

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

March 3, 2014

Re: \_\_\_\_\_ – Opinion Request

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

This is to follow up on your request that the Department of Business Oversight (Department) make a determination of whether \_\_\_\_\_ is engaged in a business which is regulated by the California Money Transmission Act, Financial Code § 2000, et seq. (MTA). You reserved the issue of whether \_\_\_\_\_, would need a license under the MTA. However, because \_\_\_\_\_ and \_\_\_\_\_ provide substantially similar services, at least with regard to the applicability of the MTA, the Department is providing this opinion as to both \_\_\_\_\_ and \_\_\_\_\_.

According to your correspondence, \_\_\_\_\_ provides payments services to certain online merchants. These services permit the customers of such merchants to purchase virtual goods and services (for example, for online games offered by merchants) through the use of their mobile phone. Payments using the \_\_\_\_\_ are processed in one of two ways: (1) payee-agent structure or (2) factoring arrangement.

1. Payee-Agent Structure

\_\_\_\_\_ argues that because each merchant has entered into a merchant agency agreement, which explicitly states that payment made by a customer to a \_\_\_\_\_ agent acting on behalf of the merchant is considered the same as payment made directly to the merchant, this means that no transmission of money is taking place. In other words, because a customer's payment obligation is extinguished when the customer pays the Carrier bill, \_\_\_\_\_ asserts that from the customer's perspective, the transaction is complete at the time money is tendered to the Carrier, and therefore the customer is not tendering money for transmission to the merchant.

As an initial matter, unlike New York's money transmission law, there is no statutory exemption from the MTA for an agent of a payee.

In addition, pursuant to FC § 2003(s), "receiving money for transmission" is not defined by the respective liability of the transaction's parties; it is defined as "receiving money... for transmission." The fact that the customer's liability to the merchant is satisfied when

the Carrier bill is paid has no bearing on whether money is being received for transmission.

Moreover, whether or not \_\_\_\_\_ is acting as a payment agent for a merchant, \_\_\_\_\_ is nonetheless transmitting money between the customer and the merchant. All of the agents of the merchant in the transaction (i.e., the Carrier, the aggregator, \_\_\_\_\_, and \_\_\_\_\_) hold the merchant's funds before transmitting the money to the next agent in the chain – all the way to the merchant. \_\_\_\_\_ agreement with the merchants confirms that \_\_\_\_\_ will hold and disburse funds due to the merchant according to the specified fee and payment schedule.

In summary, \_\_\_\_\_ and \_\_\_\_\_ stand as intermediaries between the customer and the merchant, transmitting monetary value between them. The conduct of transmitting money from one person to another person falls squarely within the meaning of money transmission under the MTA. Thus, any \_\_\_\_\_ transactions involving the payee-agent structure require licensing under the MTA.

## 2. Factoring Arrangement

Under the factoring arrangement, each merchant enters into the standard merchant agency agreement, as well as an amendment whereby the merchant agrees to sell all receivables generated in connection with the \_\_\_\_\_ immediately upon the issuance of a transaction authorization message from the Carrier. The agreement specifies that the merchant “releases all of its right, title and interest to any Receivable resulting from a transaction” effective upon receipt of such authorization message.

After purchase from the merchant, \_\_\_\_\_ immediately sells each receivable to \_\_\_\_\_ and releases all right and title to collect payment for the same. \_\_\_\_\_ agreement with each Carrier and/or aggregator contains the same language so that each party has upon their sale of the receivable, released all title to the receivable.

Thus, unlike the payee-agent structure, the factoring structure is based on the purchase and sale of receivables. The sales of receivables between merchant and \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_, \_\_\_\_\_ and aggregator, and aggregator and Carrier occur before any funds are tendered by the customer to the Carrier. The customer receives the good or service before payment is made to the Carrier. In addition, at the time of the sale of the receivable and in exchange for title to the receivable, the merchant (or other seller of the receivable) receives consideration in the form of cash from the buyer of the receivable, and not consideration in the form of a receivable from the buyer. Moreover, the Department is assuming that if the customer does not pay the Carrier bill, the credit risk belongs to the buyer of the receivable, and not the seller of the receivable. Based on the foregoing reasons, it is the Department's view that these factoring transactions are not “receiving money for transmission” and do not need to be licensed under the MTA.

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This opinion is based solely on the facts presented in your correspondence and the documents attached thereto, and the Department's understanding of those facts as described in this letter, 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  
Department of Business Oversight

By

/s/  
Jennifer L.W. Rumberger  
Senior Counsel

JLWR:acp