



# COMMONWEALTH OF MASSACHUSETTS

## Office of Consumer Affairs and Business Regulation

### DIVISION OF BANKS

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February 16, 2021

Andrea Donkor  
PayPal, Inc.  
2211 North First Street  
San Jose, CA 95131

Dear Ms. Donkor:

This letter is in response to your correspondence of December 18, 2020 to the Division of Banks (Division) requesting an opinion as to whether a check seller license is required based upon the activities described in your correspondence.

Your correspondence states that PayPal, Inc. (PayPal), a Massachusetts foreign transmittal agency licensee under General Laws chapter 169, is a company that provides various forms of domestic and international electronic funds transmission service. This service is provided to consumers under several trade names, including PayPal, Venmo, Xoom, and Hyperwallet. With respect to the operations of PayPal and Venmo, the core service provided to consumers through these services involves a digital wallet that allows consumers to make person-to-person (P2P) payments and virtual or physical payments to a business. In contrast, Xoom is primarily a remittance service whereby consumers can transfer funds to third parties in foreign countries. Lastly, Hyperwallet is a service which allows companies to distribute funds to a large number of payees through electronic fund transfers. With each of these services, the payee has the option of receiving the funds through a bank account or debit card transfer, a deposit to a PayPal or Venmo account, a credit to a pre-paid card, a cash pick-up, or the issuance of a paper check payable to the payee.

None of the services above permit a PayPal user to make payment to a third party by check or purchase a check for the purpose of making a payment. Additionally, none of the services above include any marketing of check issuance as a feature of the service. As noted in your correspondence, paper checks may be issued in two limited circumstances.

In the first scenario, a check to a Massachusetts consumer may be issued at the request of the consumer in order to refund an amount held for the consumer for which they are unable or unwilling to receive an electronic payment. Further, in the issuance of a check as described above, PayPal utilizes the services of Wells Fargo, a federally chartered bank supervised by the Office of the Comptroller of the Currency. PayPal does not independently issue checks to consumers. Lastly, such a check is made payable to the payee – it is never made payable to cash or a third party.<sup>1</sup> The second scenario involves Hyperwallet.

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<sup>1</sup> As noted in your correspondence, a requesting consumer is always listed as payee except in the limited circumstance where PayPal is under some other legal obligation to have a different payee (e.g. escheatment requirements or in accordance with other court orders).

In a Hyperwallet transaction, a customer is able to effect a mass electronic payout to different company payees through a variety of methods. The method of distribution to a payee is solely at the option of the payee, and includes transfer to a bank account or debit card, a deposit to a PayPal or Venmo account, a credit to a prepaid card, a cash pick-up, and the issuance of a paper check. As noted in your correspondence, very few payees choose to receive their payment through the issuance of a paper check. As with the first fact pattern, the check is only made payable to the payee and is never made payable to a third party or to cash. Likewise, as with the first scenario, it is solely the payee's choice to receive payment via the issuance of the paper check. Neither PayPal nor PayPal's user making the payment may select how the funds are distributed to the payee.

General Laws chapter 167F, section 4 provides, in part, that, "Any bank, a national banking association or savings and loan association authorized to do business in the commonwealth, *may engage directly in the business of selling, issuing or registering checks or money orders*, except that trust companies and national banks may engage in such business through agents who shall not be deemed to be branches of such banks. *No person, other than the foregoing, shall engage in such business directly or indirectly unless he files on or before January fifteenth in each year a sworn statement setting forth his name and address, the names and business addresses of his agents, other than a bank, a national banking association or savings and loan association, authorized to receive money and transact such business on his behalf.*" *Emphasis added.*

As indicated in your request, PayPal provides consumers service in the form of electronic funds transmission; specifically, they permit consumers to pay other consumers or businesses through a digital wallet and, with Hyperwallet, allows for the mass distribution of funds from businesses to consumers wherein the consumer elects the form of payment. PayPal only issues checks to consumers when requested and the requesting consumer is always listed as payee unless PayPal is under some other legal obligation to have a different payee (e.g. escheatment requirements or in accordance with other court orders). As noted in your correspondence, PayPal's operations are centered on providing convenient electronic funds transmission, and as such, the issuance of a paper check in the limited circumstances described above is rare. There is no function within the PayPal system for a consumer to request or remit a third party payment by check. Further, PayPal does not directly issue checks to consumers, but relies on a supervised federally chartered third party bank to effectuate payment to the payee consumer. Moreover, a key feature in both of the fact patterns involving paper checks is that PayPal has no control over whether a payee may ultimately end up receiving the payment at issue via a paper check. In these circumstances, it is the position of the Division that PayPal is not engaged in the business of selling, issuing or registering checks and therefore is not required to obtain a check seller license pursuant to G. L. c. 167F, §4.

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,  
/s/ Barbara Keefe  
Deputy Commissioner of Banks  
and General Counsel