

## COMMONWEALTH OF MASSACHUSETTS

Office of Consumer Affairs and Business Regulation

### DIVISION OF BANKS

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January 17, 2020

Adam Atlas, Esq.  
Attorney at Law  
5585 Monkland Avenue  
Suite 150  
Montreal, Quebec, Canada H4A-1E1

Dear Mr. Atlas:

This letter is in response to your correspondence dated October 8, 2019 to the Division of Banks (Division) in which you request an opinion relative to the licensing requirements for your client, Paybis LTD, with regard to its online operations involving virtual currency, referred to in your correspondence as convertible crypto currency (CVC).

Paybis LTD (Paybis) is a United Kingdom (U.K.) company headquartered in Edinburgh, Scotland. As described in your correspondence, Paybis intends to buy and sell CVC through its website. Each transaction is a two-party purchase or sale transaction between Paybis and its customer. Paybis has defined CVC as: a decentralized virtual currency for which there is no central administrator. Additionally, Paybis' correspondence assumes that CVC is not a security. Each transaction involves CVC and either United States dollars, Euros, or Pounds Sterling (each of the latter three being, "Fiat Currency"). While Paybis sells or purchases CVC at spot pricing, it charges its customers a fee over and above the transaction value as its source of revenue. Additionally, as a FinCEN-registered money services business, Paybis maintains an anti-money laundering program (AML Program) as required by the United States Bank Secrecy Act (BSA) and BSA regulations. Paybis also maintains automated rules to reduce the risk of fraud or security breaches in the course of carrying on business (Risk Policy). As part of these procedures, Paybis utilizes different types of virtual wallets, which include: the buyer wallet (Buyer Wallet), the company cold wallet (Cold Wallet) and the company hot wallet (Hot Wallet).

As described in your correspondence, each transaction is independent from all other transactions. No transaction will automatically trigger another transaction on an exchange or elsewhere. At no time does Paybis take possession of CVC or Fiat Currency as custodian for a customer. Likewise, none of the transactions include any promise to deliver any value to any third party. More specifically, as explained in your letter, Paybis offers two types of transactions: company-as-seller transactions and company-as-buyer transactions. The two types of transactions offered by Paybis are described below.

A company-as-seller transaction is a two-party transaction whereby Paybis sells CVC directly to a buyer/customer from its own inventory of CVC through its website. The buyer's selection on Paybis' website results in an accepted offer for the sale of a precise type and amount of CVC by Paybis to the buyer in consideration of a precise dollar amount (Purchase Price). The website informs the buyer of the

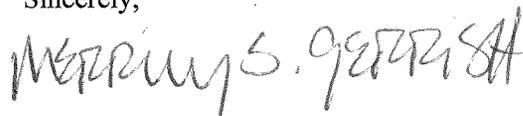
corresponding amount of CVC that the buyer will receive in exchange for the Purchase Price, taking into account Paybis' fee and the applicable payment processing fee. At this time, the buyer also identifies the CVC wallet belonging to the buyer into which Paybis is to deliver the corresponding amount of CVC purchased (Buyer Wallet). The buyer then selects a payment method and is charged the Purchase Price by Paybis through a payment processor. Subject to the AML Program and Risk Policy, in preparation for delivery of the CVC to the buyer, Paybis transfers the quantity of purchased CVC from its Cold Wallet to its Hot Wallet. Paybis then transfers the CVC to the Buyer Wallet. Pursuant to the applicable payment processing agreement, the payment processor provides the corresponding amount of Fiat Currency to Paybis.

A company-as-buyer transaction is a two-party transaction whereby Paybis purchases CVC directly from a seller/customer through its website. Paybis does not rely on company-as-buyer transactions to restock its inventory of CVC. In these transactions, through the website, the seller/customer agrees to sell to Paybis a fixed quantity of CVC in exchange for a fixed quantity of Fiat Currency (Purchase Price). Paybis then collects transaction records pursuant to its AML Program and Risk Policy. After confirmation from the CVC network that the CVC sold by the seller/customer has been sent to Paybis' Hot Wallet, Paybis provides payment to the seller/customer for the CVC. From its own bank account, Paybis transfers the Fiat Currency Purchase Price of the CVC to the seller/customer by way of a money transmitter locally registered and licensed in the U.K. or European Union to provide such remittance services. Finally, Paybis transfers its purchased CVC from its Hot Wallet to its Cold Wallet for storage in its own inventory and possible later sale. The seller/customer is able to access records concerning the transaction through the Paybis website.

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, Paybis either receives funds or receives CVC. Paybis' receipt of funds or CVC, however, is not for the purpose of transmission to a foreign country; rather, it is for the purchase of CVC from a seller/customer or the sale of CVC to a buyer/customer. Each transaction consists of the seller or buyer engaging in a sale or purchase transaction solely with Paybis. Paybis does not accept funds or CVC for later transmission and none of the transactions include any promise to deliver any value to any third party. *See* Division of Banks Selected Opinion 18-002. Based on the facts presented, Paybis is not required to be licensed as a foreign transmittal agency by the Division.<sup>1</sup>

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.

Sincerely,



Merrily S. Gerrish  
Deputy Commissioner of Banks  
and General Counsel

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<sup>1</sup> Your correspondence also briefly references the licensing requirement for check sellers in Massachusetts. Paybis' sale and purchase of CVC does not constitute selling, issuing, or registering checks or money orders. As such, Paybis is not required to be licensed as a check seller pursuant to G. L. c. 167F, § 4 and 209 CMR 45.00.