

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

Jan Lynn Owen
Commissioner of Business Oversight

April 7, 2017

Re: Opinion Request

Dear _____:

Thank you for your letters to the Department of Business Oversight dated January 11, 2016, July 8, 2016, and November 11, 2016 and your emails dated February 8, 2017 and March 4, 2017. In your January 11, 2016 letter, you requested an opinion on whether _____ requires licensing as a money transmitter under California law. You assert that _____ does not require licensing because it does not engage in the business of money transmission in California.

BACKGROUND

_____ is a Delaware corporation headquartered in _____ with no locations in California. _____ is in contract with two foreign companies: a German entity, _____, and a Japanese entity, _____.¹ _____ and the _____ offer services to U.S. military personnel stationed in Germany, Japan, and Korea. Specifically, if a U.S. military officer based in Germany rents an apartment and has related utility expenses, _____ and the _____ facilitate payments from the officer's U.S. bank account to the German landlord and utility company.

In your January 11, 2016 letter, you provided the following description of the service: The _____ market their services to U.S. military personnel stationed overseas. To sign up, military personnel visit an office of the _____, fill out an application and provide their identification, U.S. bank account records, and foreign bills. Military personnel then sign a contract authorizing the _____ and _____² to withdraw funds from a specified U.S. bank account on certain dates to pay a local vendor such as their landlord or utility company. The U.S. bank account may be a California bank account.

¹ The _____ are not subsidiaries or affiliates of _____ but are related due to overlapping board membership and ownership.

² The bill payment contracts and terms of service submitted with your July 8, 2016 letter show that military personnel authorize both _____ and the _____ to debit funds from their bank accounts for bill payment.

In your July 8, 2016 letter, you attached a flow of funds chart depicting a standard transaction. First, _____ debits a military member's U.S. bank account for the U.S. dollar equivalent of a rent or utility bill due in Euros. The funds flow into _____'s U.S. bank account where the U.S. dollars are converted to Euros. The Euros are then transferred to _____'s _____ London multi-currency account to pay the landlord or utility company in Germany.

In another sample transaction, _____ debits a military member's U.S. bank account for the U.S. dollar equivalent of a rent or utility bill due in Yen. The funds then flow into _____'s U.S. bank account to convert the U.S. dollars to Yen. Pursuant to a contractual relationship, the Yen are then deposited into a Japanese sister corporation's bank account to pay the military member's rent or utility bill.

In your March 4, 2017 email, you confirmed that _____'s bill payment services can only be used by military personnel while residing abroad. Before a customer is rotated to another duty location or sent home to the United States for retirement or separation from the military, the customer must "final out," a process that includes final settlement of bills. You confirmed that bills cannot be initiated by persons residing in the United States.

MONEY TRANSMISSION ACT

Financial Code section 2003, subdivision (q)(3) defines "money transmission" to include receiving money for transmission. Financial Code section 2003, subdivision (u) defines "receiving money for transmission" to mean receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means.

_____ receives money from military members in a U.S. bank account for transmission to _____'s London bank account or to a sister corporation's bank account in Japan. This constitutes receiving money for transmission.

Financial Code section 2030 prohibits a person from engaging in the business of money transmission in this state, unless the person is licensed or exempt from licensure or is an agent of a person licensed or exempt from licensure. Financial Code section 2003, subdivision (k) defines "in this state" or "in California" to mean physically located in California, or with, to, or from persons located in California.

_____, the _____, their U.S. military customers, and their customers' landlords and utility companies are not physically located in California. The services of _____ and the _____ are not marketed or advertised in California. Bill payments cannot be initiated by persons residing in the United States. Therefore, _____ does not engage in the business of money transmission in California or with, to, or from persons located in California and does not require licensure pursuant to the Money Transmission Act.

This opinion is based solely on the facts as represented in your correspondence, and may change if any of the conditions or circumstances under which _____ provides products or services is altered in the future.

If you have any questions, please feel free to contact me at _____.

Sincerely,

Jan Lynn Owen
Commissioner of Business Oversight

By

Pamela Hernandez
Counsel

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