device or computer.

¹ ____ is registered with the Financial Crimes Enforcement Network, a bureau of the United States Department of Treasury (FinCEN). ____ represents its member approval process is consistent with FinCEN and state guidelines and meets or exceeds Bank Secrecy Act requirements and Anti-Money Laundering regulations.

² ____ has not defined the term “encumbered account” but based on ____’s description of the proposed transaction, the Division believes the account would be unencumbered for purposes of TOMA (*i.e.* ____TM would own the fiat currency free and clear of the members’ creditors). 205 ILCS 657/50 (a) (“Permissible investments include, but are not limited to, all of the following unencumbered items: (1) Cash on hand or on deposit in the name of the licensee . . .”).

_____ members can also exchange their _____ Credit to pay bills outside the _____ network using ACH, eCheck or wire transfers. Members use their _____ account to send instructions to _____'s bank. _____'s software verifies that _____ Credit is available in the member's account and then the member's _____'s Credit and corresponding funds in _____'s "encumbered account" are reduced by the amount of the transaction.

Consumer members open and maintain their account at no cost. However, consumers are charged fees to initiate exchanges of _____ Credit outside of the _____ network. Business members pay an application fee and monthly membership fee. Businesses related to _____ must pay an additional compliance fee and maintenance fee.

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.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 Bill payment service "means the business of transmitting money on behalf of an Illinois resident for the purpose of paying the resident's bills."⁵ 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."⁶ TOMA defines payment instrument as follows:

[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.⁷

Finally, TOMA defines "stored value card" as follows:

³ 205 ILCS 657/5

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

[A]ny 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.⁸

ANALYSIS

The Division finds that ____'s proposed business activities require ____ to obtain a TOMA license because: (1) ____ would be engaging in the business of receiving money for transmission or transmitting money and (2) ____ would be issuing payment instruments.

1. Engaging in the Business of Receiving Money for Transmission or Transmitting Money

TOMA's definition of "transmitting money" expressly encompasses bill payment services. As explained above, ____ members can use ____'s software platform to pay bills outside of the ____ network with U.S. dollars for a fee. Therefore, ____ engages in the business of receiving money for transmission or transmitting money.

____ asserts that its bill payment service does not constitute "transmission money" because it "is entirely an ____ member-controlled process" and the ACH, wire, or eCheck is issued by the bank where the ____ secured funds are held only after the bank receives instructions from the ____ member. The Division disagrees. The U.S. dollars provided by ____ members are deposited into a bank account in ____'s name. ____ has not represented or provided any documentation reflecting that an ____ member can access these funds in any way except through ____'s software platform. Most, if not all, money transmitters are dependent on the financial institutions in which they maintain their accounts to complete the settlement process. When accounts are held in a person or entity's own name, such person or entity is engaging in money transmission, irrespective of the involvement of the person's or entity's financial institution in handling the settlement funds.

2. Selling or Issuing Payment Instruments

TOMA defines payment instrument broadly. A payment instrument 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."⁹

____ asserts that an ____ Credit does not meet the definition of a payment instrument because an ____ Credit is not "money" as defined by TOMA. However, U.S. Dollars are 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. As explained above, ____ issues one ____ Credit for every U.S. dollar it receives from a member. An ____ Credit can be used to buy goods and services within ____ network and may be used to pay bills in U.S. dollars outside of the ____ Network in U.S. dollars at any time. Therefore, an ____ Credit is the functional equivalent of a U.S. dollar. The 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

⁸ *Id.*

⁹ *Id.*

another individual.¹⁰ The Division does not believe that ____ relabeling U.S. dollars as ____ Credits makes TOMA inapplicable to ____'s business activities. The Division finds that an ____ Credit constitutes money as defined by TOMA.

The Division recognizes that a “[p]ayment instrument does not include an instrument that is redeemable by the issuer in merchandise or service.”¹¹ However, ____ Credits are not only redeemable for merchandise or services because ____ Credits can be used to pay bills outside of the ____ network. Furthermore, the issuer of an ____ Credit is ____ itself and not ____'s business members. Therefore, ____ Credits are not redeemable *by the issuer* for merchandise or services as required for the exception to apply. For these reasons, an ____ Credit is a payment instrument pursuant to TOMA.

CONCLUSION

If all of the facts provided in ____'s March 16, 2020 letter are true and correct, ____ would be required to have 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 ____ 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.

Respectfully,

David Berland
Deputy General Counsel

¹⁰ *Id.*(emphasis added).

¹¹ *Id.*