

**DEPARTMENT OF BUSINESS OVERSIGHT***Ensuring a Fair and Secure Financial Services Marketplace for all Californians***Jan Lynn Owen****Commissioner of Business Oversight**

October 5, 2015

Re: Rebuttal of Acquisition of Control of \_\_\_\_\_ by \_\_\_\_\_

Dear \_\_\_\_\_:

Thank you for your letter dated, August 6, 2015, regarding the direct and indirect acquisition of control of \_\_\_\_\_ by \_\_\_\_\_, the ultimate parent of your organization, and its affiliates. In your letter, you describe your organization; urge the Department of Business Oversight to consider ways that investment management service providers can rebut the presumption of control under Financial Code sections 1250(b)(2) and 2035; and offer facts that rebut the presumption that your organization has acquired control of \_\_\_\_\_.

**MONEY TRANSMISSION ACT**

Financial Code section 2035 provides that no person shall directly or indirectly acquire control of a licensee under the Money Transmission Act (MTA) unless the Commissioner of Business Oversight (Commissioner) has first approved the acquisition of control. Financial Code section 2003(h) provides that “control” for purposes of the MTA shall have the meaning set forth in Financial Code section 1250. California Financial Code section 1250(b), in pertinent part, provides that a person who “directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the then outstanding voting securities issued by another person is presumed to control such other person.” The presumption contained in the cited portion of California Financial Code section 1250(b) is rebuttable.

**BACKGROUND**

Your letter responds to the Department’s request that \_\_\_\_\_ explain why it did not obtain the approval of the Commissioner before acquiring a beneficial interest in at least 10 percent of \_\_\_\_\_’s outstanding voting securities. \_\_\_\_\_ filing with the U.S. Securities and Exchange Commission (SEC) on SEC Schedule 13G, dated April 8, 2015, discloses that it beneficially owned 3,875,805 shares or 10 percent of the 38,699,042 shares of \_\_\_\_\_ voting securities believed to be outstanding.

\_\_\_\_\_ and \_\_\_\_\_ are each an operating division of \_\_\_\_\_, which is wholly

1515 K Street, Suite 200  
Sacramento, CA 95814-4052  
(916) 445-2705

One Sansome Street, Suite 600  
San Francisco, CA 94104-4428  
(415) 972-8565

320 West 4<sup>th</sup> Street, Suite 750  
Los Angeles, CA 90013-2344  
(213) 576-7500

1350 Front Street, Room 2034  
San Diego, CA 92101-3697  
(619) 525-4233

45 Fremont Street, Suite 1700  
San Francisco, CA 94105  
(415) 263-8500

300 S. Spring Street, Suite 15513  
Los Angeles, CA 90013  
(213) 897-2085

7575 Metropolitan Drive, Suite 108  
San Diego, CA 92108  
(619) 682-7227

owned by \_\_\_\_\_.

According to your letter, on June 8, 2015, the funds and accounts advised by \_\_\_\_\_ owned, in the aggregate, 3,975,805 shares of \_\_\_\_\_'s stock, which was 10.28 percent of \_\_\_\_\_'s outstanding shares. \_\_\_\_\_ owned 7.95 percent of the outstanding shares of \_\_\_\_\_'s stock while \_\_\_\_\_ owned 2.33 percent of \_\_\_\_\_'s outstanding stock. As of August 6, 2015, funds and accounts advised by \_\_\_\_\_ no longer hold any shares of \_\_\_\_\_'s stock. As of August 6, 2015, funds and accounts advised by \_\_\_\_\_, another division of \_\_\_\_\_ owned, in the aggregate, 1,790,801 shares of \_\_\_\_\_'s stock, 4.56 percent of the outstanding.

As separate operating divisions, \_\_\_\_\_ and \_\_\_\_\_, along with a third operating division, \_\_\_\_\_, make independent investment and proxy voting decisions, conduct investment management activity independently and each operate separate trading desks. Each operating division has been accorded separate filing status by the SEC for purposes of filing SEC Schedule 13G.

Your letter also represents that \_\_\_\_\_ and its affiliates do not beneficially own the shares of \_\_\_\_\_'s stock discussed in your letter. Rather, the shares are beneficially owned by the funds and accounts advised by \_\_\_\_\_ or \_\_\_\_\_. Therefore, while \_\_\_\_\_ filed a report with the SEC on SEC Schedule 13G indicating ownership of more than 10 percent of \_\_\_\_\_'s stock, the filing disclaimed beneficial ownership of the stock. The actual beneficial owners of the shares were \_\_\_\_\_ and \_\_\_\_\_, but neither fund owned 10 percent or more of the outstanding shares of \_\_\_\_\_'s stock. Moreover, both funds have fundamental investment policies, which provide that they "may not invest in companies for the purpose of exercising control or management."

Finally, your letter represents that other holders of \_\_\_\_\_'s stock held significantly more shares than the funds advised by \_\_\_\_\_. According to your letter, as of February 28, 2015, as reported in \_\_\_\_\_'s proxy statement, entities affiliated with \_\_\_\_\_ owned 16.7 percent of \_\_\_\_\_'s stock and entities affiliated with \_\_\_\_\_ owned 14.8 percent and had one board member representative.

## CONCLUSION

Based on the fact that entities affiliated with \_\_\_\_\_ and \_\_\_\_\_ own 16.7 percent and 14.8 percent of \_\_\_\_\_'s stock, respectively, and on the other representations contained in your letter, it appears that \_\_\_\_\_ and its affiliates have not acquired control of \_\_\_\_\_, as the term "control" is defined by Financial Code section 1250(b). Accordingly, the Commissioner finds that \_\_\_\_\_ has rebutted the presumption of control with regard to its and its affiliates' holdings of \_\_\_\_\_'s stock.

The Commissioner's determination applies to the set of circumstances presented in your letter. Please be advised that, among other circumstances, should \_\_\_\_\_ or any of its

October 5, 2015

Page 3

affiliates acquire any additional shares of \_\_\_\_\_'s stock, acquire the shares of any person that controls \_\_\_\_\_, enter into any agreement regarding the voting of such shares, take any other action that may be construed to be exercising control over \_\_\_\_\_ or any person that controls \_\_\_\_\_, or deviate in any way from the representations contained in your letter, the actions may be considered to involve the acquisition of control of \_\_\_\_\_.

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

Sincerely,

Jan Lynn Owen  
Commissioner of Business Oversight

By

Wallace M. Wong  
Senior Counsel

WMW:jg

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