



Department of
Commerce

VIA REGULAR U.S. MAIL

October 11, 2022

Hourly, Inc.
Tom Sagi
660 Homer Avenue
Palo Alto, CA 94301

Karyn H. Tierney
Arkansas Bar No. 2003120
karyn.tierney@arkansas.gov

RE: Hourly, Inc.
22-NA-0001

Dear Mr. Sagi:

The Arkansas Securities Department ("Department") is in receipt of your letter dated September 22, 2022, requesting that the Department issue a no-action letter concerning Hourly Inc.'s, ("Hourly") claim of exemption from the licensing requirements of the Arkansas Uniform Money Services Act, ("AUMSA") as codified at Ark. Code Ann. § 23-55-101 through 1007 due to Hourly's payroll services activities. A copy of the request letter is attached for reference.

Based upon the specific facts contained in your request the Staff of the Department ("Staff") would not recommend that the Arkansas Securities Commissioner take an enforcement against Hourly if it does not obtain a license from the Department prior to engaging in the activities detailed in your request letter.

Please note that the position of the Staff is based solely upon the representations made in your request letter and information provided and applies only to the facts as set out therein and does not address the applicability of any law except for the AUMSA. Different facts or circumstances might and often would require a different response or opinion from the Staff. The position of the Staff expressed in this letter only deals with anticipated enforcement action by the Department. Further, the position of the Staff does not purport to be and should not be interpreted to be a legal opinion or an interpretation and non-binding statements by the Staff does not have precedent value.

The Department disclaims any obligation to advise you of any changes in the circumstances, laws, or events that may occur after this date or otherwise update this response.

Sincerely,



Karyn H. Tierney
Arkansas Securities Department

LICENSE DETERMINATION REQUEST

September 22, 2022

VIA EMAIL:

Arkansas Securities Department
1 Commerce Way, Suite 402 Little Rock, AR 72202
E-mail: info@securities.arkansas.gov, ASDInfo@arkansas.gov, jay.drake@arkansas.gov,
karyn.tierney@arkansas.gov

Re: Hourly Inc.'s Request for License Determination in Arkansas

To Whom It May Concern,

We submit this letter on behalf of Hourly, Inc., ("Hourly") a Delaware Corporation in the business of providing payroll services. We respectfully request a license determination letter from the Arkansas Securities Department (the "Staff") pursuant to AR Code § 23-55-201 (2020) confirming that Hourly is not a Transmitter of Money because it never takes possession or custody of any payroll funds. Hourly has a partnership with Atlantic Capital Bank, N.A. ("Atlantic Capital"), a financial institution registered and regulated in Georgia.

Specific Issue for Resolution:

Hourly seeks clarification from the Staff that, based on the facts and circumstances of Hourly's business model, it is not a Transmitter of Money. *See* AR Code § 23-55-201 (2020). The partnership with Atlantic Capital allows Hourly to perform a wide array of payroll functions without ever taking custody of the Employer's funds. The employer, using Hourly's payroll calculations, distributes payroll funds to its employees and the state and federal tax authorities through the Atlantic Bank account.

Summary of the Hourly Payroll Payment Functionality

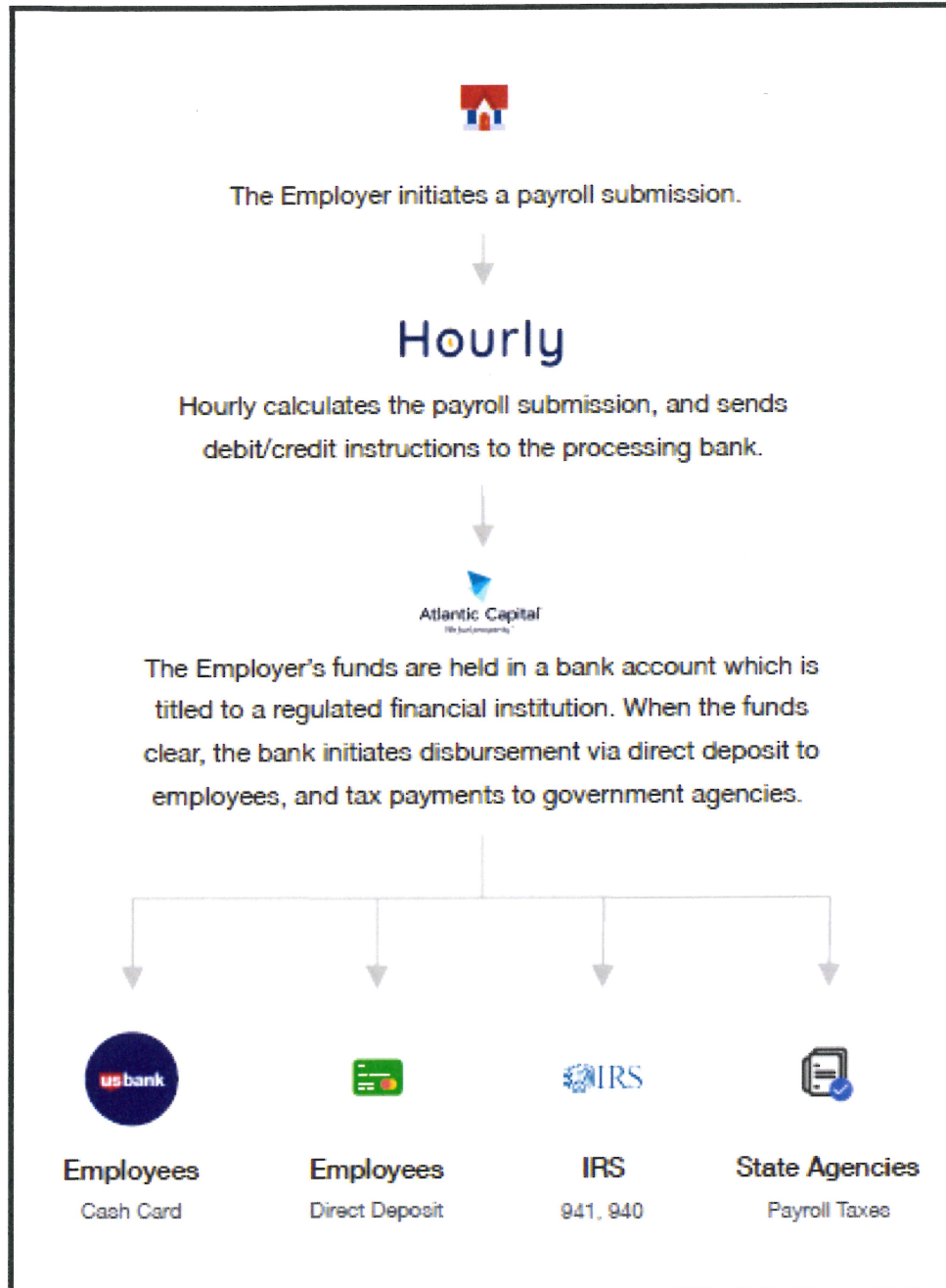
Payroll Services. Hourly provides Employers a payroll solution to calculate and provide reporting of payrolls and payroll taxes. As presented in the Flow of Funds Diagram below, Hourly will maintain an independent contractor relationship account at Atlantic Bank (the "Processor Account") which transfers funds through the Automated Clearing House ("ACH") to the payee (e.g., Employee or tax agency) pursuant to the Authorization Agreement. *See* Exhibit A.

Distribution. Upon notice from the Employer, Hourly will send instructions to the bank to distribute wages and/or tax payments to the appropriate employees and/or government agencies. The distribution occurs by Hourly communicating a debit or credit ACH transfer from the Processor Account directly to the affiliated Employee bank account. In the event that an employer wishes to pay the employee with a live paper check, the amount of the check will be excluded from the transaction, and a check drawn upon the employer's Processor Account will be issued to the employee.

Non-Custodial. Hourly will calculate the Employer's tax liability to federal and state tax authorities in the manner identified by the relevant tax authority and the Employer. Upon

submission of the payroll run by the employer, Hourly will send disbursement instructions to Atlantic Capital outlining the payroll and tax payments to be debited from the employer's Processor Account. Of particular relevance, Hourly will never hold employers' payroll funds, those funds are held and distributed from the Processor Account which is titled to Atlantic Bank.

Flow of Funds Diagram:



Federal Licensing Requirements

Hourly is exempt from registering as a Money Service Business with the Financial Crimes Enforcement Network (“FinCEN”) because of the payment processor exemption. *See* FIN-2014-R012, Exhibit “B”. To gain clarity on this matter, Hourly has obtained a legal opinion confirming the exemption. *See* Exhibit “C”.

Even though Hourly is exempt from the FinCEN registration and is not a business that falls under the scope of the Bank Secrecy Act, the Company has chosen to voluntarily implement an Anti-Money Laundering, Office of Foreign Assets Control Compliance Program as a best practice to reduce the risk of its services being used for money laundering or terrorist financing purposes. Hourly will incorporate applicable requirements of the BSA into its AML Program. The Company also complies with the requirements of the Office of Foreign Assets Control, and other applicable Anti-Money Laundering (“AML”) laws and regulations. The Company has adopted this AML Program to comply with such laws and regulations. *See* Exhibit “D.”

Licensing Requirements for Arkansas

The Arkansas Uniform Money Services Act states the following:

(a) A person may not engage in the business of money transmission or advertise, solicit, or hold itself out as providing money transmission unless the person:

- (1) is licensed under this article;
- (2) is an authorized delegate of a person licensed under this article; or
- (3) is excluded under § 23-55-103.

(b) A license under this article is not transferable or assignable.
See AR Code § 23-55-201 (2020).

Pursuant to AR Code § 23-55-103 (2020), This chapter **does not apply** to:

(4) a **bank**, bank holding company, office of an international banking corporation, branch of a foreign bank, corporation organized pursuant to the Bank Service Company Act, 12 U.S.C. §§ 1861-1867 (Supp. V 1999), or corporation organized under the Edge Act, 12 U.S.C. §§ 611-633 (1994 & Supp. V 1999) under the laws of a State or the United States if it does not issue, sell, or provide payment instruments, stored value, or prepaid access through an authorized delegate that is not such a person;

(9) an **operator of a payment system** to the extent that it provides processing, clearing, or settlement services, between or among persons excluded by this section, in connection with wire transfers, credit card transactions, debit card transactions, stored-value transactions, automated clearing house transfers, similar funds transfers, or prepaid access

Application to Hourly:

As noted in the flow of funds, Hourly never receives the Employer's money, nor does it make a promise to make the money available at a later time or in a different location to the employees or tax authorities. This aspect of the transaction is strictly performed by the Processor Account at Atlantic Capital, a licensed United States bank. Based on Hourly's relationship with Atlantic Capital, we believe Hourly is not required to be licensed under the Act.

Similar letters were sent and have been approved by 14 states. Each of these states have responded that no license is required based on Hourly's model of partnering with Atlantic Capital to perform the actual payroll transactions. You may refer to hourly.io/licenses for the approval letters from these states and/or see the responses in Exhibit "E".

Conclusion

Thank you, we look forward to your license determination response under the Arkansas Uniform Money Services Act. Should you have any questions or require any additional information or clarification, please do not hesitate to contact me at tom@hourly.io.

Thank you for your consideration.

Respectfully submitted,

Hourly, Inc.

s/Tom Sagi

Co-Founder & CEO, Hourly, Inc.
660 Homer Ave, Palo Alto, CA 94301
(650) 303-1262
tom@hourly.io