



COMMONWEALTH OF MASSACHUSETTS

Office of Consumer Affairs and Business Regulation DIVISION OF BANKS

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March 2, 2022

Philip Angeloff, Esq.
Clifford Chance US LLP
2001 K Street NW
Washington, DC 20006 - 1001

Dear Mr. Angeloff:

This letter is in response to your correspondence dated November 2, 2021 to the Division of Banks (Division) requesting an opinion as to whether your client, Bullish (GI) Limited (BGI), requires a Massachusetts foreign transmittal license or small loan license based upon the activities described in your correspondence. Following submission of your initial correspondence, you have confirmed that BGI will not be offering its Margin Financing Services (as identified in your correspondence) in the United States at this time, and as such you have withdrawn the portion of your request seeking the Division's advisory opinion with respect to those activities.

BGI is licensed as a "DLT Provider" and is authorized to operate the Bullish Exchange by the Gibraltar Financial Services Commission under the Financial Services Act 2019. BGI is also registered as a money services business with the Financial Crimes Enforcement Network (FinCEN). As discussed more fully below, BGI seeks to provide digital currency trading and custody services, as well as certain liquidity services to customers in Massachusetts.

Bullish Exchange and Custody Services

A customer of the Bullish Exchange residing in Massachusetts (Customer) would be able to access the Bullish Exchange through the web or mobile platform. Customers may buy, sell, and hold fiat and digital currencies that are approved for trading on the Bullish Exchange. A Customer must establish an account with BGI (Account) in order to access and use the Bullish Exchange's digital currency trading and custody services. According to your correspondence, a Customer may use its Account to effect the following transactions: (i) transferring fiat or digital currency into the Account; (ii) engaging in trading activity relating to digital currencies, including buying or selling a digital currency in exchange for a fiat currency or another digital currency; and (c) withdrawing fiat or digital currency from the Account. Fiat or digital currency in the Customer's Account will be reflected in a wallet maintained by the Bullish Exchange (Bullish Wallet). The Customer would appoint BGI to act as the custodian of the fiat and digital currencies held in the Customer's Bullish Wallet. Your request specifically notes that in the context of a trade settlement, the Bullish Exchange would transfer fiat or digital currencies between Customer Accounts, but a Customer would not be able to direct BGI or the Bullish Exchange to transfer fiat or digital currency to another specific Customer.

In setting up an Account with BGI to engage in the described transactions, Customers will make fiat currency deposits in a specified omnibus US bank account held by BGI for the benefit of its Customers by either: (i) wire transfer from another bank account in the name of the Customer; or (ii) by debit or credit card, via a third-party card payment services provider. These fiat currency deposits made by Customers into the omnibus bank account will also be recorded in the Customer's Bullish Wallet.

As described in detail in your correspondence, in order to initiate a buy or sell order with respect to fiat or digital currency held in its Account, a Customer would need to transfer the fiat or digital currency that the Customer wishes to trade from its Bullish Wallet into a spot trading wallet (Spot Wallet). BGI has established permissible trading pairs that are available for trading on the Bullish Exchange. The Bullish Exchange will operate an order book that matches and fills orders according to price-time priority, based on the timestamp of orders at the same price point. A proprietary pricing and liquidity algorithm will automatically execute the trades at prevailing rates on the Bullish Exchange utilizing a blockchain-based smart contract.

Massachusetts General Laws chapter 169 requires 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 in your correspondence, BGI and the Bullish Exchange will receive money and digital currency from Customers solely in connection with the digital currency trading services that will be provided by BGI and the Bullish Exchange. Of particular importance, your letter confirms that the Bullish Exchange would not accept fiat or virtual currency for the purpose of transmitting those assets to foreign countries and BGI does not provide Customers with the ability to send fiat or digital currency to a specific recipient. Rather, in permitting customers to engage in transactions on the Bullish Exchange, a Customer's order is automatically matched by the order book and is filled according to price-time priority, based on the timestamp of orders at the same price point. Through this automated order book process, Customers of the Bullish Exchange will not know the identity of the other party to a transaction and will not be able to control the identity of the person with whom a purchase, sale, or exchange is transacted. Accordingly, based on the facts presented, BGI is not required to be licensed as a foreign transmittal agency by the Division.

Liquidity Services

BGI's business operations will also include liquidity services (Liquidity Services). As described by your correspondence, the Liquidity Services would act as the primary market maker in the order book, using BGI's proprietary pricing algorithm. BGI's Liquidity Services would utilize pools of fiat and digital currency (Liquidity Pools) for the purpose of entering into trades as counterparty to Customers based on bids and offers generated by the pricing algorithm.¹ Each Liquidity Pool consists of a specific permitted trading pair. As trading takes place, both digital currency and fiat are bought and sold into and out of Liquidity Pools causing the balance of each to fluctuate. As described in your correspondence, the price of the digital currency and fiat is expected to be a function of the balances of each in a Liquidity Pool and additional spot trades that are executed on the Bullish Exchange.

¹ Your correspondence also identified a second purpose for offering the Liquidity Services; specifically, your letter noted that the Liquidity Services would also be offered for the purpose of making limited recourse loans to BGI so that BGI can provide loans to eligible Customers who wish to borrow either fiat or digital currency to engage in trading on margin (Margin Financing Services). As previously noted, BGI is no longer planning to offer Margin Financing Services in the United States at this time.

Mr. Philip Angeloff

March 2, 2022

Page 3

Customers would be able to contribute fiat and/or digital currencies to one or more Liquidity Pools for the purpose of providing liquidity on the Bullish Exchange. To make a contribution to a Liquidity Pool, an eligible Customer would provide an instruction to BGI with the value amount for the contribution in one of the two assets comprising the relevant permitted trading pair to which the contribution relates. BGI would then process the instruction by debiting the permitted trading pair from the Customer's Bullish Wallet in an aggregate value equivalent to the contribution and make a corresponding credit in the relevant Liquidity Pool wallet on behalf of the Customer. In consideration for making a Contribution to a Liquidity Pool and providing the Liquidity Services, a Customer would earn a fee (Liquidity Fee). Customers providing liquidity are not able to choose how their contributions will be utilized but will earn fees accrued from the Liquidity Services based on their contribution with respect to the relevant Liquidity Pool.

The Massachusetts small loan law provides, in pertinent part, that no person shall, directly or indirectly, engage in the business of making loans of \$6,000 or less, if the amount to be paid for interest and expenses exceed in the aggregate an amount equivalent to 12% per year without first obtaining a small loan company license in Massachusetts. The statute only applies to loans made primarily for personal, family, or household purposes. In the absence of the Margin Financing Services described in your correspondence and originally proposed to be offered, BGI's Liquidity Services do not implicate the licensing requirements of the Massachusetts small loan law.

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 also 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,

/s/ Barbara Keefe
Deputy Commissioner of Banks
and General Counsel

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