

COMMONWEALTH OF MASSACHUSETTS

Office of Consumer Affairs and Business Regulation

DIVISION OF BANKS

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January 8, 2018

Nancy R. Wilsker, Esq.
Hinckley, Allen & Snyder LLP
28 State Street
Boston, MA 02109-1775

Dear Ms. Wilsker:

This letter is provided in response to your correspondence dated March 2, 2017 to the Division of Banks (Division) in which you request an opinion as to whether a small loan license is required for the activities of your client as described in your correspondence.

As explained in your letter, you represent clients who are licensed as motor vehicle sales finance companies with the Division. In the fact pattern you describe, car purchasers often trade in their existing vehicles at the time of purchasing a new vehicle. Any existing debt owed on the vehicle to be traded in must be paid off as part of the consumer's purchase of the new vehicle. Where the balance owed on the trade-in vehicle is greater than the value of the vehicle itself, this negative amount, often referred to as "negative equity," is paid to the existing creditor and financed in conjunction with the consumer's purchase of the new vehicle. Your clients are licensed motor vehicle sales finance companies pursuant to G. L. c. 255B who purchase motor vehicle sales contracts, including some involving the financing of negative equity in amounts of \$6,000 or less with interest rates in excess of twelve percent.

Massachusetts General Laws chapter 140, section 96 provides, in pertinent part:

"No person shall directly or indirectly engage in the business of making loans of six thousand dollars or less, if the amount to be paid on any such loan for interest and expenses exceeds in the aggregate an amount equivalent to twelve per cent annum upon the sum loaned, without first obtaining from the commissioner of banks, in sections ninety-six to one hundred and fourteen, inclusive . . . a license to carry on the said business . . . *The buying or endorsing of notes or the furnishing of guarantee or security for compensation shall be considered to be engaging in the business of making small loans within said sections, but the foregoing provisions of this sentence shall not apply in the case of any transaction which involves any note or other instrument evidencing the indebtedness of a buyer to the seller of goods, services or insurance for a part or all of the purchase price; provided, however, that any advance of money by such seller or, by a person acting on his behalf for the purpose of paying an existing indebtedness of such buyer or for any other purpose shall constitute a loan of money subject to the provisions of this section.*" (Emphasis added).

The first sentence of § 96 sets forth the general requirement that no person shall engage in the business of making small loans without first obtaining a license from the Commissioner. The italicized

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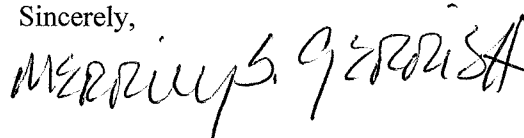
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sentence above addresses the buying or endorsing of notes. As written, the sentence provides that an entity buying or endorsing notes is in the business of making small loans within the pertinent sections of the G. L. c. 140, but also clarifies that if an entity is buying notes evidencing the sale of goods or services, then this activity does not constitute the business of making small loans. The final provision of the sentence goes on to impose a further condition, however, requiring that if such seller of goods or services advances any money to a buyer for the purpose of paying an existing indebtedness of such buyer or for any other purpose, that this advance shall constitute a loan of money "subject to the provisions of this section." The plain statutory language, therefore, requires that the purchase of such notes likewise requires a small loan license. Accordingly, it is the position of the Division that the statute requires that, unless specifically exempted from the small loan license requirement, all those engaged in the business of purchasing contracts with negative equity financing coming within the parameters of the small loan statute, including licensed motor vehicle sales finance companies, are required to obtain a small loan license from the Division.

While, as a general matter, the Division does not favor the practice of requiring multiple licenses for related components of a financing transaction, the Division is constrained by the language of the statute at issue. To the extent your client is interested in eliminating the small loan license requirement for those entities already licensed by the Division under G. L. c. 255B, the Division encourages your client to contact the applicable industry group and its legislators to pursue a statutory resolution of this issue.

The conclusions reached in this letter are based solely on the facts presented. Fact patterns which vary from that presented may result in a different position statement by the Division.

Sincerely,

A handwritten signature in black ink, appearing to read "Merrily S. Gerrish". The signature is fluid and cursive, with the first name "Merrily" being more prominent than the last name "Gerrish".

Merrily S. Gerrish
Deputy Commissioner of Banks
and General Counsel

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