



ALERTS

California DFPI: Virtual Currency Platform Activity Is Not Money Transmission

April 21, 2022

Highlights

Certain virtual currency and digital asset exchange services were not considered Money Transmission in the state of California

Without transmission to a third party, fiat and virtual currency transactions were not deemed Money Transmission

Closed loop transactions within digital asset platform were not Money Transmission under the MTA

Uncertainty remains with regard to digital asset wallets and custody accounts as “claims against the issuer” under the MTA

Responding to a [request for guidance](#) regarding California's Money Transmitter laws, the California Department of Financial Protection and Innovation (DFPI) determined that a digital asset trading platform that supports both the purchase and sale of digital assets as well as the exchange of cryptocurrencies was not a Money Transmitter under the California Money Transmission Act (MTA).

The requesting Platform provides retail and institutional investors with the ability to buy and sell digital assets, including cryptocurrency and stable

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coins, and to access related products and services through a web interface and mobile application.

DFPI provided an interpretive opinion concluding that, under the facts presented, MTA licensure is not required because:

- The sale and purchase of cryptocurrency and digital assets directly between the Platform and the customer, where the Platform does not facilitate the exchange of the fiat currency or cryptocurrency with a third party, does not meet the definition of money transmission because it does not involve the sale or issuance of a payment instrument, the sale or issuance of stored value, or receiving money for transmission.
- The exchange of one cryptocurrency for another directly between two parties (the customer and the Platform) does not meet the definition of money transmission requiring licensure by the Platform.
- The customer can only redeem the monetary value stored in their fiat account for digital currency sold by the Platform, making the Platform a closed loop transaction that does not constitute regulated money transmission under the MTA

The status, under the MTA, of certain wallets storing cryptocurrency at or on digital asset platforms still remains unclear. DFPI made no determination as to the status of these wallets and custody accounts as “claims against the issuer” accepted for use as a means of redemption for monetary value or payment for goods or services.

The interpretive opinion highlights the importance of carefully designed flow of funds and transactional platforms for virtual currencies and digital assets. Similar to many other U.S. money service and money transmission regulatory regimes, account structures, counterparties, and the flow of assets into, within and out of certain technology platforms may define applicable licensure obligations under the California MTA and applicable DFPI interpretations.

Money Transmitter determinations for any digital asset, cryptocurrency, non-fungible token (NFT), or virtual currency activities under the California MTA are facts and circumstances dependent analyses. Similar virtual asset platform and digital asset exchange services may be interpreted differently to the extent that their operations, products, services and or the structure of their transaction mechanisms differ from the facts presented to DFPI in the letter referenced above.

To obtain more information, please contact the Barnes & Thornburg attorney with whom you work or Mark Kindelin at 312-214-8317 or mark.kindelin@btlaw.com or Katie Mills at 310-284-3830 or katie.mills@btlaw.com.

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