



Charles G. Cooper
Commissioner

TEXAS DEPARTMENT OF BANKING

2601 North Lamar Blvd., Austin, Texas 78705
512-475-1300 / 877-276-5554
www.dob.texas.gov

February 7, 2020

Via email to tom@hourly.app

Mr. Tom Sagi
Co-Founder & CEO
Hourly, Inc.
660 Homer Ave.
Palo Alto, CA 94301

Re: Texas Money Transmission License Determination

Dear Mr. Sagi:

I am writing in response to your January 12, 2020 letter to the Texas Department of Banking (Department) on behalf of **Hourly, Inc.** (Hourly) in which you described the services Hourly plans to offer in Texas and requested a determination as to whether or not Hourly will be required to obtain a Texas money transmission license. **The Department has determined that Hourly will not be required to obtain a money transmission license to operate in Texas.** The Department's determination is based on the following:

1. The business overview, agreements and Proposed Terms of Service you provided to the Department with your letter.
2. The January 30, 2020 conference call between the Department, Hourly, First International Bank & Trust (Processing Bank) and the Processing Bank's "Kotapay" division (Kotapay).
3. The January 30, 2020 letter provided to the Department by corporate counsel for the Processing Bank, which describes the legal relationship between the Processing Bank and Kotapay.

BACKGROUND

Hourly is a Delaware Corporation located in Palo Alto, California. It provides payroll processing, time tracking and workers' compensation insurance services to customers in the construction, light industrial, restaurant and retail industries. Hourly currently operates exclusively in California, but wishes to offer its services in Texas. To accomplish its expansion into Texas, Hourly proposes a three-party agreement between Hourly, its Texas customers (Customers) and Kotapay. It is important to note that the Processing Bank is an FDIC insured North Dakota state-chartered bank. Kotapay is an internally operated division of the Processing Bank, not a separate business entity. The name

“Kotapay” is an official trade name which is owned by the Processing Bank and registered with the North Dakota Secretary of State.

PROPOSED PAYROLL PROCESSING SERVICES

The three-party agreement between Hourly, its Customers and Kotapay will work as follows:

1. Customers will initiate payroll submissions using software provided by Hourly.
2. Upon the receipt of a payroll submission from a Customer, Hourly will calculate the payroll and payroll taxes, and provide a draft preview of the payroll run to the Customer via an online interface.
3. The Customer will review the draft of the payroll run and provide Hourly with notification when the Customer is ready for the payroll to be processed. Upon receipt of this notification, Hourly will provide Kotapay with debit and credit instructions for the Customer’s payroll.
4. Upon receipt of the debit and credit instructions from Hourly, Kotapay will debit the Customer’s designated bank account for the total amount of the payroll and payroll taxes. The funds will be placed in an account belonging to the Processing Bank. Once the Customer’s funds clear, Kotapay will use the credit instructions provided by Hourly to disburse the funds to the Customer’s employees and the appropriate taxing authorities using the Automated Clearing House (ACH) Network.
5. Hourly will charge its Customers a fee for its payroll processing services. Kotapay will charge Hourly a fee for facilitating the movement of funds through the ACH Network.

LEGAL ANALYSIS AND DETERMINATION

Money transmission means “the receipt of money or monetary value by any means in exchange for a promise to make the money or monetary value available at a later time or different location.” Texas Finance Code (Finance Code) §151.301(b)(4). A person engages in the business of money transmission if “the person receives compensation or expects to receive compensation, directly or indirectly, for conducting money transmission.” Finance Code §151.302(b).

Pursuant to Finance Code §151.302(a), a person may not engage in the business of money transmission in Texas or advertise, solicit, or represent that the person engages in the business of money transmission in Texas unless the person is licensed under Finance Code, Chapter 151, Subchapter D (Subchapter D); is an authorized delegate of a person licensed under Subchapter D, and appointed by the license holder in accordance with Finance Code §151.402; is excluded from licensure under Finance Code §151.003; or has been granted an exemption under Finance Code §151.302(c).

Because of the three-party agreement between Hourly, its Customers and Kotapay, Hourly will never take possession of Customer funds. Rather Customer funds will be sent directly to Kotapay for disbursement to Customers’ employees and the appropriate taxing authorities. Since Hourly will not be receiving Customer funds in exchange for a promise to make those funds available at a later time

or different location, it will not be conducting money transmission in Texas and will not be required to obtain a Texas money transmission license.

Kotapay will be receiving funds directly from Customers in exchange for a promise to make those funds available to employees and taxing authorities at a later time or different location. In addition, Kotapay will be directly compensated for this service. Therefore, Kotapay will be engaging in the business of money transmission in Texas. However, Finance Code §151.003(3) excludes from licensure federally insured financial institutions that are organized under the laws of the State of Texas, another state, or the United States. As noted above, the Processing Bank is a federally insured financial institution that is organized under the laws of the State of North Dakota, and Kotapay is an internally operated division of the Processing Bank, not a separate business entity. Therefore, the Processing Bank and Kotapay are excluded from licensure in Texas.

This determination is based on the information you provided to the Department as summarized above. If I have misstated any facts, there are material facts that have not been presented, or the services offered by Hourly or Kotapay change materially, then please contact the Department for a review of how such changes might affect this determination.

If you have any questions about this determination, please contact me directly.

Sincerely,



Alice E. Geyer
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cc (via email): Russell Reese, Assistant Deputy Commissioner, Texas Department of Banking
Jesse Saucillo, Director, Non-Depository Supervision, Texas Department of Banking
Catherine Reyer, General Counsel, Texas Department of Banking
John Docken, Vice President and Corporate Counsel, First International Bank & Trust
Jim Haug, Senior Vice President and Director of Kotapay



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January 12, 2021

Via email to tom@hourly.app

Mr. Tom Sagi
Co-Founder & CEO
Hourly, Inc.
660 Homer Ave.
Palo Alto, CA 94301

Re: Second Determination Letter

Dear Mr. Sagi:

I am writing in response to your December 29, 2020 letter to the Texas Department of Banking ("Department") on behalf of Hourly, Inc. ("Hourly") in which you described two proposed modifications to the services Hourly plans to offer in Texas and requested clarification on whether the modifications would impact the formal determination the Department issued to Hourly on February 7, 2020. Based on the information you provided in your letter and our telephone conversation on January 6, 2020, the Department has determined that your proposed modifications will not change the Department's February 7, 2020 determination that Hourly is not required to obtain a money transmission license to operate in Texas.

BACKGROUND

Hourly is a Delaware Corporation located in Palo Alto, California. It provides payroll processing, time tracking, and workers' compensation insurance services to customers in the construction, light industrial, restaurant, and retail industries. Hourly currently operates exclusively in California, but plans to offer its services in Texas. To accomplish its expansion into Texas, Hourly originally proposed a three-party agreement between Hourly, its Texas customers, and Kotapay, an internally operated division of First International Bank & Trust ("the Bank"), which is an FDIC-insured North Dakota state-chartered bank.

The process was to work as follows. Hourly customers would initiate payroll submissions using software provided by Hourly. Upon the receipt of a payroll submission from a customer, Hourly would calculate the payroll and payroll taxes, and provide a draft preview of the payroll run to the customer via an online interface. The customer would review the draft of the payroll run and provide Hourly with notification when the customer was ready for the payroll to be processed. Upon receipt of this notification, Hourly would provide Kotapay with debit and credit instructions for the customer's payroll. Upon receipt of the debit and credit instructions from Hourly, Kotapay

would debit the customer's designated bank account for the total amount of the payroll and payroll taxes. The funds would be placed in an account belonging to the Bank. Once the customer's funds cleared, the Bank would use the credit instructions provided by Hourly to disburse the funds to the customer's employees and the appropriate taxing authorities using the Automated Clearing House (ACH) Network.

Since Hourly would not take possession of or have control over any customer funds, the Department determined on February 7, 2020 that Hourly would not be conducting money transmission in Texas and would not be required to obtain a Texas money transmission license.

PROPOSED MODIFICATIONS

As explained above, Hourly originally named Kotapay as its sole ACH transaction processor. With its first proposed modification, Hourly will add Atlantic Capital Bank, N.A. ("ACB") and Silicon Valley Bank ("SVB") as additional ACH processors. ACB is an FDIC-insured national bank regulated by the Office of the Comptroller of the Currency ("OCC"). SVB is an FDIC-insured California state-chartered bank. The original process and flow of funds explained above will not change. Hourly will not take possession of or have control over any customer funds with this first modification.

Under the original process explained above, the only payment methods for employees are paper checks or direct deposits. With its second proposed modification, Hourly will add an additional payment option by partnering with U.S. Bank, N.A. ("US Bank") to issue payroll debit cards. US Bank is an FDIC-insured national bank regulated by the OCC. Hourly will collect and transmit employee information to US Bank for the purpose of opening virtual bank accounts and issuing the payroll debit cards. US Bank will use debit and credit instructions provided by Hourly to debit customer bank accounts and disburse payroll funds to employee payroll debit cards. As with Hourly's first proposed modification, the original process and flow of funds explained above will not change. And, as with paper checks and direct deposits, Hourly will not take possession of or have control over any customer or employee funds related to the payroll debit cards.

LEGAL ANALYSIS AND DETERMINATION

Finance Code §151.003(3) excludes from licensure federally insured financial institutions that are organized under the laws of the State of Texas, another state, or the United States. Both ACB and US Bank are federally insured financial institutions organized under the laws of the United States. SVB is a federally insured financial institution organized under the laws of California. Therefore, these banks are excluded from licensure in Texas. Additionally, with the two modifications above, Hourly will not receive or have control over any customer or employee funds. Therefore, the original determination the Department issued to Hourly on February 7, 2020 does not change and Hourly is not required to obtain a Texas money transmission license.

This second determination is based on the information you provided to the Department as summarized above. If I have misstated any facts, there are material facts that have not been presented, or the services offered by Hourly, its ACH processors, or US Bank change materially,

Mr. Tom Sagi
Second Determination Letter
January 12, 2021

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then please contact the Department for a review of how such changes might affect this determination.

If you have any questions, please contact me directly.

Sincerely,



Alice E. Geyer
Assistant General Counsel
(512) 475-0439 direct
alice.geyer@dob.texas.gov

cc (via email): Russell Reese, Assistant Deputy Commissioner, Texas Department of Banking
Jesse Saucillo, Director, Non-Depository Supervision, Texas Department of Banking
Catherine Reyer, General Counsel, Texas Department of Banking