



COMMONWEALTH OF MASSACHUSETTS

Office of Consumer Affairs and Business Regulation

DIVISION OF BANKS

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April 16, 2021

Lisa Lanham, Esq.
Alston & Bird, LLP
90 Park Avenue
New York, NY 10016

Dear Ms. Lanham:

This letter is in response to your correspondence of February 23, 2021 to the Division of Banks (Division) requesting an opinion as to whether certain financial advisor employees of your client, UBS Financial Services Inc. (UBS), are required to be individually licensed as mortgage loan originators based upon the activities described in your correspondence. You have also provided supplemental correspondence providing additional information about the relevant operations of UBS and its financial advisors.

Factual Background. As described in your request, UBS is a financial services provider that employs financial advisors to offer securities and other investment products to Massachusetts residents. UBS is registered with the Securities and Exchange Commission (SEC) as an investment advisor and broker-dealer and is also registered as a broker-dealer in Massachusetts. The financial advisors employed by UBS are also registered securities agents. Through several offices, both within Massachusetts and outside of Massachusetts, UBS's financial advisors work with their brokerage and advisory clients (who are generally high net worth individuals) to assist them in achieving their financial goals as part of the financial advisor's "know your customer" obligations under applicable SEC and Financial Industry Regulatory Authority (FINRA) rules relating to investment suitability.

In developing wealth management strategies to assist clients achieve their financial goals, UBS financial advisors may determine that a purchase money or refinance residential mortgage loan (including cash out refinances) may be beneficial for the client. According to your correspondence, a client may express interest in following up on a financial advisor's suggestion that she obtain or modify an existing residential mortgage loan and may request further information about mortgage products in general, without expressing an interest in mortgage products from UBS specifically. A client may also inquire as to whether a mortgage loan is available specifically from UBS. In both of these situations, under UBS policies, the financial advisor is permitted to refer the client to an FDIC-insured bank affiliated with UBS (the "Bank"), where the client may obtain further information about mortgage products and potentially apply for a mortgage loan from the Bank. The Bank's employees who take loan applications are federally registered mortgage loan originators who maintain a record on the federal Nationwide Multistate Licensing System & Registry.

Your correspondence states that UBS financial advisors engage in very limited business activities relative to residential mortgage loans at the request of a client. Specifically, UBS advisors may engage in the following activities:

- Speaking with clients about the Bank's mortgage products only generically and within the context of the client's overall wealth management plan at his or her request;
- Providing limited and pre-approved Bank marketing materials to the client;
- Referring an interested client to the Bank for additional information and perhaps for completing a loan application;

Your correspondence also notes that UBS financial advisors are prohibited from:

- Taking a mortgage loan application from a client;
- Assisting any client with completing all or a portion of a residential mortgage application or submitting a completed residential mortgage application to the Bank;
- Requesting that the Bank provide a reduction in interest rate for a client; and
- Offering to pay for a client to receive a reduced interest rate or closing costs.

In supplemental correspondence, you have also confirmed that UBS provides a financial incentive to its financial advisors for providing client referrals to the Bank if the referral results in a closed loan. Your additional correspondence noted the following facts regarding the financial incentive provided to the UBS financial advisor: (1) no part of the financial incentive is provided to the financial advisor by the Bank or by the client/borrower; and (2) no client referral to the Bank is made unless and until the client expresses an interest in a residential mortgage loan. All referrals made are at the request of the client. Additionally, your supplemental correspondence notes that UBS has ensured that the arrangement is fully compliant with the Real Estate Settlement Procedures Act (RESPA). It is your position that UBS financial advisors are not required to be licensed as mortgage loan originators under G. L. c. 255F.

Analysis. Massachusetts General Laws chapter 255F, § 2 defines a mortgage loan originator as “a person who for compensation or gain or in the expectation of compensation or gain: (i) takes a residential mortgage loan application; or (ii) offers or negotiates terms of a residential mortgage loan.” While the statute does not define what constitutes “offer[ing] or negotiat[ing]”, the Division has, in considering a similar fact pattern, looked to the pertinent federal guidance and regulations under the Secure And Fair Enforcement For Mortgage Licensing Act of 2008 (the SAFE Act). *See* Division Opinions 11-028 and 09-021.¹

In these prior opinions, the Division looked to the final rules promulgated by the relevant federal agency pursuant to the SAFE Act. The Consumer Financial Protection Bureau (CFPB) has promulgated rules implementing the SAFE Act found at 12 C.F.R. Part 1008.² The CFPB's rules state in relevant part:

¹ As noted in the Division's prior opinions on this topic, the SAFE Act defines “mortgage loan originator” as an individual who for compensation or gain 1) takes a residential mortgage loan application and 2) offers or negotiates terms of a residential mortgage loan. Consistent with states' ability to establish standards that exceed those required by the SAFE Act, the model state law expanded the definition of “mortgage loan originator” by requiring licensing for an individual who for compensation or gain 1) takes a residential mortgage loan application or 2) offers or negotiates terms of a residential mortgage loan. That model state law was the basis of legislation that became G. L. c. 255F in Massachusetts, which includes the broader definition of mortgage loan originator for licensing purposes.

² At the time of the Division's prior opinions, the Department of Housing and Urban Development (HUD) was the primary federal regulator for enforcement of the SAFE Act. Rulemaking and enforcement of the SAFE Act was

An individual “offers or negotiates terms of a residential mortgage loan for compensation or gain” if the individual: (i) (A) presents for consideration by a borrower or prospective borrower particular loan terms; (B) communicates directly or indirectly with a borrower or prospective borrower for the purpose of reaching a mutual understanding about prospective residential mortgage loan terms; or (C) recommends, refers, or steers a borrower or prospective borrower to a particular lender or set of residential mortgage loan terms in accordance with a duty to or incentive from any person other than the borrower or prospective borrower; and (ii) receives or expects to receive payment of money or anything of value in connection with the activities described in paragraph (c)(2)(i) of this section or as a result of any residential mortgage loan terms entered into as a result of such activities.^{12 C.F.R. 1008.103(c)(2).}³ Accordingly, when previously faced with a fact pattern similar to that presented by your request, the Division looked to relevant federal rules and determined that the financial advisors were mortgage loan originators under the third prong of the above-referenced rule because they referred their clients to a particular lender and received compensation or gain. Please note that “compensation or gain” is interpreted broadly and covers payment of a salary that is unrelated to whether a referral ultimately results in the loan closing. *See* Appendix A to 12 CFR 1008.

Similarly, while UBS financial advisors do not take applications, as noted, the financial advisors are provided with a financial incentive for referring clients to the Bank if the referral results in a closed loan. In doing so, such conduct falls squarely within 12 CFR 1008.103(c)(2)(C), as the financial advisors, with the expectation of receiving a financial incentive, are referring clients to a particular lender in accordance with an incentive provided by UBS. The fact that UBS permits such referrals only when the client has inquired about the availability of mortgage products, whether in general or specifically from UBS, does not alter this analysis.

Conclusion. Consistent with the Division’s prior opinions, then, it is the position of the Division that UBS financial advisors are required to be licensed as mortgage loan originators under Massachusetts law. 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

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transferred from HUD to the Consumer Financial Protection Bureau (CFPB) as of July 21, 2011, and since that time, the CFPB has published final regulations pursuant to the SAFE Act. See 12 C.F.R. Part 1008. The Division also notes that your correspondence references Regulation G, 12 CFR Part 1007. As Regulation G applies only to federal mortgage loan originator registrants, the applicable regulation is Regulation H, 12 CFR Part 1008, applicable to mortgage loan originator licensees.

³ This language expressly incorporates the precise language from the HUD rule with respect to the definition of “offers or negotiates” that was in effect at the time of the Division’s prior opinions on this topic.