

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

**Jan Lynn Owen**  
**Commissioner of Business Oversight**

May 20, 2014

Re: \_\_\_\_\_ – Opinion Request

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

This is to follow up on the various discussions and correspondence you have had with the Department of Business Oversight (“Department”). You have requested a determination of whether \_\_\_\_\_ is engaged in a business which is regulated by California Money Transmission Act, Financial Code § 2000, et seq. (MTA).

According to your correspondence, \_\_\_\_\_ is a data processor, which submits transaction data to \_\_\_\_\_ (“Bank”) on behalf of \_\_\_\_\_ merchant customers. \_\_\_\_\_ batches all the credit/debit authorizations it receives daily, and submits a capture settlement request to \_\_\_\_\_ (the processor affiliated with the Bank), which relays that information to the card networks on behalf of the Bank. The payment information includes the merchant I.D., which allows the Bank to identify the merchant associated with a particular payment. Once the card networks confirm receipt of those requests, funds associated with those authorizations are deposited into the Bank. The Bank maintains a settlement account, in the Bank’s name, for the benefit of \_\_\_\_\_ merchant customers. The Bank has sole ownership and control over the Bank’s merchant settlement account. \_\_\_\_\_ does not have any legal or constructive ownership or control over the Bank’s merchant settlement account or merchant funds. The Bank is responsible for processing merchant transactions and settling with merchants via the settlement account. Merchant funds do not appear on \_\_\_\_\_ balance sheet.

In addition, \_\_\_\_\_ underwrites and guarantees against merchant risk. The Bank debits \_\_\_\_\_ account for merchant chargeback or return-related losses rather than recovering that loss from the Bank’s merchant settlement account (which would be tantamount to using the funds allocated to one sub-merchant to pay off the obligations of another).

The Bank as the acquiring bank (originating depository financial institution/ODFI) is liable to the card networks (receiving depository financial institutions/RDFIs) under the payment system rules. Similarly, for ACH transactions, the Bank, as the ODFI providing ACH services to the merchants as Originators, is responsible for payment and settlement to

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the merchants. The Bank has agreed to settle in accordance with the card network operating rules. The foregoing obligations of the Bank are independent of \_\_\_\_\_ status as guarantor against loss by the Bank on the card or ACH transactions.

In addition, there are disclosures on the \_\_\_\_ web site and Terms of Service (TOS) that disclose the name of the Bank as the party that has the responsibility for settling funds and payments between purchasers and merchants, and that \_\_\_\_\_ does not actually or constructively receive, take possession of or hold any money or monetary value for transmission. The TOS explicitly state that \_\_\_\_\_ is not a bank or money transmitter, and that the Bank is the entity that receives and transmits all funds on the \_\_\_\_\_ platform.

Based on all of the foregoing reasons, it is the Department's view that \_\_\_\_\_, by providing data processing services, is not engaged in "receiving money for transmission" as defined in Financial Code § 2003(s). Therefore, \_\_\_\_\_ does not need to be licensed under the MTA. Furthermore, the disclosures in the TOS confirm that \_\_\_\_\_ is not advertising, soliciting or holding itself out as providing money transmission in California. Financial Code § 2030(a).

This opinion is based solely on the facts presented in your correspondence and the documents attached thereto, and may change if any of the conditions or circumstances under which \_\_\_\_\_ provides services are altered in the future. If you have any questions or comments, please contact me at (415) 263-8528.

Sincerely,

Jan Lynn Owen  
Commissioner of Business Oversight

By

Jennifer L.W. Rumberger  
Senior Counsel

JLWR:acp