

**COMMONWEALTH OF MASSACHUSETTS**

**Office of Consumer Affairs and Business Regulation**

**DIVISION OF BANKS**

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COMMISSIONER

August 13, 2019

Dsu-Wei Yuen, Esq.  
Davis Wright Tremaine LLP  
920 Fifth Avenue, Suite 3300  
Seattle, WA 98104

Dear Ms. Yuen:

This letter is in response to your correspondence dated May 21, 2019 to the Division of Banks (Division) on behalf of a client company (Client) requesting a determination relative to whether the Client is required to be licensed as a foreign transmittal agency. The licensing inquiry on behalf of your Client was also the subject of a telephone call with Division staff.

As explained in your letter, the Client is a privately-held company based in the United Kingdom (U.K.) that is registered with the U.K. Financial Conduct Authority and authorized to provide payment services in the U.K. and across Europe. The Client intends to offer its services in the United States through an affiliate, a Delaware corporation. The Client's proposed business would permit U.S. and non-U.S. merchants the ability to receive payments for goods and services from end-customers, including consumers, through the Automated Clearing House network (ACH). Your correspondence provides a detailed description of the proposed service to be offered by your Client to merchants in the United States. First, merchants who wish to utilize the Client's services are onboarded to the Client's system after executing a contract with the Client, submitting the required information, and completing the Client's verification process. The Client only contracts to deliver its services to merchants engaged in the business of providing goods or services. The merchant, facilitated through the Client's platform, then obtains the end-customer's authorization to debit the end-customer's bank account. The end-customer's authorization is stored with the Client, and the Client then notifies the merchant that the authorization is in place. Once this occurs, the merchant may send a request to the Client that the end-customer be billed for the cost of whatever goods and services have been provided. This may include recurring payments or single, one-off payments. The merchant notifies the end-customer of the date when the payment will be debited from his or her account in accordance with applicable law and requirements. The Client sends the payment request, via its US bank, to initiate the ACH debit of the end-customer's bank account. The end-customer's bank is notified of the ACH debit, and the funds are transferred from the end-customer's bank account to the Client's US bank account. The funds are held by the Client with its bank for a brief period (typically 48 hours) and then transferred to the merchant, minus the fee due to the Client. The Client's platform also enables end-customers to receive refunds from merchants through the ACH network.

As noted in your correspondence, the Client does not have a direct contractual relationship with the end-customer; rather, the end-customer has a direct relationship with the merchant, and the end-customer authorizes the Client, as the agent of the merchant, to effect ACH debits from his or her bank account. End-

Dsu-Wei Yuen, Esq.

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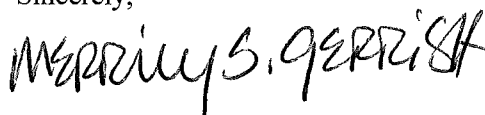
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customers do not pay any fee to the Client. Furthermore, the Client will only offer its ACH debit payment services, as described above, pursuant to the preexisting written contract entered into between the Client and the merchant. This contract expressly appoints the Client as the agent of the merchant for purposes of processing the end-customer's payment, and, the contract provides that delivery of the funds to the Client will satisfy the end-customer's payment obligation to the merchant. A copy of the proposed contractual language was also submitted with your request.

Pursuant to M.G.L. c 169, section 1, persons who engage or are financially interested in the business of receiving deposits of money for the purpose of transmitting such deposits to foreign countries must be licensed by the Division. Licensing questions under chapter 169 traditionally have been evaluated by the Division on a case-by-case basis, taking into account: (1) whether money or its equivalent is deposited for the purpose of transmission to a foreign country; (2) the location and manner of the deposit-taking and transmittal; and, more generally, (3) whether the money transmitting operations of a particular enterprise are such as would adequately protect Massachusetts customers. In this case, the Client's services are provided only for the purposes of processing payments for the goods and services that end-customers have purchased from merchants in the regular course of business. *See* Division Opinion 14-009. The Client does not provide a general service of money transmittal for merchants or end-customers, and does not offer its services directly to individual consumers. In addition, funds will be transferred from the end-customer's account to the Client's account held with a US bank only through formal banking channels utilizing the ACH network. Lastly, the contract entered into between the Client and the merchant will: a) expressly appoint the Client as agent of the merchant; and b) provide that the end-customer's payment obligation to the merchant is satisfied once funds are received by the Client through the ACH transaction. In light of the foregoing, it is the position of the Division that a foreign transmittal agency license would not be required.

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,



Merrily S. Gerrish  
Deputy Commissioner of Banks  
and General Counsel

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