

**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: Opinion Request – Agent of Payee Exemption

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

Thank you for your letter dated October 7, 2016 to Robert Venchiarutti, Deputy Commissioner of the Money Transmitter Division of the Department of Business Oversight. As Counsel for the Legal Division, I have been asked to respond to this matter. Your letter requests a determination that the California Money Transmission Act (“MTA”) agent-of-payee exemption applies to the \_\_\_\_\_. Through subsequent phone calls and correspondence on October 17 and 19, 2016, you provided additional information regarding the flow of funds in \_\_\_\_\_ transactions and the application of \_\_\_\_\_’s Terms of Service. For the reasons discussed below, the Department concludes that the MTA does not apply to transactions processed by \_\_\_\_\_’s payment processing service.

**Background**

\_\_\_\_\_ is the parent company of both \_\_\_\_\_ and \_\_\_\_\_. \_\_\_\_\_ is currently licensed by the Department as a money transmitter. \_\_\_\_\_ is a marketplace used on mobile phones with the \_\_\_\_\_ operating system, to purchase games, apps, and other digital content. Digital content is made available on \_\_\_\_\_ by various merchants who have contracted with \_\_\_\_\_ to sell their products on a \_\_\_\_\_ marketplace.

\_\_\_\_\_ provides payment processing services for \_\_\_\_\_. Your letter and the \_\_\_\_\_ Terms of Service describe two options by which a marketplace user can purchase digital content on \_\_\_\_\_: 1) through a credit or debit card payment processing network (i.e., Visa, Discover, MasterCard, and American Express); or, 2) through the mobile phone carrier, which bills the customer’s mobile phone account. Your phone call clarified that the second option, payment through the mobile phone carrier, is not available in the United States. Therefore, this opinion focuses on the first option, payment through a card payment processing network.

To be on the \_\_\_\_\_ marketplace, merchants must agree to \_\_\_\_\_’s Terms of Service. The Terms of Service contract explains the relationship between \_\_\_\_\_ and the merchant. \_\_\_\_\_ is authorized to charge a marketplace customer’s credit or debit card the amount owed to the merchant for the goods or services purchased on \_\_\_\_\_ (“transaction

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amount”). The transaction amount is processed by the card payment processing network, and then transferred into an account held by \_\_\_\_\_’s processing financial institution, for the benefit of \_\_\_\_\_ customers. Although the account is held for the benefit of \_\_\_\_\_ customers, \_\_\_\_\_ has authority to move money into and out of the account. \_\_\_\_\_’s financial institution remits the transaction amount to the merchant’s deposit account. The Terms of Service state the merchant acknowledges that receipt of the transaction amount by \_\_\_\_\_ extinguishes the customer’s obligation to the merchant. The card processing network remains liable for the transaction amount until it is received by the merchant.

### **Money Transmission Act**

The Money Transmission Act provides that a person shall not engage in the business of money transmission in California unless the person is licensed or exempt from licensure under the MTA, or is an agent of a person licensed or exempt from licensure.<sup>1</sup> Financial Code section 2003, subdivision (q) defines “money transmission” in relevant part as receiving money for transmission. Financial Code section 2003, subdivision (u) defines “receiving money for transmission” as receiving money or monetary value in the United States for transmission within or outside of the United States by electronic or other means.

\_\_\_\_\_’s financial institution accepts customer money on behalf of merchants and deposits the money into an account \_\_\_\_\_ can access. From that account, \_\_\_\_\_ transfers the transaction amount to deposit accounts owned by the merchants. By accepting payment on behalf of the merchant, from the customer, and into an account \_\_\_\_\_ can access, \_\_\_\_\_ holds the money or monetary value for transmission.<sup>2</sup> \_\_\_\_\_ therefore receives money for transmission under Section 2003, subdivision (u). \_\_\_\_\_ is already licensed under the MTA, and the transactions it processes for \_\_\_\_\_ are subject to the reporting requirements of the MTA unless there is an exemption for those transactions.

Financial Code section 2010, subdivision (l) exempts from the MTA transactions in which a money transmitter acts as the “agent of the payee.” Under this subdivision, the transaction is exempt if the transmitter acts as an agent of the payee under a preexisting written contract and delivery of funds to the transmitter satisfies the payor’s obligation to the payee for the goods or services provided.

\_\_\_\_\_’s Terms of Service are a written agreement stating that payment authorization from a card processing network to \_\_\_\_\_’s financial institution satisfies the payor’s (customer’s) obligation to the payee (merchant). The transactions \_\_\_\_\_ processes for \_\_\_\_\_ satisfy the requirements of Section 2010, subdivision (l) because \_\_\_\_\_ acts as the agent of the payee pursuant to a preexisting written contract. Therefore, the MTA does not apply to the transactions \_\_\_\_\_ processes for \_\_\_\_\_.

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<sup>1</sup> Fin. Code, § 2030, subd. (a).

<sup>2</sup> Cal. Code Regs., tit. 10, § 80.129.

**Conclusion**

The Department finds that the transactions \_\_\_\_\_ processes for \_\_\_\_\_ fall within the MTA's definition of "money transmission;" however, the MTA does not apply to these transactions because \_\_\_\_\_ is an agent of the payee pursuant to Financial Code section 2010, subdivision (l). The Department's determination is limited to \_\_\_\_\_'s money received for transmission for goods and services purchased on \_\_\_\_\_ and does not extend to its other services. The Department expects \_\_\_\_\_ to continue reporting other services performed pursuant to its California money transmission license.

This opinion is limited to the facts and circumstances described above regarding the application of the MTA. Should any of the facts or circumstances change, the Department's opinion may also change.

Should you have any questions, please contact the undersigned at \_\_\_\_\_.

Sincerely,

Jan Lynn Owen  
Commissioner  
Department of Business Oversight

By

\_\_\_\_\_  
Shavaugn I. Lewis  
Counsel

SIL:acp

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