



COMMONWEALTH OF MASSACHUSETTS

Office of Consumer Affairs and Business Regulation

DIVISION OF BANKS

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August 6, 2021

Joseph B. Evans
Partner
McDermott Will & Emory LLP
340 Madison Avenue
New York, New York 10173-1922

Dear Mr. Evans:

This letter is in response to your correspondence dated March 23, 2021 to the Division of Banks (Division), in which you request an opinion on behalf of your client Atomyze LLC (Atomyze), relative to the applicability of the Massachusetts foreign transmittal law, General Laws chapter 169, to the business model of Atomyze.

As indicated in your letter, Atomyze is a limited liability company registered in Delaware. More specifically, Atomyze is a digital asset company that intends to assist owners of large amounts of metal by creating digital assets that represent these interests in metals, called "Metal Asset Backed Tokens" (Metal ABTs). The primary purpose of the business model is to facilitate the creation of Metal ABTs for purchase and sale by domestic customers. Atomyze will use blockchain technology to create, purchase, invest, and sell interests in metals. Atomyze is registered with the Financial Crimes Enforcement Network (FinCEN) as a Money Services Business, and therefore Atomyze is required to comply with all applicable anti-money laundering and "Know Your Customer" reporting requirements. As part of the business model, Atomyze is creating a platform that facilitates the creation and sale of Metal ABTs (Platform). The providers of metals, called "Tokenizers" (Tokenizers), will hire Atomyze to provide the technical expertise necessary to create Metal ABTs. The Tokenizers must give Atomyze administrative powers over the physical metal, which Atomyze will store in a secure vault or warehouse. Each Metal ABT represents a portion of a bar of metal stored. Once Atomyze creates the Metal ABTs for the Tokenizers, customers will be able to purchase and trade Metal ABTs on the Platform. Customers must purchase Metal ABTs with fiat currency. Once a customer purchases Metal ABTs, the Tokenizer receives fiat. The title and delivery rights to the metal passes with the Metal ABT to the purchaser. Customers that own Metal ABTs have rights to redeem the Metal ABTs for the physical delivery of the underlying metal. Therefore, if a customer desires to redeem Metal ABTs, Atomyze will facilitate the actual delivery of the physical underlying metal to that customer.

Through the Platform, customers can purchase Metal ABTs from Tokenizers or other customers. The Platform will be a spot market, where Atomyze will match purchasers and sellers of Metal ABTs by virtue of their respective bids and asks for the particular Metal ABTs. All transfers will occur exclusively within the Platform; therefore, Atomyze will not permit customers to transfer Metal ABTs or fiat to other specific customers on third-party websites outside of the Platform. Your letter notes that some Tokenizers may be persons or entities located in foreign countries (Foreign Tokenizers). Following the initial sales of

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Metal ABTs, Foreign Tokenizers will receive some fiat currency upon the sale of their Metal ABTs. FDIC insured banks, primarily The Provident Bank (Bank), will execute all fiat currency transactions to Foreign Tokenizers. Atomyze will provide its customers and Tokenizers with digital wallets to store Metal ABTs and fiat (Custodial Wallet). When a customer wishes to transfer fiat to the customer's Custodial Wallet, the customer may do so by transferring fiat from an external bank account to Atomyze's account at the Bank. The Bank account will be an F.B.O. account specially designated to hold customer funds. Atomyze will also record customer fiat deposits on an internal blockchain ledger.

As stated in your correspondence, the purpose of a customer utilizing the spot market is not the transmission of currency to a foreign country or a specific person, but rather, to enable users to purchase and sell asset-backed tokens, or engage in exchanges of different types of asset-backed tokens, through the use of the Platform. While some fiat currency will flow back to Foreign Tokenizers, all of those transactions are executed by FDIC insured banks. Because Foreign Tokenizers will be permitted to create and sell Metal ABTs, it is possible that some fiat currency will be transferred to Foreign Tokenizers. All purchases of Metal ABTs will be in fiat currency. Any Foreign Tokenizer seeking to withdraw fiat currency will only be able to receive that fiat currency via wire transfers from an FDIC insured banking institution.

As Massachusetts does not presently have a domestic money transmission statute, your request must be analyzed for its applicability under Massachusetts General Laws chapter 169, the foreign transmittal agency statute. 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. On occasion, the Division has had 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. *See* Division Opinion 20-003.

Your letter argues that Atomyze is not a foreign transmittal agency because it will be effectively operating a spot market where transactions in Metal ABT will automatically execute when bids and asks meet in the market. Atomyze's customers are not seeking to send funds overseas, they are seeking to transact in Metal ABTs at agreeable prices. While Tokenizers and customers may make their names available on the Platform, Atomyze will not be listing the location of customers or Tokenizers. In order to be a "foreign transmittal agency," the sender must know that the recipient is located in a foreign country and make a deliberate choice to transact with that foreign recipient at the outset of the transaction. As a spot market automatically executing bids and asks, neither customers nor Tokenizers will know the identity of the other party to a transaction prior to submitting a bid or ask, and cannot control the identity of the person with whom a purchase or sale is ultimately transacted. Additionally, any Foreign Tokenizer seeking to withdraw fiat currency will only be able to receive that fiat currency via wire transfers from an FDIC insured banking institution, so only FDIC insured banking institutions will be executing transactions flowing from Massachusetts to foreign recipients. Accordingly, based on the facts presented, Atomyze is not required to be licensed as a foreign transmittal agency by the Division.

In addition to the primary business model explained above, your letter and attached materials note that Atomyze is intending to create two additional digital assets: a Currency Token and an Industrial Token.

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The Division will not consider those additional digital assets at this time. Further information and analysis will need to be provided to the Division in order to determine how those potential future digital assets will affect the business model of Atomyze relative to the applicability of 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.

Please be advised that the Division continues to monitor the evolution and use of virtual currencies, including asset-backed tokens, and there may be regulatory changes in the future applicable to such currencies and digital assets.

Sincerely,

A handwritten signature in blue ink that reads "Barbara Keefe". The signature is written in a cursive style with a large initial "B".

Barbara Keefe
Deputy Commissioner of Banks
and General Counsel

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