



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

September 21, 2018

Mark J. Stein
Simpson Thatcher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017

Re: In the Matter of Heartland Payment Systems, Inc.
**Global Payments, Inc. – Waiver Request of Ineligible Issuer Status under Rule 405 of
the Securities Act of 1933**

Dear Mr. Stein:

This is in response to your letter dated September 6, 2018, written on behalf of Global Payments, Inc. (“Global Payments”) and constituting an application for relief from Global Payments being considered an “ineligible issuer” under clause (1)(vi) of the definition of ineligible issuer in Rule 405 of the Securities Act of 1933 (“Securities Act”). Global Payments requests relief from being considered an ineligible issuer under Rule 405, due to the entry on September 21, 2018 of a Commission Order (“Order”) pursuant to Section 8A of the Securities Act against Heartland Payment Systems, Inc. (“Heartland”). The Order requires that, among other things, Heartland cease and desist from committing or causing any violations and any future violations of Sections 17(a)(2) and 17(a)(3) of the Securities Act.

Based on the facts and representations in your letter, and assuming Heartland complies with the Order, we have determined that Global Payments has made a showing of good cause under clause (2) of the definition of ineligible issuer in Rule 405 and that Global Payments will not be considered an ineligible issuer by reason of the entry of the Order. Accordingly, the relief described above from Global Payments being an ineligible issuer under Rule 405 of the Securities Act is hereby granted. Any different facts from those represented or failure to comply with the terms of the Order would require us to revisit our determination that good cause has been shown and could constitute grounds to revoke or further condition the waiver. The Commission reserves the right, in its sole discretion, to revoke or further condition the waiver under those circumstances.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Sincerely,

/s/

Tim Henseler
Chief, Office of Enforcement Liaison
Division of Corporation Finance

Simpson Thacher & Bartlett LLP

425 LEXINGTON AVENUE
NEW YORK, NY 10017-3954

TELEPHONE: +1-212-455-2000
FACSIMILE: +1-212-455-2592

Direct Dial Number
+1-212-455-2310

E-mail Address
mstein@stblaw.com

VIA EMAIL AND FEDERAL EXPRESS

September 6, 2018

Re: In the Matter of Heartland Payment Systems, Inc. — Waiver Request of Ineligible Issuer Status under Rule 405 of the Securities Act

Tim Henseler, Esq.
Chief of Office of Enforcement Liaison
U.S. Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Dear Mr. Henseler:

We are writing on behalf of our client, Global Payments Inc. (“Global”), in connection with the anticipated settlement relating to the above-referenced investigation by the Securities and Exchange Commission (the “Commission”) of Heartland Payment Systems, LLC, formerly known as Heartland Payment Systems, Inc. (“Heartland”), which is now a subsidiary of Global. The settlement would result in entry of an Order Instituting Cease-and-Desist Proceedings Pursuant to Section 8A of the Securities Act of 1933, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order (the “Order”). It is important to note that all of the conduct which was the subject of the above-referenced investigation occurred between 2013 and 2015 – prior to Global’s acquisition of Heartland, which took place in April 2016.

Global is a publicly traded company listed on the New York Stock Exchange (“NYSE”) and is a reporting company under the Securities Exchange Act of 1934, as amended (the “Exchange Act”). Global currently qualifies as a “well-known seasoned issuer” (“WKSI”) as defined in Rule 405 (“Rule 405”) of the Securities Act of 1933, as amended (the “Securities Act”). Although Heartland was not a subsidiary of Global during the time of the stated conduct and Global is not and was never a target of the investigation, Global recognizes that, as Heartland is now a subsidiary of Global, Global would be deemed an “ineligible issuer” as a result of the Order.

Accordingly, pursuant to Rule 405 of the Securities Act, Global respectfully requests that the Commission, or the Division of Corporation Finance (the “Division”),

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acting pursuant to its delegated authority, determine that it is not necessary under the circumstances that Global be considered an “ineligible issuer” as defined in Rule 405 as a result of the contemplated Order and waive the disqualification that would otherwise result from the Order.

Consistent with the framework outlined in the Division’s Revised Statement on Well-Known Seasoned Issuer Waivers (April 24, 2014) (the “Revised Statement”), Global respectfully submits that there is good cause for the Division or the Commission to grant the requested waiver, for the reasons articulated below.

We have been informed that the Division of Enforcement does not object to the grant of the requested waiver. Global requests that the determination that Global is not an ineligible issuer be made effective upon entry of the Order.

BACKGROUND

Heartland and the Division of Enforcement have reached an agreement in principle to settle the matter as described below. In doing so, Heartland has submitted to the Commission an offer of settlement in which, solely for the purpose of proceedings brought by or on behalf of the Commission or to which the Commission is a party, Heartland consents to the entry of the Order without admitting or denying the matters set forth in the Order (except as to the jurisdiction of the Commission and the subject matter of the proceeding).

The Order will provide that, as a result of certain disclosure practices involving a proprietary metric (new margin installed, or “NMI”) used by Heartland, Heartland and its former Chairman and Chief Executive Officer, Robert O. Carr (“Carr”), violated one or more of Sections 17(a)(2) and (3) of the Securities Act. The Order will provide that Heartland and Carr acted negligently in engaging in the conduct that is the subject of the Order. The Order requires Heartland and Carr to cease and desist from committing or causing any violations or future violations of Sections 17(a)(2) and (3) of the Securities Act, and requires Heartland to pay a civil monetary penalty.

DISCUSSION

An issuer that qualifies as a WKSI is eligible for the benefits in the securities offering and communication processes adopted by the Commission in 2005. Among other things, a WKSI can register securities for offer and sale under an “automatic shelf registration statement” on Form S-3, which becomes effective immediately upon filing. Similarly, WKSI benefit from the ability to file automatically effective post-effective amendments to register additional securities and are permitted to pay registration filing fees on a “pay as you go” basis. In addition, WKSI are able to communicate more freely

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than non-WKSIIs during the offering process, including through the use of free-writing prospectuses.¹

Designation as an “ineligible issuer,” however, would result in the loss of all of these benefits. Pursuant to Rule 405 of the Securities Act, an issuer is an “ineligible issuer” if, among other things, “[w]ithin the past three years . . . the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that (A) prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws; (B) requires that the person cease and desist from violating the anti-fraud provisions of the federal securities laws; or (C) determines that the person violated the anti-fraud provisions of the federal securities laws.”

However, Rule 405 also grants the Commission (or the Division pursuant to delegated authority) the authority to determine “upon a showing of good cause that it is not necessary under the circumstances that the issuer be considered an ineligible issuer.” In the Revised Statement, the Division has stated that it would consider the following factors in determining whether to grant a waiver: (1) the nature of the violation and whether it involved disclosure for which the issuer or any of its subsidiaries was responsible or calls into question the ability of the issuer to produce reliable disclosure currently and in the future; (2) whether the alleged misconduct involved a criminal conviction or scienter-based violation; (3) who was responsible for the misconduct and what was the duration of the misconduct; (4) remedial steps taken by the issuer; and (5) impact on the issuer if the waiver request is denied.

For the reasons set forth below, Global respectfully submits that there is good cause for the Commission, or the Division pursuant to delegated authority, to determine that it is not necessary for the public interest or the protection of investors that Global be considered an ineligible issuer and to grant the waiver requested herein.

The Nature of the Violation Does Not Call into Question the Ability of Global to Produce Reliable Disclosure Currently and in the Future

The Order states that Heartland and Carr, through negligent conduct, materially overstated NMI — a proprietary metric used only by Heartland — in their public disclosures from 2013 to 2015. Global was not responsible for these disclosures by Heartland and Carr, and the conduct described in the Order does not implicate the reliability of Global’s disclosures. First, the conduct in the Order occurred prior to Global’s acquisition of Heartland in 2016. Second, the conduct involved a metric that

¹ See Rules 163, 164, and 433 of the Securities Act.

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Global has never used, either prior to or since its acquisition of Heartland. Consequently, nothing about Heartland's or Carr's misconduct from 2013 to 2015 as described in the Order calls into question Global's ability to produce reliable disclosures either currently or in the future.

*Heartland's Misconduct Is Not Criminal in Nature and Does Not Involve Scier-
Based Fraud*

The misconduct described in the Order does not involve a criminal conviction or an intent to defraud. The Order does not include any scier-based anti-fraud violations of the securities laws; rather, it includes violations of Sections 17(a)(2) and (3) of the Securities Act, which are non-scier-based provisions of the federal securities laws.

The Duration of the Misconduct and the Persons Responsible for the Misconduct

As discussed above, all of the conduct that is the subject of the Order occurred prior to Global's acquisition of Heartland in April 2016. In addition, the only other person charged in the Order — Carr — left Heartland upon Global's acquisition in 2016, and never became an officer, director, or employee of Global.

Remedial Steps Taken by Global

The disclosure metric at issue — NMI — was a proprietary metric disclosed only by Heartland and Carr prior to Global's acquisition of Heartland in April 2016. Prior to that acquisition, Global never publicly disclosed a metric similar to NMI and, after Global completed its acquisition of Heartland, Global did not, and will not, make any disclosures relating to NMI. As a result, all disclosure practices that are the subject of the Order have ceased, as the NMI metric is no longer reported. Furthermore, Global has strong internal controls in place to ensure that Global's filings are accurate.

Impact on Global if the Waiver Request is Denied

For Global, the automatic shelf registration process provides an important means of access to the capital markets in a timely and efficient manner. In September 2017, by way of example, Global used the automatic shelf registration process in connection with an acquisition. Without the relief requested from the Commission or the Division in this letter, Global will lose flexibility in accessing the capital markets that would otherwise be available to Global if it were not an ineligible issuer. Being considered an ineligible issuer would preclude Global from taking advantage of many of the benefits set forth in Rule 405 and hinder its access to U.S. capital markets through significantly

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increased time, labor, and cost of such access. Applying ineligible issuer status would impose an unduly severe additional penalty on Global and its shareholders.

We also note that Global has meaningfully cooperated with the Division of Enforcement staff in connection with its investigation, a fact specifically noted by the Division of Enforcement in the Order. Moreover, Global has not previously been subject to any Commission or court decree arising out of a governmental action that prohibits future violation of the anti-fraud provisions of the securities laws, requires that Global cease and desist from violating the anti-fraud provisions of the securities laws, or determined that Global violated the anti-fraud provisions of the securities laws.

Given the substantial grounds for relief discussed above, we believe that disqualification is not necessary to serve the public interest or for the protection of investors, and that there is good cause for the Commission, or its delegate, to determine that Global should not be considered an "ineligible issuer" under Rule 405. Accordingly, we respectfully request that the Commission, or the Division pursuant to delegated authority on behalf of the Commission, grant a waiver, effective upon the entry of the Order, of any ineligible issuer status with regard to Global that may arise pursuant to Rule 405.

If you have any questions regarding any of the foregoing, please do not hesitate to contact me.

Very truly yours,



Mark J. Stein

cc: Global Payments Inc.
3550 Lenox Road
Atlanta, GA 30326