



COMMONWEALTH OF MASSACHUSETTS

Office of Consumer Affairs and Business Regulation

DIVISION OF BANKS

1000 Washington Street, 10TH Floor, Boston, MA 02118-6400
(617) 956-1500 · Fax (617) 956-1599 · TDD (617) 956-1577
www.Mass.Gov/DOB

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August 19, 2022

Daynor Carman
VP & General Counsel
Possible Financial Inc.
2231 1st Avenue, Suite B
Seattle, WA 98121

Dear Attorney Carman:

This letter is in response to your correspondence received by the Division of Banks (Division) on June 13, 2022 on behalf of Possible Financial Inc. (Possible Financial) requesting an opinion as to the applicability of the Massachusetts third-party loan servicer registration requirement under M.G.L. c. 93, § 24A with respect to Possible Financial's anticipated business operations in Massachusetts.¹ The Division has also reviewed Possible Financial's business plan, as uploaded by Possible Financial to the Nationwide Multistate Licensing System.

Possible Financial intends to service a credit card branded by Possible Financial (Possible Card) and issued by Coastal Community Bank (Bank). At all relevant times, the Bank remains the lender of record for the account, the issuer, and the party with enforcement rights with respect to the account. The Possible Card is open-end credit with no fixed term. As represented in your correspondence, under Regulation Z, there is no APR, interest rate, or finance charge for the card. As further described in your correspondence, the Possible Card will have two variations: one card with a limit of at least \$400 that carries an \$8.00 per month fee assessed by the Bank, and one card with a limit of at least \$800 that carries a \$16 per month fee assessed by the Bank. These respective fees will be charged to the card account monthly and is explicitly excluded from the definition of finance charge in Section 1026.4(c)(4) of Regulation Z. The fees are disclosed in the cardholder agreement and Truth in Lending (TILA) disclosure as a fee for the issuance or availability of the card, as required by TILA. The only fee that is charged for the Possible Card is the monthly fee. As noted in your letter, there are no late fees, no fees for insufficient funds, and no penalty fees.

¹ As represented in other communications with Division staff, Possible Financial has confirmed it will not be offering any direct loans to consumers in Massachusetts. In addition, while your request makes general reference to the applicability of "any other license/registration", your correspondence limits its discussion and analysis to the Massachusetts third-party loan servicer registration requirement. Similarly, your correspondence notes that Possible Financial has not definitively determined the process for recovery on delinquent accounts, and that the process is still under development. As such, the Division's opinion is limited to the applicability of the loan servicer registration statute pursuant to the process and requirements set forth in Regulatory Bulletin 1.1-102, governing requests for Advisory Opinions.

Your correspondence notes that Possible Financial will conduct marketing activities and also describes the other activities that Possible will conduct as part of its operations in Massachusetts. Specifically, your correspondence states that Possible Financial will engage in “servicing-related activities” including accepting applications via its mobile application, collecting payments from users of the Possible Card, and resolving customer service issues, including complaints and billing disputes.

Massachusetts General Laws chapter 93, sections 24 through 28 governs the registration and supervision of third party loan servicers. Pursuant to M.G.L. c. 93, § 24, a third party loan servicer is defined as a person who uses an instrumentality of interstate commerce or the mails in any business the “principal purpose” of which is servicing a loan directly or indirectly, owed or due or asserted to be owed or due another.”² Further, M.G.L. c. 93, § 24 defines “servicing” as:

receiving a scheduled periodic payment from a borrower pursuant to the terms of a loan, including amounts for escrow accounts, and making the payments to the owner of the loan or other third party of principal and interest and other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the servicing loan document or servicing contract. In the case of a home equity conversion mortgage or reverse mortgage as referenced in this section, servicing includes making payments to the borrower.

Your request inquires whether a third-party loan servicer registration is required, particularly in light of the fact that the accounts to be serviced by Possible Financial involve only open-end credit. Neither the third-party loan servicer statute, nor the Division’s regulation, 209 CMR 18.00 *et seq*, makes any distinction with regard to the type of credit involved in the account being serviced. Likewise, the Division has not issued any advisory legal opinions taking the position that the loan servicer registration is not applicable to those servicing open-end credit accounts. In response to your inquiry, the Division has also considered what is intended to be encompassed by the term “loan” as used in M.G.L. c. 93, § 24. As that term is not defined in the statute, the Division recognizes that industry confusion may exist with regard to the applicability of the loan servicer registration statute to open-end credit card accounts. In analyzing this issue, the Division notes that M.G.L. c. 140, § 114B, governing finance charges for open end credit accounts, refers to “*loans* made pursuant to any open-end credit plan.” (emphasis added). Likewise, the Division has considered that the Massachusetts Supreme Judicial Court has defined a loan as “delivery by one party to and receipt by another party of a sum of money upon agreement, express or implied, to repay it, with or without interest.” *Murphy v. Charlestown Sav. Bank*, 380 Mass. 738, 745 n. 11 (1980) (quoting Black’s Law Dictionary 844 (5th ed. 1979)). In light of these authorities and the plain language of the loan servicer registration statute, the Division concludes that the term “loan” as used in M.G.L. c. 93, § 24 encompasses open-end credit card accounts. Accordingly, it is the position of the Division that Possible Financial must obtain a loan servicer registration with the Division for its third party loan servicing activities in the Commonwealth.

² The statutory language of M.G.L. c. 93, § 24 contains a typographical error. As written, it states:

“Third party loan servicer”, a person who uses an instrumentality of interstate commerce or the mails in any business the principal purpose of servicing a loan directly or indirectly, owed or due or asserted to be owed or due another.

The Division’s regulation, 209 CMR 18.02, corrects this typographical error in the definition of “third party loan servicer” and states:

Third party loan servicer means a person who uses an instrumentality of interstate commerce or the mails in any business the principal purpose of which is servicing a loan directly or indirectly, owed or due or asserted to be owed or due another.

(Emphasis added to highlight the corrected language).

Daynor Carman
August 19, 2022
Page 3

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

Sincerely,

Barbara Keefe
Deputy Commissioner of Banks
and General Counsel

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