



COMMONWEALTH OF MASSACHUSETTS

DIVISION OF BANKS

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November 29, 2023

Via Electronic Mail
nikola@axonfinance.io

Nikola Penchev
Attorney at Law

Dear Mr. Penchev:

This letter is in response to your correspondence to the Division of Banks (Division) seeking an advisory legal opinion on behalf of your client (Client or Company) as to whether foreign transmittal licensure is required under M.G.L. c. 169.

Your Client is registered as Money Service Business with FinCEN and is a Delaware limited liability company. As described in your correspondence, the Company intends to offer a mobile application for use by United States customers. Your correspondence confirms that Client will offer three services to customers: (a) a customer can purchase virtual currency with US dollars from the Client; (b) the customer can sell virtual currency for US dollars to the Client; and (c) the customer can acquire one type of virtual currency from the Client in exchange for another type of virtual currency. Prior to engaging in any transactions with customers, customers seeking to utilize your Client's application must fulfill the Company's Know Your Customer (KYC) and Anti-Money Laundering (AML) procedures. Your correspondence provides a description of the flow of funds for the services the Company will offer and has confirmed that all three of the foregoing transactions are two-party transactions between the Company and the customer. The customer will engage in the described transactions with the Company by utilizing the customer's own virtual currency wallet. None of the transactions involve matching of buy and sell offers by third parties.¹ Your Client does not take custody of funds to hold for future transmission to a third party. Notably, your correspondence confirms that the Company will only provide services to customers located in the United States.

¹ Your correspondence notes that in a purchase transaction, there may be a situation where the Company does not have the requested amount of virtual currency in its own storage. In that scenario, the Company would immediately purchase the requested amount of virtual currency on the open market (through a decentralized exchange protocol) at its own expense in order to fulfill the purchase request by the Customer. Your submission confirms that the purchase by the Company is simply an open-market purchase in order to fulfill the order and that the Company is not acting as an intermediary between the Customer and any third party.

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 an initial matter, your correspondence confirms that Company will only provide services to customers located in the United States. As such, the Company will not be providing any services to customers located in foreign countries. Because Massachusetts General Laws chapter 169 only applies to persons who engage in the business of receiving deposits of money for the purpose of transmitting such money or equivalents to foreign countries, chapter 169 is inapplicable and licensure by the Division is not required.

Furthermore, in the event your client expanded its business model to include customers inside and outside of the United States, your submission confirms that the Company's business model permits customers to purchase virtual currency from the Company's own supply, to sell their virtual currency to the Company in exchange for fiat, and exchange cryptocurrency for another cryptocurrency with the Company. In the transactions described, your Client either receives funds or receives virtual currency from a customer. The Company's receipt of funds or virtual currency would not be for the purpose of transmission to a foreign country; rather, it would be for the purchase of virtual currency from a customer, the sale of virtual currency to a customer, or the exchange of virtual currency for another virtual currency with a customer. Each transaction consists of the customer engaging in one of these transactions solely with the Company as a two-party transaction with a customer that has completed the Company's KYC/AML process. Your Client's acceptance of fiat or virtual currency through the described purchase or sale transactions does not facilitate the transmission of funds or virtual currency to any third party. *See* Division of Banks Opinions 22-002, 20-002, 19-008, and 18-002. Accordingly, based on the facts presented, your Client is not required to be licensed as a foreign transmittal agency by the Division.

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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