

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

Jan Lynn Owen
Commissioner of Business Oversight

October 29, 2015

Re: Financial Institutions as Agents

Dear _____:

Thank you for your letter dated June 30, 2015. Your letter requests that the Department of Business Oversight (Department) confirm that _____ is not required to report to the Department financial institutions that use _____'s international drafts or use its remote draft printing service.

Background

_____ is a licensee under the California Money Transmission Act (MTA). According to your letter, financial institutions use _____'s international drafts and remote draft printing service to fulfill their customers' requests for international drafts. The financial institutions may either order international drafts through _____ by providing _____ with payment instructions, or print international drafts using the remote draft printing service and check paper stock provided to the financial institution by _____. The international drafts are drawn on accounts maintained by _____ at foreign banks and are either instruments of _____ or instruments of the foreign banks. International drafts printed using the remote draft printing service are instruments of _____. You provided the agreement _____ enters into with the financial institutions to provide these services. In the agreement, _____ appoints the financial institution as its agent.

Your request is based on an opinion from the California Department of Financial Institutions, dated August 23, 2012, regarding the intention of _____ to no longer report certain financial institutions as agents for which it provides processing services for international electronic funds transfer payments. That letter took the view that financial institutions are not agents for purposes of money transmission because Financial Code section 2010(d) exempts financial institutions from the MTA.

Money Transmission Act

Financial institutions that use _____'s international drafts or use its remote draft printing service fall within the definition of "agent" set forth in Financial Code section

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2003(b) because they are providing money transmission in California on behalf of _____. When _____ uses agents to conduct money transmission in California, it must comply with the requirements of the MTA applicable to licensees that conduct money transmission in California through agents, including when the agents are financial institutions exempt from the MTA by Financial Code section 2010(d). The requirements include compliance with Financial Code section 2060, which requires _____ to enter into written contracts with its agents that contain the terms conditions required by Financial Code section 2060. _____ must also review the fitness of all of its agents as required by Financial Code section 2061 and the receipts used by its agents must comply with Financial Code sections 2100 and 2103. _____ is not exempt from the requirements that apply to MTA licensees that use agents to conduct money transmission in California because the agent is exempt from the MTA.

_____’s set of facts is distinct from the 2012 _____ letter. In that case, the financial institutions were explicitly not agents of _____.

Conclusion

Accordingly, the Department cannot confirm that _____ is not required to report to the Department financial institutions that are acting as agents of _____ when they use _____’s international drafts or its remote draft printing service.

This letter does not address whether any State or federal banking and securities law apply to _____ or any of its agents, including agents that are financial institutions, when any of them participate in the issuance of international drafts that are instruments of foreign banks. That activity may constitute deposit taking on behalf of the foreign bank by _____ and its agents, and may also constitute the offer and sale of securities in the form of the instruments of the foreign banks.

Please contact the undersigned at 213.897.2172 if you have any questions.

Sincerely,

Jan Lynn Owen
Commissioner of Business Oversight

By

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WMW:jg