



IDFPR

Illinois Department of
Financial and Professional Regulation

Division of Financial Institutions

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JB PRITZKER
Governor

MARIO TRETO, JR.
Acting Secretary

FRANCISCO MENCHACA
Director

January 4, 2022

Tom Sagi
Co-Founder & CEO, Hourly, Inc.
660 Homer Ave, Palo Alto, CA 94301
tom@hourly.io

Re: Hourly, Inc. Request for Non-Binding Statement

VIA ELECTRONIC MAIL

Non-Binding Statement 2022-1

Dear Mr. Sagi:

Thank you for your letter. You requested a non-binding statement pursuant Title 38, Section 200.310 of the Illinois Administrative Code addressing whether Hourly, Inc.'s ("Hourly") proposed disbursement of payroll funds via Atlantic Capital Bank ("ACB") requires licensure under the Illinois Transmitters of Money Act ("TOMA"). You did not request confidential treatment.

Please be advised that consistent with governing law, the Illinois Department of Financial and Professional Regulation - Division of Financial Institutions ("Department" or "Division") does not render formal legal opinions or interpretations and non-binding statements do not have precedent value.

In addition, facts or conditions different than those presented will require different conclusions. Persons other than those requesting the statement should not rely on this statement. The Division has not independently verified any represented facts, and instead has relied upon the statements and representations contained in your correspondence.

BACKGROUND

Hourly is a Delaware Corporation located in Palo Alto, California. Hourly is in the business of providing payroll services to employers. Hourly requests a determination from the Department whether it is required to obtain a license pursuant to TOMA.

FACTS

Hourly offers payroll services in partnership with partner banks such as Atlantic Capital Bank ("ACB"), a nationally chartered bank located in Georgia. Hourly has partnered with ACB so that it may provide payroll functions without ever taking custody of the employer's funds.

Hourly represents its services operate as such: (1) employers initiate a payroll submission with Hourly; (2) Hourly calculates the payroll submission; (3) Hourly communicates debit or credit ACH instructions to the processing bank; (4) the processing bank transfers the funds directly to the employee's bank or government agency. Hourly represents that at no time will the employer funds be deposited into Hourly's bank account.

Employer payroll funds are held in a bank account with Hourly's partner bank. The account is non-interest bearing and is titled to the bank.

Hourly allows customer payment through the ACH network. Hourly represents it will never co-mingle these payments with payroll funds.

APPLICABLE LAW

Pursuant to 205 ILCS 657/5 of the Transmitters of Money Act:

"Money transmitter" means a person who is located in or doing business in this State and who directly or through authorized sellers does any of the following in this State:

- (1) Sells or issues payment instruments.
- (2) Engages in the business of receiving money for transmission or transmitting money.
- (3) Engages in the business of exchanging, for compensation, money of the United States Government or a foreign government to or from money of another government.

Pursuant to 205 ILCS 657/5 of the Transmitters of Money Act:

"Transmitting money" means the transmission of money by any means, including transmissions to or from locations within the United States or to and from locations outside of the United States by payment instrument, facsimile or electronic transfer, or otherwise, and includes bill payment services.

Pursuant to the licensing requirement of 205 ILCS 657/10 of the Transmitters of Money Act:

No person may engage in this State in the business of selling or issuing payment instruments, transmitting money, or exchanging, for compensation, payment instruments or money of the United States government or a foreign government to or from money of another government without first obtaining a license under this Act. Separate licenses shall not be required, however, for persons acting as authorized sellers of licensees under this Act.

Pursuant to 205 ILCS 657/15, the following are exempt from licensing under the Act:

- (1) The United States and any department or agency of the United States.
- (2) This State and any political subdivision of this State.
- (3) Banks, trust companies, building and loan associations, savings and loan associations, savings banks, or credit unions, licensed or organized under the laws of any state or of the

United States and any foreign bank maintaining a branch or agency licensed or organized under the laws of any state or of the United States.

...

(6) An operator of a payment system to the extent that it provides processing, clearing, or settlement services between or among persons exempt under this Section in connection with wire transfers, credit card transactions, debit card transactions, stored value transactions, automated clearing house transfers, or similar funds transfers.

CONCLUSION

If all of the facts provided by Hourly are true and correct, the Division would not recommend that enforcement action be initiated against Hourly if they proceeded with the proposed service.

The Division expressly disclaims any obligation to advise you of any changes in the circumstances, laws or events that may occur after this date or otherwise update this response. This letter does not address the applicability of any law except TOMA.

Sincerely,

Francisco Menchaca
Director, Division of Financial Institutions

By,

S/David Berland
David Berland
Deputy General Counsel