

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

Jan Lynn Owen
Commissioner of Business Oversight

November 3, 2016

Re: Request for Approval of Money Transmission Funds Maintained in Deposit Accounts as Eligible Securities Under Financial Code section 2084, subdivision (c)

Dear _____:

Thank you for your letter dated July 27, 2016 to the Commissioner of Business Oversight, as supplemented with information provided by your emails dated September 1 and October 20, 2016. As Counsel in the Legal Division, the Commissioner requested that I respond to this matter. You request a determination that _____ account titled “_____, FBO ITS CUSTOMERS” at _____ Bank qualifies as an eligible security.

MONEY TRANSMISSION ACT

Financial Code section 2081 provides, in relevant part, that a money transmitter must own eligible securities with an aggregate market value that is the same as or more than all its outstanding money transmission liabilities. This requirement ensures that money transmitters adequately safeguard the funds entrusted to them by their customers.

Financial Code section 2084, subdivision (b)(3) allows money transmitters to count as eligible securities the transmission money that is held in an account titled in the name of the money transmitter for the benefit of its customers. Additionally, the money transmitter must hold the money in a custodial capacity as an agent of its customers. Subdivision (c) of the same section provides that the Commissioner shall decide whether subdivision (b)(3) applies.

ANALYSIS

_____ holds its customers’ funds in an account titled “_____, FBO ITS CUSTOMERS.” The Master Services Agreement between _____ Bank and _____ states that _____’s accounts designated “for the benefit” of _____’s customers is evidence of a custodial relationship. Additionally, _____’s User Agreement for California residents was revised on October 18, 2016, and now contains a clause that states

1515 K Street, Suite 200
Sacramento, CA 95814-4052
(916) 445-7205

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

320 West 4th 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

the customer consents to _____ acting as his or her agent with respect to the customer's funds held in this FBO Account.

Based on these factors, this FBO Account meets the naming, custodial, and agency requirements set forth in Financial Code section 2084, subdivision (b)(3). Based on a review of the financial statements and other factors submitted by _____, the Department grants the request to include these FBO accounts as eligible securities pursuant to Financial Code section 2084, subdivision (c).

_____ should continue to evaluate the amount, nature, quality, and liquidity of its assets, amount and nature of its liabilities, and compliance with applicable state and federal law. If there is any material deterioration in _____'s status with respect to the requirements of Financial Code section 2084, subdivision (c), _____ risks losing the ability to count these FBO accounts as eligible securities.

This opinion is based solely on the facts presented in your correspondence. Any changes in the facts or circumstances, as we understand them, could lead to a different conclusion.

Please call me at _____ with any questions.

Sincerely,

Jan Lynn Owen
Commissioner of Business Oversight

By

Julie L. Jacob
Counsel

JJ:is

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