

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

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

May 19, 2016

Re: Opinion Request – Exempt from Licensure under California Money Transmission Act

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

Thank you for your email dated March 8, 2016 to Robert Venchiarutti, Deputy Commissioner of the Money Transmitter Division of the Department of Business Oversight (“Department”). As Counsel for the Legal Division, I have been asked to respond to this matter. In your email, you attach a letter from the law firm \_\_\_\_\_ that explains why \_\_\_\_\_ should be exempt from licensure under the California Money Transmission Act (“MTA”). Through subsequent emails dated April 25, 2016, you provide additional information regarding the contractual relationships used for \_\_\_\_\_’ products. For the reasons discussed below, the Department concludes that \_\_\_\_\_ will not be subject licensure under the MTA.

**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, subsection (q) defines “money transmission” as: (1) selling or issuing payment instruments, (2) selling or issuing stored value, or (3) receiving money for transmission. \_\_\_\_\_ does not appear to sell or issue payment instruments or stored value; therefore, this opinion will focus on receiving money for transmission. Financial Code section 2003, subsection (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.

\_\_\_\_\_ is not currently licensed as a money transmitter in California or in any other state. We understand that \_\_\_\_\_ currently offers two products, “Third Party

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

Booking” and “Transportation Industry.” \_\_\_\_\_ is looking to offer a third product, “Union Driven Model.”

### Third Party Booking

The Third Party Booking software allows \_\_\_\_\_’ commercial clients to manage periodic or recurring payments to non-employees. The client establishes a payment account directly with a bank, and the client authorizes \_\_\_\_\_ to use its software to initiate a transfer from the client’s bank account to the non-employee. You state that the funds in the client’s bank account do not appear on \_\_\_\_\_’ balance sheet because at no time does \_\_\_\_\_ receive, take possession of, or hold the client’s funds. \_\_\_\_\_ sends the client an invoice for its services and the client pays the invoice. \_\_\_\_\_ does not withdraw its own payments from client accounts.

The Department agrees that \_\_\_\_\_ does not receive money for transmission with this product because \_\_\_\_\_ does not receive any money. The money goes directly from the client’s bank account to the payee’s bank account.

### Transportation Industry

The Transportation Industry product is offered in the trucking and shipping industry. Using an online platform, a shipper describes the goods to be transported (the “job”), along with the price the shipper is willing to pay. Potential carriers then review the jobs posted. When a carrier accepts the job from a shipper, the carrier assigns the receivable to \_\_\_\_\_ in exchange for payment from \_\_\_\_\_. Thus, \_\_\_\_\_ provides a service to the carrier that allows the carrier to be paid before transporting the goods. \_\_\_\_\_ then invoices the shipper the amount the shipper had offered to pay for the job. \_\_\_\_\_ always pays the carrier before it receives payment from the shipper and therefore bears the risk of loss for shipper non-payment.

With the Transportation Industry product, the carrier is paid by \_\_\_\_\_ before \_\_\_\_\_ receives money from the shipper. Therefore, \_\_\_\_\_ does not transmit any money from the shipper to the carrier. The Department agrees that \_\_\_\_\_ does not receive money for transmission with this product.

### Union Driven Model

The Union Driven Model allows an entertainment company to pay an actor through the actor’s union. The entertainment company will transfer money to the union for payment to the actor. The payment will then be transferred from the actor’s union to an \_\_\_\_\_ account by ACH transfer. \_\_\_\_\_ will then pay the actor by direct deposit. You explain that \_\_\_\_\_ has a contract with the union to transmit money to the actors on the union’s behalf.

Under this model, an actor must accept \_\_\_\_\_' written terms of service before receiving any funds from \_\_\_\_\_. \_\_\_\_\_' terms of service state that the actor "appoints \_\_\_\_\_ as its agent" to accept payment, and that "payment of money from the Payor to \_\_\_\_\_ for delivery to Payee satisfies and discharges the Payor's obligations to the Payee to the extent of such payment." The payor is the union and the payee is the actor.

Unlike Third Party Booking, with the Union Drive Model, \_\_\_\_\_ will receive or take possession of the union's funds in an account owned by \_\_\_\_\_ before the funds are disbursed to actors. This product constitutes receiving money for transmission. \_\_\_\_\_ can only engage in money transmission under the MTA without a license if it qualifies for an exemption.

Financial Code section 2010, subsection (l) exempts from the MTA transactions in which the transmitter acts as the "agent of the payee." Under this subsection, the transmitter is exempt if it 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.

\_\_\_\_\_ ' terms of service are a written agreement providing the transfer of funds to \_\_\_\_\_ satisfies the payor's obligation to the payee. In this scenario, \_\_\_\_\_ satisfies the requirements of Section 2010, subsection (l) because it will be acting as the agent of the payee pursuant to a preexisting written contract. Therefore, the "Union Drive Model" is exempt from licensure under the MTA.

### **Conclusion**

The Department finds that the Third Party Booking and Transportation Industry products do not fall within the MTA's definition of "money transmission," and are therefore not subject to licensure under the MTA. While the Union Driven Model constitutes money transmission, \_\_\_\_\_ is exempt from licensure as an agent of the payee pursuant to Financial Code section 2010, subsection (l).

This opinion is limited to the facts and circumstances described above regarding the need for licensure under 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