



# Illinois Department of Financial and Professional Regulation

## Division of Financial Institutions

**JB PRITZKER**  
Governor

**DEBORAH HAGAN**  
Secretary

**FRANCISCO MENCHACA**  
Director  
Division of Financial Institutions

March 3, 2020

The Crypto Lawyers  
Attn: Rafael Yakobi, Esq.  
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San Diego, California 92101  
[rafael@thecryptolawyers.com](mailto:rafael@thecryptolawyers.com)

Re: CryptoFlip

**VIA ELECTRONIC MAIL**

### **Non-Binding Statement Request 2020-02**

Dear Mr. Yakobi:

Thank you for your letter emailed on February 18, 2020. You requested a non-binding opinion pursuant Title 38, Section 200.310 of the Illinois Administrative Code addressing whether your client, CryptoFlip, is required to obtain a license under the Illinois Transmitters of Money Act (“TOMA”). You did not request 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. In reaching its opinion, the Division has not independently verified any represented facts, and instead has relied upon the statements and representations contained in your correspondence.

### **FACTS**

CryptoFlip proposes to sell Bitcoin from its own inventory to residents of the State of Illinois. CryptoFlip represents the transaction will work as follows:

- 1) CryptoFlip will work with existing companies who are licensed under the Transmitters of Money Act<sup>1</sup> (“TOMA”) and registered with FinCEN as Money Services Businesses (“licensed companies”). CryptoFlip customers will place an order for the Bitcoin from CryptoFlip at the physical store fronts of these licensed companies in Illinois.
- 2) The licensed companies will collect the customer’s personal information in accordance with local state laws and the Bank Secrecy Act and payment in fiat currency.

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<sup>1</sup> 205 ILCS 657/1 *et. seq.*

- 3) Bitcoin will then be immediately transferred from CryptoFlip to the customer's wallet.
- 4) The licensed companies will accept the payment on behalf of CryptoFlip and will send the payment to CryptoFlip via the ACH network into an account owned and controlled by CryptoFlip at the end of each day.

CryptoFlip represents it will sell Bitcoin from its own supply, will not post orders on third party exchanges, or receive funds, whether fiat or virtual, for transmission.

## **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.<sup>2</sup>

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.”<sup>3</sup> 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.”<sup>4</sup>

## **ANALYSIS**

CryptoFlip represents that all companies it works with, the only entities receiving and/or transmitting fiat currency, will have a TOMA license. CryptoFlip is not selling or issuing payment instruments because payment instruments must be “for the transmission or payment of money” and Bitcoin is not money under TOMA.<sup>5</sup> CryptoFlip is also not acting as “third-party exchange” or “escrow-like intermediary.”<sup>6</sup> Therefore, CryptoFlip is not engaging in the business of receiving money for transmission or transmitting money either directly or through an authorized seller. Finally, CryptoFlip is not engaged in the business of exchanging fiat currency for fiat currency.

Based on CryptoFlip counsel's representations and the analysis above, CryptoFlip would not require a TOMA license. Each exchange is an exchange of digital currency for money between CryptoFlip and a consumer. As such, under TOMA and the Department's existing guidance, CryptoFlip is not engaged in money transmission when it sells its own cryptocurrency for fiat currency.<sup>7</sup>

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<sup>2</sup> 205 ILCS 657/5

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> 205 ILCS 657/5.

<sup>6</sup> See Digital Currency Regulatory Guidance at P. 6 available at <https://www.idfpr.com/Forms/DFI/CCD/IDFPR%20-%20Digital%20Currency%20Regulatory%20Guidance.pdf>

<sup>7</sup> See Digital Currency Regulatory Guidance at P. 6 available at <https://www.idfpr.com/Forms/DFI/CCD/IDFPR%20-%20Digital%20Currency%20Regulatory%20Guidance.pdf>

The Department 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.

Sincerely,

Francisco Menchaca  
Director, Division of Financial Institutions

By,

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David Berland  
Deputy General Counsel