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## COMMONWEALTH OF MASSACHUSETTS

### Office of Consumer Affairs and Business Regulation DIVISION OF BANKS

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May 22, 2020

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Dear Mr. Atlas:

This letter is in response to your recent correspondence to the Division of Banks (Division) in which you request an opinion relative to the licensing requirements for your client, Samsa Technologies, Inc. d/b/a LVL (LVL), with regard to its operations involving virtual currency. In particular, you have inquired whether a Massachusetts foreign money transmittal license is required for LVL's proposed activities.<sup>1</sup>

LVL is a Delaware corporation with its office in Los Angeles, California. LVL is registered with FinCEN as a money transmitter, maintains an anti-money laundering (AML) program as required by the federal Bank Secrecy Act and its regulations, and will offer its services pursuant to its AML program. As described in your correspondence, LVL intends to offer three services to Massachusetts consumers: (1) Hosted Wallet Service; (2) DDA Platform Service; and (3) P2P Exchange Service.<sup>2</sup> LVL has requested that the Division opine on the necessity of a money transmitter license for each discrete service, as LVL may adjust its business plan based upon on the Division's response. The three identified services would be offered through LVL's mobile application as well as its website and are described more fully below.

#### Hosted Wallet Service

In the Hosted Wallet service, a user enters into a User Agreement with LVL. Pursuant to that agreement, users are able to open a hosted virtual currency wallet that allows the user to securely deposit, hold, and send Digital Assets.<sup>3</sup> Under the Hosted Wallet Service, LVL is entrusted with control of the user's digital assets. LVL contracts with a third party company to provide the software to create and maintain the private keys to its hosted wallets. Your correspondence notes that the third party company alone cannot initiate any transaction involving Digital Assets because it holds only one of three keys to LVL's wallets, and two are required to initiate a transaction.

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<sup>1</sup> The Division's opinion is limited to the licensing questions posed and is not intended to provide a review of LVL's operations outside of this scope.

<sup>2</sup> While not expressly stated in your correspondence, it is assumed that LVL intends to provide its services such that the transactions may involve the transmission of funds or virtual currency to recipients located in foreign countries.

<sup>3</sup> These Digital Assets include Bitcoin, Litecoin, Ethereum, and Bitcoin Cash.

As set forth in your correspondence, a user can use his or her Hosted Wallet to: (i) receive Digital Assets from his or her external Digital Asset wallets; (ii) send Digital Assets to his or her external Digital Asset wallets; (iii) transfer Digital Assets to another User's Hosted Wallet, through an ordinary peer-to-peer transaction, where the receiving user simply shares her Hosted Wallet address with another user, as is the case in any Digital Assets wallet transaction; or (iv) transfer Digital Assets to another user as part of a P2P Exchange Transaction (discussed below). Your correspondence notes that the Hosted Wallet utilizes certain features to prevent a non-user from carrying out transactions or otherwise using the Hosted Wallet for fraudulent activity.

#### DDA Platform Service

In the DDA Platform service, users are able to open a bank account with Evolve Bank & Trust (DDA Bank), an Arkansas-chartered and FDIC-insured bank, pursuant to an agreement entered into between the user and DDA Bank. The DDA Bank account can be accessed through the LVL application or website, and permits users to: (i) receive Fiat currency from the user's external account with another bank (external bank account); (ii) send Fiat currency to the user's external bank account; or (iii) send or receive Fiat currency to or from a DDA Bank Account of a LVL user as part of a P2P Exchange transaction (as discussed below). As noted in your correspondence, LVL users are not permitted to send Fiat currency from their DDA Bank account to another LVL user other than automatically as part of a P2P Exchange Transaction, described more fully in the next section.

Your correspondence also emphasizes that LVL does not take possession of any Fiat currency as part of the DDA Platform Service. Rather, you note that LVL serves as a conduit solely for data, providing data from users to and from the DDA Bank (via the agent of the DDA Bank).<sup>4</sup> Under the terms of the User Agreement entered into between the user and LVL, the user specifically authorizes LVL to send and receive data between the user and the user's DDA Bank. For example, when a user wishes to move funds from his or her external bank account to the user's DDA Bank account, the user delivers instructions for this transaction to LVL, which then forwards those same instructions to DDA Bank, via its agent, to carry out.

#### P2P Exchange Service

LVL also proposes to provide a peer-to-peer service for exchanging Digital Assets (P2P Exchange Service). The P2P Exchange Service allows users to buy or sell Digital Assets in transactions directly with each other. Specifically, the P2P Exchange is hosted by LVL and enables users to submit orders to buy and sell specific quantities of Digital Assets. The orders are then matched by LVL such that once a match is found, the transaction is automatically completed. These P2P transactions occur pursuant to the user's agreement with LVL. Your correspondence notes the following examples of P2P transactions:

(i) *Purchase of Digital Assets With Fiat Currency.* By way of example, if a user wishes to buy Bitcoin, the user will post a bid within the LVL P2P Exchange to purchase a specific quantity of Bitcoin at a specific price. If there is a matching offer from another LVL user to sell a corresponding quantity of Bitcoin at the corresponding price or better, the P2P Exchange automatically matches the bid and the offer, and executes a trade. In order to

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<sup>4</sup> Your correspondence notes that LVL has entered into a master service agreement with Synapse Financial Technologies, Inc. (Synapse), an agent of the DDA Bank. Pursuant to the master service agreement, LVL allows Synapse to offer bank accounts at DDA Bank for each LVL user. Where a user elects to establish a bank account with DDA Bank, the user establishes such bank account pursuant to the terms of an agreement directly between the DDA Bank and the user. LVL is not a party to that agreement.

effect the trade: (i) Fiat currency is automatically transferred by the DDA Bank from the buyer's DDA account to the seller's DDA account; and (ii) the quantity of Bitcoin purchased is automatically transferred from the Hosted Wallet of the Bitcoin seller to that of the Hosted Wallet buyer. With respect to the fiat currency aspect of the transaction, according to your correspondence, LVL acts solely as the facilitator of the user's instructions to the user's DDA Bank, and it is the DDA Bank who holds and transfers the Fiat currency. With respect to the Digital Asset portion of the trade (i.e. the Bitcoin), the user who is a seller automatically instructs LVL, as the Hosted Wallet operator, to transfer the Bitcoin to the Hosted Wallet of the buyer.

(ii) *Buy Digital Assets for Digital Assets*. According to your correspondence, this kind of trade is identical to a trade of fiat currency for digital assets, as described above, except that both components of the trade are Digital Assets and no fiat currency is involved. For example, a user may wish to buy a specific quantity of Bitcoin in exchange for a quantity of Ethereum. When a match exists such that another user is seeking to sell the specific quantity of Bitcoin in exchange for that quantity of Ethereum, this match automatically results in a trade by which each of the Hosted Wallets of the two users are debited or credited. In this transaction, the P2P Exchange causes each of the two parties to the trade to instruct their respective Hosted Wallets to debit the amount of the traded Digital Assets and credit the same to the respective counterparty.

Your letter emphasizes that, in contrast to other virtual currency exchanges, in the P2P Exchange, LVL is neither acting as a custodian of fiat currency, nor as a transmitter of Fiat currency. Rather, you note that LVL hosts only the Digital Assets through the Hosted Wallet, while permitting the users to transfer fiat currency between themselves under their standalone account agreements with DDA Bank. As further noted in your correspondence, LVL is not involved in the security of a user's fiat currency; that role is fulfilled by the DDA Bank under a distinct and direct relationship between the DDA Bank and the user.

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. The Division has had occasion to consider other business models involving virtual currency exchange and transmission in the context of its licensure requirements. In prior opinions, the Division has analyzed whether the virtual currency transmission at issue is "for the purpose of transmitting the [money or its equivalents] to foreign countries." In making this determination, the Division has considered whether the service at issue permits a customer to send money or virtual currency to a specific recipient. *See* Division Opinion 18-003. In doing so, the Division has reasoned that where a transmission is effected but the sender has no knowledge of the identity of the recipient or the recipient's location (such as in certain automatic exchange transactions), the transmission of the virtual currency does not meet the statutory requirement.

With respect to the Hosted Wallet Services, LVL has confirmed that a user has the ability to transfer Digital Assets directly to another identified LVL user's Hosted Wallet. In this transaction, the user has the ability to select the recipient of the Digital Assets and effect the transmission through the use of LVL's website or application. These recipients may be located inside or outside of the United States. For this reason, it is the position of the Division that providing the Hosted Wallet Services would require a money transmission license under G. L. c. 169. As noted, this conclusion is consistent with the Division's previous opinions concerning money transmission.

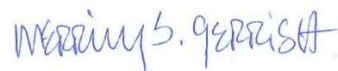
With respect to the DDA Platform Service, as noted, there are three variations of transactions that occur utilizing the DDA Platform Service. The first two permit users to: (i) receive Fiat currency from the user's external account with another bank (external bank account); (ii) send Fiat currency to the user's external bank account. In both of these scenarios, the sending and receiving party are the same person. A Massachusetts consumer who utilizes her LVL account to send Fiat currency from her DDA Account to her external bank account is merely moving her own money to a separate bank account. The Division does not view the transfer of money between an individual's bank accounts as money transmission. Accordingly, with respect to the first two variations of DDA Platform Service transactions, it is the position of the Division that no license would be required. As noted in your correspondence, LVL users are not permitted to send Fiat currency from their DDA Bank account to another LVL user other than automatically as part of a P2P Exchange Transaction, as discussed more fully below.

With respect to the P2P Exchange Service, which is also the third way in which the DDA Platform Service may be utilized, your correspondence confirms that P2P Exchange Service transactions are automatic transactions, and are effected when a prospective buyer's desired order for the purchase of Digital Assets can be matched with the desired sale price agreeable to another LV user. P2P Exchange Service transactions may also occur as a trade of digital assets for other digital assets, which is also effected automatically when a match is found meeting the requirements of two LVL users. You have confirmed that LVL users may not select a specific individual with whom they will effect a transaction in a P2P Exchange Service transaction. The Division has previously opined that such exchange services do not constitute money transmission under Massachusetts law because they are not undertaken with the purpose of effecting a transmission to a foreign country where the identity of the recipient cannot be selected or determined by the sender; indeed, once an order is set, the trade is automatically matched and neither party is able to select the other party to the trade. Accordingly, it is the position of the Division that offering the P2P Exchange Service, as described, would not require LVL to obtain a foreign transmittal license with 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.

Please be advised that the Division continues to monitor the evolution and use of virtual currencies, and there may be regulatory changes in the future applicable to such currencies.

Sincerely,



Merrily S. Gerrish  
Deputy Commissioner of Banks  
and General Counsel

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