



STATE OF CALIFORNIA
Department of Business Oversight

GOVERNOR **Gavin Newsom** ▪ COMMISSIONER **Jan Lynn Owen**

IN REPLY REFER TO:
FILE NO:

March 20, 2019

Re: _____ as agent of an affiliate licensee.

Dear Mr. _____ :

Thank you for your January 28, 2019, letter requesting confirmation from the Department of Business Oversight ("Department") that _____'s (_____) proposed activity as an agent for _____ (_____) does not require licensure pursuant to the Money Transmission Act ("MTA").¹

I. BACKGROUND

_____ and _____ (collectively referred to as "_____") are affiliates of each other and both individually licensed by the Department as money transmitters. _____ intends to surrender its license in the coming months.

_____ provides an accounts payable technology platform which facilitates payments from businesses receiving goods or services (each a "Payor") and their suppliers (each a "Payee"). The platform enables Payors to enter payment information and Payees to receive and direct disbursement of payments. According to _____, most funds for these payments are provided by Payors to _____ with associated payment instructions and are exempt from the MTA pursuant to the agent of payee exemption,² consistent with the Department's July 19, 2017, letter.

However, in some cases, _____ will receive funds from Payors without associated payment instructions,³ and the transmission of those funds constitutes regulated activity subject to the

¹ Fin. Code, § 2000 et. seq. All further statutory references to "Section" in this letter are to the Financial Code unless otherwise indicated.

² Fin. Code, § 2010, subd. (l).

³ These include situations where a Payor wishes to maintain a relatively small amount of funds with _____ without payment instructions so future "off-cycle" payments can be made without initiating additional wire transfers. Unanticipated, off-cycle payments might occur if, for example, a Payor underpaid or did not pay a supplier and issues a payment to correct the mistake.

MTA. In these situations, _____ proposes to accept payment through _____, which will promptly remit those funds to _____'s bank account for future money transmission under _____'s license.

For operational ease and due to the significant challenges in requiring Payors to send funds to two separate bank accounts depending on whether the funds are accompanied by payment instructions, _____ proposes to have Payors send all funds, whether accompanied by instructions or not, to _____'s bank account. When _____ receives funds without associated payment instructions, _____ proposes to act as _____'s agent and remit those funds to _____'s bank account within one business day of receipt. The funds will be held by _____ for the Payor's benefit and used for future money transmission by _____ once the Payor provides payment instructions.

If the proposal is approved, _____ and _____ assert they will comply with all California laws, regulations, and guidance with respect to the use of agents by licensees, including those set forth in Sections 2060 and 2061.

II. MONEY TRANSMISSION ACT

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. Pursuant to California Code of Regulations, title 10, section 80.126, the term "agent," when referring to an agent of a licensee, is defined in Section 2003, subdivision (b), as "a person that is not itself licensed as a money transmitter in California and provides money transmission in California on behalf of the licensee, provided that the licensee becomes liable for the money transmission from the time money or monetary value is received by that person..."

Section 2060 requires a licensee to enter into a written contract before appointing an agent. The written agency contract must include certain provisions including 1) that the licensee appoints the person as its agent with authority to conduct money transmission on behalf of the licensee, 2) that the agent shall make and keep records for a specified time, 3) that all money or monetary value, less fees, received by the agent for money transmission on behalf of the licensee shall be trust funds owned by and belonging to the licensee until remitted by the agent to the licensee, 4) that the money must be remitted in accordance with the requirements of the MTA, and 5) any other provisions the commissioner may by regulation or order find to be necessary to carry out the provisions and purposes of the MTA.

Section 2060 also requires specific timeframes for remittances, reasonable supervision of agents by the licensee, impressing property with a trust in favor of the licensee in the event an agent commingles assets, and liability of the licensee from the time money or monetary value is received by the agent; it also prohibits an agent from providing money transmission outside the scope of activity permissible under the contract, the use of subagents, and agents conducting money transmission on behalf of the licensee without receiving an amount believed to be not less than the amount of money transmission provided.

Section 2061 requires a licensee to conduct a review of a proposed agent's fitness to act as an agent and to determine the proposed agent and any persons who control the proposed agent are of good character and sound financial standing. The licensee must also maintain records of review for each agent while the agent is providing money transmission on behalf of the licensee, and for three years after the relationship with the agent has terminated.

III. CONCLUSION

The Department finds [redacted] may, without maintaining its own license, act as [redacted]'s agent to the extent described in your January 28, 2019, letter, as permitted by Section 2030 once all other agency requirements, including those in Sections 2060 and 2061, are met. Prior to surrendering its license, [redacted] may not act as [redacted]'s agent but may engage in money transmission under its own license.

This opinion is based solely on the facts as represented in your correspondence, and the Department's understanding of those representations. The Department may reach a different conclusion under other facts and circumstances. If you have questions, please contact me at (213) 576-7554.

Sincerely,

Jan Lynn Owen
Commissioner
Department of Business Oversight

By

David Bae
Senior Counsel

cc: Robert Venchiarutti, Department of Business Oversight, San Francisco