COMMONWEALTH OF MASSACHUSETTS
Office of Consumer Affairs and Business Regulation
DIVISION OF BANKS
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November 1, 2022

Ilie Cernisev
CEO Utorg OÜ
Roosikrantsi tn 2-1068
Tallinn, Estonia 10119

Dear Mr. Cernisev:

This letter is in response to your correspondence dated June 28, 2022 to the Division of Banks (Division) on behalf of Utorg OÜ (Utorg) in which you request an opinion that the identified activities of Utorg do not require a foreign money transmission license under Massachusetts law. You also provided additional correspondence, dated September 14, 2022, along with a supporting video file.

Your correspondence explains that Utorg is a corporation based in Estonia and holds an Estonian license for providing certain virtual currency services. Your initial request letter stated that Utorg intended to offer services to customers in Massachusetts in two ways. First, customers would be permitted to utilize the Utorg platform to instantly buy virtual currencies from Utorg using fiat or sell virtual currencies to Utorg in exchange for fiat. Second, your initial letter stated that Utorg would permit customers to exchange virtual currency for another virtual currency through the use of the Utorg platform. As confirmed in your subsequent September 14, 2022 correspondence, however, Utorg no longer intends to offer this second service to Massachusetts consumers. Accordingly, Utorg's business operations with regard to Massachusetts consumers will be limited to offering such consumers the ability to purchase virtual currency from Utorg with fiat or sell virtual currency to Utorg in exchange for fiat.

Your letter also represents that Utorg employs processes to ensure compliance with applicable federal Bank Secrecy Act (BSA) and Anti-Money Laundering (AML) requirements.[1] As further noted in your September 14, 2022 correspondence, Utorg is in the process of registering with FinCEN as a Money Services Business.

[1] As outlined in your letter, these controls include the following:
- US customers must enter a Social Security Number;
- Utorg requires validation of US customer telephone numbers. Where the number cannot be validated, Utorg will decline the requested transaction;
- Each customer transaction will be checked via Utorg's AML tool;
- Each US customer must pass Utorg's Know Your Customer (KYC) requirements, including providing proof of identity and address;
- Each client is checked against sanctions lists (OFAC, US DOJ (FBI, DEA, US Marshals, etc.), etc.) prior to proceeding with a transaction;
- Non-US residents are not permitted to utilize American payment methods.

Your September 14, 2022 correspondence also included a supporting video file demonstrating the online process by which a customer makes a virtual currency purchase transaction.[2] The customer initiates all transactions on the Utorg website by entering the amount he or she desires to purchase or sell. At this point, the customer must also enter the address information for the customer's outside virtual currency wallet or bank account information. Utorg does not offer hosted wallets. Utorg then executes a transaction using the quantity and the spot price, inclusive of UTorg's fees. Utorg derives nearly all of its net revenue from transaction fees charged to customers for utilizing Utorg's platform for the purchase or sale of virtual currencies. As described in your letter, Utorg maintains a bank account with a third party merchant bank so that Utorg may accept credit cards as payment for virtual currency purchases by customers. Utorg's bank does not store any funds or virtual currency on behalf of its customers. In a customer purchase transaction, Fiat funds are settled to Utorg by the bank, and the virtual currency is sent to the purchaser's outside wallet instantly.

In addition, your letter sets forth activities that Utorg's platform does not undertake or permit. Utorg does not store customers' virtual currency or real currency. Utorg does not exchange fiat for fiat. Utorg does not permit transmission of virtual or fiat between natural or legal persons; all transmissions remain solely between the customer and Utorg, as part of the described purchase or sale transaction. Likewise, Utorg does not accept checks, negotiable instruments, or any other payment instruments, nor does it sell, issue, or deliver checks, money orders, or other instruments. Your correspondence also provides additional factual details regarding Utorg's operations.

Massachusetts General Laws chapter 169 requires that all persons who engage or are financially interested in the business of receiving deposits of money for the purpose of transmitting the same or equivalents thereof to foreign countries obtain a foreign transmittal agency license from the Division. In the transactions described, Utorg is either selling virtual currency from its own supply in exchange for fiat or is purchasing virtual currency from customers in exchange for fiat. Utorg's receipt of funds or virtual currency is not for the purpose of transmission to a foreign country; rather, each transaction consists of the seller-customer or buyer-customer engaging in a sale or purchase transaction solely with Utorg. Utorg does not accept fiat or virtual currency for later transmission, and none of the transactions include any promise to deliver any value to any third party. *See* Division of Banks Opinions 19-008 and 18-002. Based on the facts presented, Utorg is not required to be licensed as a foreign transmittal agency by the Division.

The conclusions reached in this letter are based solely on the facts presented. Fact patterns which vary from those stated above may result in a different position statement by the Division.

The Division continues to monitor the development of evolving payment systems such as bitcoin and notes that there may be regulatory changes in the future governing such digital currencies.

Sincerely,

Barbara Keefe
Deputy Commissioner of Banks
and General Counsel

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[2] The written correspondence and supporting video file demonstrate the step-by-step process for this transaction with the pertinent screens a customer would encounter, as well as the information required to be submitted, including pertinent identification information.