



COMMONWEALTH OF MASSACHUSETTS

Office of Consumer Affairs and Business Regulation DIVISION OF BANKS

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November 3, 2020

Carol R. Van Cleef, Esq.
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Dear Ms. Van Cleef:

This letter is in response to your correspondence to the Division of Banks (Division) on behalf of your client Mythical, Inc. (Mythical), in which you request an opinion relative to the applicability of registration and licensing requirements in the Commonwealth of Massachusetts. Specifically, you are asking if Massachusetts General Laws chapter 167F, section 4 and chapter 169 would be applicable to a new interactive entertainment software product that Mythical is developing.

Mythical is a video gaming technology company headquartered in Los Angeles, California. It specializes in developing interactive entertainment software products and games. Mythical is launching a new generation of interactive games using distributed ledger technology (DLT). The DLT developed by Mythical enables players of a game to acquire, own, and sell digital assets that they use in the game.

The first interactive game by Mythical is the Blankos Block Party Game (Game). Specially developed computer programs referred to as smart contracts (Smart Contracts) enable the Game's players to acquire, own, transfer, and generate unique digital characters and other digital assets. Players may acquire assets either by purchasing them from Mythical through its in-game store or earning them through playing the Game. To purchase assets, players may use either of two "in-game" virtual currencies created by Mythical. The first, Golden Vibes, may only be obtained by earning it through playing the Game. The second, Blankos Virtual Currency (BVC), can be purchased with US dollars or other fiat currency.

Both Golden Vibes and BVC can only be used in-game to purchase assets from Mythical. According to your letter, neither virtual currency has any real-world monetary value, neither is transferable, and neither can be used in any way outside the game. In addition, neither virtual currency is convertible; therefore Mythical will not redeem either in-game currency for fiat currency or other virtual currency. As further described in your correspondence, ownership, purchases, and sales of in-game assets are governed and mediated entirely by the terms of the Smart Contract. The Smart Contract also contains provisions governing commissions payable to Mythical on sales; fees payable to third-party platforms on which the Game is offered and played (e.g. PC, console, and mobile platforms); and any specific restrictions or prohibitions that may be imposed on the sale or transfer of an asset.

Mythical has also created a Secondary Marketplace (SM) where players can interact directly with other players to sell and buy assets using US dollars or another fiat currency. Mythical's role in the

transaction differs depending on whether these SM sales transactions occur in the marketplace hosted by Mythical (Hosted SM) or on a marketplace hosted by a third party (TPSM), such as e-Bay. Regardless of whether a player decides to sell an asset in the Hosted SM or TPSM, the player must open an account with Hyperwallet, a third-party licensed money transmitter, to receive and hold the proceeds of the sale.¹

You request that the Division confirm your conclusion that Mythical is neither engaged in the business of money transmission pursuant to Chapter 169, nor engaged in the business of selling, issuing, or registering checks pursuant to Chapter 167F, as a result of offering the software product and ancillary services described in your correspondence.

Massachusetts General Laws chapter 167F, section 4 states that no person or entity, other than that authorized by the Commonwealth of Massachusetts, “may engage in the business of selling, issuing or registering checks or money orders.” The virtual currencies and virtual in-game assets described in your letter do not constitute “checks” or “money orders” within Massachusetts law. Golden Vibes and BVC are virtual currencies created by Mythical solely for use in an interactive video game. Players can only earn Golden Vibes by playing the Game and can obtain BVC only by purchasing it directly from Mythical. Players can only use Golden Vibes and BVC to buy digital assets from Mythical within the Game. Neither Golden Vibes nor BVC can be transferred to other players, used outside of the Game, or redeemed for fiat currency or other virtual currencies. Based on these facts, Golden Vibes and BVC are not equivalent to checks or money orders. Accordingly, Mythical is not required to be licensed pursuant to Massachusetts General Laws chapter 167F, section 4.

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. As noted above, Mythical created a Secondary Marketplace for players to interact with each other to buy and sell in-game assets. Mythical’s role in the transaction differs depending on whether these secondary sales transactions occur in the Hosted SM or TPSM. In the Hosted SM, Mythical provides the platform that facilitates the sale and transfer of ownership of the digital assets from the seller to the buyer, but Mythical is not involved in the transaction. The buyer buys the asset with a credit card, debit card, or funds in a PayPal account. Braintree, a division of PayPal, processes the transaction and transfers the funds directly to the seller’s Hyperwallet account. The asset itself is transferred automatically from the seller to the buyer in accordance with the instructions contained in the Smart Contract, which also provides for the automatic transfer of fees/commissions on the sale to Mythical. In a TPSM, Mythical acts on behalf of the seller as a reseller of the asset. The buyer may use the forms of payment accepted in the TPSM. The TPSM’s processor settles the funds from these transactions into a separate Mythical PayPal account. Mythical, then, as part of its sales efforts, pays the seller the proceeds from the sale, net of Mythical’s sales commission. Like a Hosted SM transaction, the asset itself is transferred automatically from the seller to the buyer based on the instructions contained in the Smart Contract.

Regardless of whether the transaction occurs in the Hosted SM or the TPSM, once the seller receives the fiat payment, the seller has the option to retain the funds in the Hyperwallet account and use them to buy additional BVC to make in-game purchases of in-game assets. Alternatively, the seller may request a disbursement of the funds from the Hyperwallet account. Hyperwallet is responsible for transferring all funds out of the account. Therefore, when actual fiat currency is exchanged to buy and sell an in-game asset between players, a licensed money transmitter is used. The purpose of this Secondary

¹ PayPal, Inc. acquired Hyperwallet. PayPal, Inc. does business as Hyperwallet in Massachusetts and other states. PayPal holds a foreign transmittal agency license with the Division.

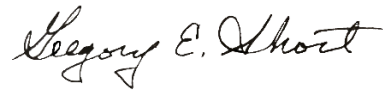
Marketplace is not to transfer funds to another country but rather to create a forum for players of the Game to trade assets for in-game play. The in-game assets, as described in your correspondence, are not money and have no monetary value outside of the Game. They are created by Mythical to be used for playing the Game; they are unique, nonfungible assets; and they are not used as a medium of exchange. Further, even where a sale of a digital asset occurs and fiat currency is exchanged for the in-game digital asset, the fiat currency is transferred via Hyperwallet, a licensed foreign transmittal agency.²

Based on the facts presented in your letter, Mythical is not required to be a licensed foreign transmittal agency by the Division. The purpose of this Secondary Marketplace is not to transfer funds to another country, but rather to create a forum for players of the Game to trade assets for in-game play. It is the position of the Division that the virtual currency and virtual assets developed by Mythical for in-game use have no monetary value. Therefore, Mythical is not a foreign transmittal agency under Massachusetts General Laws chapter 169.

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 and virtual currencies and notes that there may be regulatory changes in the future governing such digital currencies.

Sincerely,

A handwritten signature in black ink, reading "Gregory E. Short". The signature is written in a cursive, flowing style.

Gregory E. Short
Deputy General Counsel

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² Furthermore, while not dispositive of the Division's conclusion, it is the position of the Division that the two virtual currencies Mythical created for the Game, Golden Vibes and BVC, would not constitute convertible crypto currency (CVC). FinCEN defines a CVC as a virtual currency that either has an equivalent value in real currency or acts as a substitute for real currency. Neither virtual currency has any real-world monetary value, neither is transferable, and neither can be used in any way outside the game. Golden Vibes and BVC do not have an established exchange rate with numerous real currencies and they are not accepted as a payment method by merchants in exchange for goods and services. Unlike other cryptocurrencies, Golden Vibes and BVC were not developed for the specific purpose of substituting for fiat currency, they are simply for use in the Game. If the Game were to temporarily shut down or permanently end, Golden Vibes and BVC would have no value in the real world.