

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

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

August 23, 2016

Re: - Opinion

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

Thank you for your letters to the Commissioner of Business Oversight, Jan Lynn Owen, dated, March 21, 2016 and July 14, 2016. As Senior Counsel for the Legal Division, the Commissioner requested that I respond to this matter. Your letters ask the Department of Business Oversight to confirm that \_\_\_\_\_ does not need to be licensed as a money transmitter under the California Money Transmission Act ("MTA") in order to perform certain check encashment services ("Services") for \_\_\_\_\_ and \_\_\_\_\_ (together, the "Legacy Issuers"). According to your July 14, 2016 letter, \_\_\_\_\_ changed its name to \_\_\_\_\_ in 2013. It also appears that \_\_\_\_\_ became a limited liability company.

**MONEY TRANSMISSION ACT**

Financial Code section 2003, subdivision (q)(3) defines "money transmission" to mean issuing or selling payment instruments; issuing or selling stored value; or 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. Financial Code section 2030 prohibits a person from engaging in the business of money transmission in this state, unless the person is licensed, exempt from licensure or is an agent of a person that is licensed or exempt from licensure. Financial Code section 2003, subdivision (k) defines "in this state" to mean physically located in California, or with, to, or from persons located in California.

**BACKGROUND**

Your letters state that the Legacy Issuers were each formerly licensed under the MTA to issue traveler's checks and are currently affiliates of \_\_\_\_\_. The Services consist of \_\_\_\_\_ being a part of the Legacy Issuers' acceptance network and accepting and processing traveler's checks for so long as there are traveler's checks outstanding, including processing checks for banks that are no longer able to clear checks through their clearance system.

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The Services will only be provided in connection with the redemption by the initial purchasers of traveler's checks (each a "Check Holder") that were issued by either of the Legacy Issuers. Certain exceptions in cases where the initial purchaser is deceased or is, for some reason, unable to send in the traveler's checks for redemption may apply. Check Holders do not include any subsequent holders of the traveler's check, such as merchants and other persons that accept the traveler's check as payment for goods or services or otherwise come in to possession of a traveler's check.

In order to redeem their traveler's checks, Check Holders must void and deface them and return the voided and defaced traveler's checks to \_\_\_\_\_ at its redemption facility in Peterborough, England, along with bank account information to which the funds are to be sent. The traveler's checks must be delivered to \_\_\_\_\_ in Peterborough, England in person or via international mail carrier to Peterborough, England. \_\_\_\_\_ will not accept traveler's checks via an alternative method such as an electronically transmitted copy of the traveler's checks or certificate attesting to the destruction of the traveler's check.

Once \_\_\_\_\_ receives the traveler's checks, it verifies that the voided and defaced traveler's checks were previously issued by one of the Legacy Issuers, conducts any required foreign exchange conversion and sends the funds via electronic transfer from \_\_\_\_\_ to the bank specified by the Check Holder. Of the projected \$1,400,000 of annual encashment in 2016 for California provided by \_\_\_\_\_ with respect to the Legacy Issuers, \$200,000 is projected to be through the Services.

After making payment to a Check Holder, \_\_\_\_\_ returns the processed (endorsed) voided and defaced traveler's check to the applicable Legacy Issuer. The Legacy Issuer then settles with \_\_\_\_\_ by reimbursing \_\_\_\_\_ the face value of the processed voided and defaced traveler's check. \_\_\_\_\_ receives reimbursements from the Legacy Issuers in its U.K. bank account for the funds that \_\_\_\_\_ transmits to Check Holders that are in California. \_\_\_\_\_ enters into separate contracts, one with each Check Holder (individual or bank) for traveler's check encashment and currency conversion (to the extent required), and a separate contract with the Legacy Issuers for encashment reimbursement. \_\_\_\_\_ receives fees and other payments, including its actual costs plus a five percent mark-up, for providing the Services.

## **CONCLUSION**

It is the Department's opinion that the defaced traveler's checks returned by the Check Holders to \_\_\_\_\_ for redemption are not received in the United States by \_\_\_\_\_ because the defaced traveler's checks are only received by \_\_\_\_\_ in Peterborough, England. It is also the Department's opinion that money or monetary value received by \_\_\_\_\_ from the Legacy Issuers as reimbursement for money paid by \_\_\_\_\_ to persons in California as a part of the Services is not received in the United States by \_\_\_\_\_ because the reimbursements are only paid to \_\_\_\_\_ bank account in the United

August 23, 2016

Page 3

Kingdom. As a result, \_\_\_\_\_ is not engaged in money transmission by receiving money for transmission when it receives the defaced traveler's checks from person in California or when its receives reimbursements from the Legacy Issuers because Financial Code section 2003, subdivision (q)(3) defines "receiving money for transmission" to mean receiving money or monetary value in the United States. As a result, notwithstanding that Financial Code section 2003, subdivision (k) defines "in California" or "in this state" to include "to ... California," \_\_\_\_\_ does not need to be licensed as a money transmitter under the MTA in order to perform the Services for the Legacy Issuers because \_\_\_\_\_ is not engaged in money transmission when it does so, even though \_\_\_\_\_ transmits money to California in connection with its business of providing the Services.

The Services, as described in your Letters, also do not appear to constitute issuing or selling payment instruments, or selling or storing payment instruments, which would also constitute money transmission.

This letter is based solely on the representations you have made in your correspondence, and the Department's understandings of those representations. The Department may reach a different conclusion under other facts and circumstances. This letter only expresses an opinion regarding the application of the MTA to the performance of the Services by \_\_\_\_\_. Except in connection with the performance of the Services, this letter does not express any opinions regarding the application of the MTA or any other law, state or federal, that may apply to \_\_\_\_\_, the Legacy Issuers or any of their affiliates due to the redemption of traveler's checks, or any other encashment activities in California.

This opinion will be made public on the Department's internet website as required by Financial Code section 2174, subdivision (b). The Department will redact the names of \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ in the version of the opinion that is posted on the Department's website.

Please contact the undersigned at \_\_\_\_\_ if you have any questions.

Sincerely,

Jan Lynn Owen  
Commissioner of Business Oversight

By

Wallace M. Wong  
Senior Counsel

WMW:jg

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