



# COMMONWEALTH OF MASSACHUSETTS

Office of Consumer Affairs and Business Regulation

DIVISION OF BANKS

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August 13, 2020

**By Electronic Mail**

legal@bitcoinofamerica.org

Kasim Carbide, Esq.  
SandP Solutions, Inc.

Dear Mr. Carbide:

This letter is in response to your correspondence dated March 24, 2020 to the Division of Banks (Division) on behalf of SandP Solutions, Inc., dba Bitcoin of America (BOA) in which you request an opinion that the listed activities of BOA do not require a license under Massachusetts law.

Your correspondence explains that BOA is an Illinois corporation offering certain virtual currency exchange services. As noted in your letter, BOA facilitates virtual currency transactions by providing kiosks for customers to both purchase and sell virtual currency, in addition to permitting customers to purchase virtual currency from BOA through BOA's website. Your description also provides additional factual details regarding BOA's operations.

**Transaction via Kiosk:**

According to your correspondence, no transaction, however nominal, may be conducted without providing at a minimum one's phone number and full name. In addition, the kiosk shall retain the following transaction information for all completed transactions: customer virtual currency wallet, transaction date, transaction time, transaction location (i.e. kiosk location), and video footage of the customer from an embedded surveillance camera. Further, all customer transactions, regardless of denomination, are subject to SMS phone verification and customer OFAC SDN watchlist screening.

In any transaction over \$500, the kiosk will require the customer to provide certain Know Your Customer (KYC) information, including the following: his/her phone number, full name, physical address, date of birth, social security number, and driver's license or other identifying documents. Concurrently, in near real-time, the kiosk will facilitate one or more verifications, including SMS phone verification, customer identification verification, and government watch list screening. The customer information required is determined in accordance with the risk-based approach and, where required, meets and exceeds FinCEN regulatory obligations and FFIEC compliance expectations.

All transactions are conducted via a kiosk manufactured by a trusted provider (i.e. Genesis Coin, Inc.). The kiosk is complemented by a transaction software platform provided and hosted by the kiosk manufacturer that is integrated with the BOA transaction platform. BOA is notified of every transaction in real-time and has a dashboard to monitor and control transactions.

You request that the Division confirm your conclusions that BOA's kiosks do not meet the definitions of either "financial institution" or "electronic branch" as defined in Massachusetts General Laws chapter 167B, section 1 and, therefore, are not required to be approved by or registered with the Division. You also ask whether transactions conducted at BOA's kiosks constitute an "electronic fund transfer" under Massachusetts General Laws chapter 167B, section 1, and are thus non-bank ATMs requiring the approval of the Division pursuant to section 3 of chapter 167B of the General Laws. In addition, you ask the Division to confirm that BOA does not require a foreign transmittal agency license under Massachusetts General Laws chapter 169 in order to operate its kiosks in the Commonwealth.

Massachusetts General Laws chapter 167B, section 1 defines an electronic branch as an electronic device, other than a telephone operated by a consumer, through which a consumer may initiate "an electronic fund transfer." An electronic fund transfer is defined as any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic branch telephone instrument, or computer or magnetic tape or point of sale terminal so as to order, instruct, or authorize a financial institution to debit or credit an account. A "financial institution" is defined in Chapter 167B as any person who: a) directly or indirectly holds an account belonging to a consumer, or b) issues an access device and agrees with a consumer to provide electronic fund transfer services; provided, however, that a person shall not include a co-operative bank, a credit union, a federal bank, a foreign bank, an out-of-state bank, an out of state federal bank, a savings bank or a trust company, as defined in section 1 of chapter 167, and a federal credit union and a foreign credit union, as defined in section 1 of chapter 171.

BOA's kiosks are electronic devices, but they do not provide the user with a means of initiating an electronic funds transfer because the kiosk does not, in any way, order, instruct, or authorize a financial institution to debit or credit an account. The kiosk where the transaction takes place does not meet that part of the definition of "financial institution" which references "any person who directly or indirectly holds an account belonging to a consumer" because the BOA kiosk does not hold an account of the consumer. The bitcoin transaction is conducted on a bitcoin exchange where the consumer buys bitcoins in a bitcoin wallet; the bitcoin wallet is owned by the consumer and secured with an encrypted private key of the consumer.

Based on the facts as presented in your letter, BOA's kiosks do not constitute an electronic branch under Massachusetts General Laws chapter 167B, section 1, and bitcoin transactions conducted at the kiosks do not constitute an electronic fund transfer under said statute. Therefore, it is the position of the Division that BOA's kiosks are not non-bank ATMs requiring the approval of the Division pursuant to section 3 of chapter 167B of the General Laws.

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 a BOA kiosk transaction, the kiosk receives U.S. dollars or funds from the user. The purpose is not for transmission to a foreign country but rather the purchase of bitcoins from BOA by the user. BOA will be selling its own bitcoins to the user-buyer at the kiosk and does not take possession of the user-buyer's funds for later transmission. *See* Division of Banks Selected Opinions 18-002 and 19-007. All bitcoin transactions with users will take place entirely in Massachusetts. Based on the facts presented, BOA is not required to be licensed as a foreign transmittal agency by the Division.

### **Transaction via Website:**

In addition to the above activity, you request that the Division confirm your conclusion that BOA does not require a foreign transmittal agency license under Massachusetts General Laws chapter 169 for its online operations in the Commonwealth.

The procedure BOA uses for internet-based transactions for the sale of virtual currency is as follows. A first-time visitor to the BOA website is required to register in order to gain access to the site (i.e., beyond the Home Page). The registration serves to collect required Know Your Customer (KYC) information for BSA/AML compliance purposes including First and last name, User Identification (created by the customer), Social Security Number (SSN), U.S. cellular phone number, and mail address. An Activation Code is then sent via SMS to the customer's cell phone (using the number provided by the customer), and the website prompts the customer to provide the Activation Code. In this way, the phone number is verified, and the number is tied to the customer. Once the Activation Code is entered and verified, an email is sent to the email address provided by the customer. The email confirms the User Identification and provides an Initial Password for first-time access; the Password can be changed by the customer once s/he registers successfully. The system then prompts the customer to enter the User ID and Initial Password so that the verified customer can gain access to the BOA website (i.e., beyond the Home Page). In this way, the email is verified, and the email is tied to the customer.

From this point forward, a registered customer is provided access to the website, after the User ID and Password is entered and verified. A customer wishing to buy virtual currency from BOA is given two options for payment. A customer can choose the "store payment locations" option, to physically go to a brick-and-mortar location, or, a customer can choose the "wire transfer" option, to wire funds for payment.

If a customer decides to wire funds for payment, s/he is advised that they must verify their account before purchasing any virtual currency. The customer is prompted to: (1) upload a photo of their state-issued photo identification, such as a driver's license; (2) upload a photo of the back of their state-issued photo identification; and, (3) upload a photo which shows them holding their state-issued photo identification with their name and photo visible. The customer is prompted to enter the address of their digital wallet and check the amount to make certain that the amount they wish to purchase is correct. The funds are then transferred from the customer's bank account to the BOA bank account. BOA assesses a two percent (2%) fee over the then current rate for Bitcoin and settles the account the same day the wire is received. Once BOA receives the customer's wire, it deposits the Bitcoin into the customer's digital wallet.

If a customer decides to choose the store payment option, BOA has store locations that are contracted to collect payment from BOA customers. The customer creates an order, enters his/her digital wallet data (i.e. address), and goes to the payment location nearest them to make payment. All trades are time stamped and confirmed in the BOA trading platform so the customer knows exactly what time and how much virtual currency was purchased. BOA sends the customer all of the transaction information (i.e. payment instructions, store location, name, number, address and all other payment info needed to make your payment) via SMS to the customer's smartphone.

As noted, 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 a BOA website transaction, BOA receives U.S. dollars or funds from the user. The purpose is not for transmission to a foreign country but rather the purchase of bitcoins from BOA by the user. BOA will be selling its own bitcoins to the user-buyer on the BOA website and does not take possession of the

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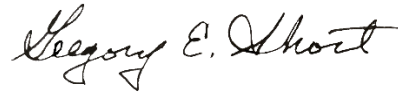
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user-buyer's funds for later transmission. See Division of Banks Selected Opinion 19-008. All bitcoin transactions with users will take place entirely in Massachusetts. Based on the facts presented, BOA is not required to be licensed as a foreign transmittal 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,

A handwritten signature in black ink that reads "Gregory E. Short". The signature is written in a cursive style with a large, stylized 'G' and 'S'.

Gregory E. Short  
Deputy General Counsel

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