



## COMMONWEALTH OF MASSACHUSETTS

### Office of Consumer Affairs and Business Regulation

#### DIVISION OF BANKS

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February 21, 2023

Via electronic mail

[jerry@lofty.ai](mailto:jerry@lofty.ai)

Jerry Chu  
CEO  
Lofty Markets

Dear Mr. Chu:

This letter is in response to your correspondence on behalf of Lofty Markets (Lofty) received by the Division of Banks (Division) on October 24, 2022 in which you request an opinion that the described activities of Lofty and its Trading Platform do not require a foreign money transmission license under Massachusetts law pursuant to M. G. L. c. 169.

Per your correspondence, Lofty AI's Trading Platform would be the exclusive avenue for Lofty users (Subscribers) to post offers and bids for Fractional Interests of real estate investments. The Trading Platform would be available solely to Subscribers that have previously purchased a Fractional Interest from Lofty AI, or to natural persons seeking to purchase such Fractional Interests from a Subscriber. Your submission describes the user verification process for those Lofty users who have not previously been verified through Lofty AI.<sup>1</sup> Your correspondence also confirms that the Trading Platform will not permit order matching for any assets other than Fractional Interests.

With respect to the Trading Platform's operations, your correspondence describes its role as solely a technology provider. Specifically, the Trading Platform will provide Subscribers with the ability to post their Fractional Interests for sale at a specific price and will match those offers for sale with those seeking to purchase the offered Fractional Interests at the specific price. Orders are matched automatically based upon a strict price/time priority. Critically, because the orders are matched solely based upon price/time priority, Subscribers do not know and cannot control the identity or location of the counter-party to the matched order. Your correspondence emphasizes that Lofty is solely the technology provider that allows for the matching of orders. Your letter further asserts that Lofty never has custody of Subscribers' Fractional Interests or fiat, nor does it control the movement of Subscribers Fractional Interests or fiat. Further, your submission states that Lofty will never have the ability to facilitate settlement of a matched trade. As noted above, the matched orders are settled among the Subscribers off-platform through the Alogrand blockchain. Your supplemental correspondence provides further detail as to how the transactions are executed off-platform. Specifically, your additional submission notes that all transactions are "auto-executed" through a smart contract, and that once both parties have taken the appropriate steps, the transaction, including applicable trading fees, are auto-executed by means of a smart contract. The smart contract is responsible for delivery of the interests to both parties and remits the applicable trading fee to Lofty. As described by

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<sup>1</sup> Your submission describes the required process for an individual Subscriber to be able to access the Trading Platform. Lofty and Lofty AI use a third-party vendor to complete automated digital verification of potential Subscribers, as described in detail in your correspondence.

your correspondence, the process is completely automated and executes these transactions on a near instantaneous basis, and as such, there is no settlement or delivery risk that one or both parties may fail to settle the transaction.

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. Your submission makes clear the function and purpose of the Lofty Trading Platform is to act solely as the technology provider for the matching of orders. Your letter confirms that the Lofty Platform matches orders on an anonymous basis through strict time/price priority. Through this automated process, Subscribers 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 an order is matched. Accordingly, even if the Fractional Interests were deemed to fall within the scope of M. G. L. c. 169, based on the facts presented, Lofty is not required to be licensed as a foreign transmittal agency by the Division. *See* Division Opinions 21-009; 20-003; 18-003.<sup>2</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. Please also note that the Division's determination that licensure is not required on a particular set of facts should not be construed as a review or endorsement of a company or business model. Likewise, the Division's review and opinion is limited solely to the question of whether a foreign money transmission license is required and is not an evaluation of any other licensing, registration, or permissibility questions under Massachusetts law.

Sincerely,

Barbara Keefe  
Deputy Commissioner of Banks  
and General Counsel

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<sup>2</sup> Your submission also asserts that Lofty does not require a money transmission license because it does not directly engage in or otherwise custody or control Subscriber's fiat or Fractional Interests. The Division expresses no opinion on this alternative argument.