

DEPARTMENT OF BUSINESS OVERSIGHT*Ensuring a Fair and Secure Financial Services Marketplace for all Californians*

Jan Lynn Owen
Commissioner of Business Oversight

January 19, 2016

Re: _____ – Opinion Request

Dear _____:

Thank you for your letter dated November 12, 2015, as amended by your letter dated November 16, 2015. _____ requests the Department of Business Oversight (Department) to determine whether _____'s sister-company, _____ would require a license under the Money Transmission Act (Fin. Code, § 2000 et seq.).

BACKGROUND

_____ is California licensed money transmitter. In general, _____ receives money on behalf of businesses in order to assist them in paying certain suppliers.

_____ is a Delaware company incorporated on October 26, 2015. In your letters, you describe _____'s proposed activities as follows. _____ would obtain a Delaware money transmitter license. _____ would have its headquarters in California at the same address as _____. _____ has the same officers, directors and shareholder as _____. _____ would provide money transmission in and from Delaware for senders that are located outside of the United States. _____ would transmit money from Delaware to foreign countries and within the United States, including California.

MONEY TRANSMISSION ACT

Financial Code section 2003, subsection (q)(3) defines “money transmission” to include receiving money for transmission. Financial Code section 2003, subsection (u) defines “receiving money for transmission” to mean receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means.

Financial Code section 2030 prohibits a person from engaging in the business of money transmission in this state, unless the person is licensed or exempt from licensure or is an agent of a person licensed or exempt from licensure.

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Financial Code section 2003, subsection (k) defines "in this state" to mean physically located in California, or with, to, or from persons located in California.

The Department has considered the arguments that _____ has offered in support of its contention that _____ need not be licensed. We disagree that the facts here warrant a finding that licensing is not required.

Financial Code section 2003, subsection (k) broadly defines "in this state" to capture those entities that are either located in California or do business with, to, or from Californians. _____'s proposed activities meet both elements. "In this state" includes entities located in California because California has an interest in regulating businesses physically headquartered in the state, even if they are already licensed by another state. Read in conjunction with Financial Code section 2030, we conclude that the Legislature intended that entities which engage in the business of money transmission and meet the definition in Financial Code section 2003, subsection (k) must be licensed under the Money Transmission Act. Accordingly, _____'s proposed activities would require a money transmitter license because _____ would be engaging in the business of money transmission in this state.

Please feel free to contact me at (415) 263-8528 if you have any questions.

Sincerely,

Jan Lynn Owen
Commissioner of Business Oversight

By

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