

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

Jan Lynn Owen
Commissioner of Business Oversight

February 8, 2016

Re: _____ - Opinion Request

Dear _____:

In your letters dated April 13, 2015, and May 7, 2015, you requested a determination by the Department of Business Oversight (Department) about the application of the agent-of-payee exemption in the Money Transmission Act (MTA) to _____. On May 19, 2015, the Department requested additional information related to your request. Your firm did not provide the requested information but instead asked the Department by email on November 23, 2015, if it needed additional information. On January 25, 2016, your firm provided additional information as requested.

According to your May 7, 2015 letter, _____ will provide certain payment-processing services in support of an online marketplace offered by its affiliate, _____. The _____ (Developer Agreement) stipulates that _____ will collect funds on behalf of software-application developers from merchants. The merchants who use the developers' software applications to sell to their customers through _____ virtual marketplace will pay fees to _____ for the software applications. The Developer Agreement further stipulates that _____ will transmit the payments from the merchants to the software-application developers. The relevant sections of the Developer Agreement are in Part II, Section 3, which contains the agent-of-payee provisions:

3. COLLECTION AND REMITTANCE OF THE APP FEES TO YOU

- 3.1 You authorize _____ to appoint _____ as the Payment Processor and to join the Payment Processor as a party to the Contract.
- 3.2 The Payment Processor will act as your agent to collect and hold all Gross Revenue on your behalf and to remit the Remittance Amount to your Payment Account. You must enter into any additional terms and conditions required by the Payment Processor and you must comply with any such terms.
- 3.3 _____ will make it clear in its dealings with the Merchants that:

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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

(a) the Payment Processor collects any and all Gross Revenue on your behalf; and

(b) payment by a Merchant to the Payment Processor of any and all Gross Revenue will constitute full and final settlement of such Gross Revenue (except for Merchant Taxes) payable by such Merchant to you.

You state that _____ service meets the criteria set forth in Financial Code section 2010, subdivision (l), and is therefore exempt under the Act. In relevant part, Section 2010 provides that the MTA does not apply to the agent of a "payee" as it defines that term:

This division does not apply to the following:

* * *

(l) A transaction in which the recipient of the money or other monetary value is an agent of the payee pursuant to a preexisting written contract and delivery of the money or other monetary value to the agent satisfies the payor's obligation to the payee.

(1) For purposes of this subdivision, "agent" has the same meaning as that term is defined in Section 2295 of the Civil Code.

(2) For purposes of this subdivision, "payee" means the provider of goods or services, who is owed payment of money or other monetary value from the payor for the goods or services.

(3) For purposes of this subdivision, "payor" means the recipient of goods or services, who owes payment of money or monetary value to the payee for the goods or services.

The Developer Agreement establishes that (1) the software developers are the payees, (2) the merchants are the payors, (3) _____ is the agent of the payee for purposes of receiving payments from payors, and (4) _____ receipt of any payor's money satisfies the payor's obligation to the payee. Therefore, _____ qualifies for the agent-of-payee exemption and is not required to be licensed by the Department to transmit money.

This opinion is based solely on the facts as represented in your correspondence. Any change in the facts or circumstances under which _____ provides products or services, such as the use of third-party payment processors, may result in a different conclusion. If you have any questions, please feel free to contact me at (916) 322-5983.

Sincerely,

Jan Lynn Owen
Commissioner
Department of Business Oversight

February 8, 2016
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By

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MR:is

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