

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

Jan Lynn Owen
Commissioner of Business Oversight

August 26, 2015

Re: _____ —Eligible Securities Covering Outstanding Transmissions

Dear _____:

Thank you for your letters dated May 14, 2015 and June 30, 2015, in which you asked the Department of Business Oversight (Department) to deem customer funds held for transmission (transmission money) by _____ as eligible securities for purposes of Financial Code section 2081 of the Money Transmission Act. The Department had advised _____ on April 15, 2015, that its transmission money appeared to be subject to several lien agreements between _____ and _____ and therefore did not constitute eligible securities under the Money Transmission Act.

In response, you stated on May 14, 2015, that _____ did not own the transmission money in question; that the transmission money was not subject to its liens with _____; and that the transmission money was not subject to a Deposit Account Control Agreement. On June 3, 2015, and June 30, 2015, you submitted two supporting documents. Specifically, you submitted a bank-account statement from _____ Bank to demonstrate that _____ holds the transmission money for the benefit of its customers in a custodial account. The bank-account statement explicitly identifies the account as:

RELEASE/TRUST ACCOUNT
FBO ITS CUSTOMERS

You also submitted a letter from _____ dated June 24, 2015, to show that the transmission money in the _____ Bank account is not subject to the liens that _____ has with _____. You submitted the letter from _____ also to show that the _____ Bank account is not subject to a deposit account control agreement.

Money Transmission Act**1. Custodial Account**

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Sacramento, CA 95814-4052
(916) 445-7205

One Sansome Street, Suite 600
San Francisco, CA 94104-4428
(415) 972-8565

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Los Angeles, CA 90013-2344
(213) 576-7500

1350 Front Street, Room 2034
San Diego, CA 92101-3697
(619) 525-4233

45 Fremont Street, Suite 1700
San Francisco, CA 94105
(415) 263-8500

300 S. Spring Street, Suite 15513
Los Angeles, CA 90013
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7575 Metropolitan Drive, Suite 108
San Diego, CA 92108
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Financial Code section 2081 provides, in relevant part, that a money transmitter must own eligible securities with an aggregate market value that is the same as or more than all its outstanding transmission money received in the United States. This requirement ensures that money transmitters adequately safeguard the funds entrusted to them by their customers. Financial Code section 2084(b)(3) expressly allows money transmitters to count as eligible securities transmission money that it holds in an account that is specifically named to indicate its custodial purpose:

...no licensee shall be deemed not to own an eligible security solely on account of any of the following facts, provided that, but for that fact, the licensee would be deemed to own the eligible security under the provisions of subdivision (a):

...(3) The fact that the licensee holds the eligible security in a custodial capacity as an agent of its customers in a pooled account titled in the name of the licensee for the benefit of its customers.

Thus, to satisfy Financial Code section 2084(b)(3), an account must be named in a manner that clearly indicates that it is for the benefit of the licensee's customers. Financial Code section 2084(c) provides that the Commissioner shall decide whether subsection (b)(3) applies.

The bank-account statement from _____ Bank indicates that the transmission money is in a pooled account held in _____'s name for the benefit of its customers. Thus, it meets the custodial requirement set forth in Financial Code section 2084(b)(3). Based on a review of the financial statements and other factors submitted by _____, the Department grants the request to include FBO accounts as an eligible security pursuant to Financial Code section 2084(c).

_____ should continue to evaluate the amount, nature, quality, and liquidity of its assets, amount and nature of its liabilities, and compliance with applicable state and federal law. If there is any material deterioration in _____'s status with respect to the requirements of Financial Code section 2084(c), _____ risks losing the ability to count FBO accounts as eligible securities.

2. Security Agreements

Financial Code section 2084(a) provides the conditions under which a licensee is deemed to own an eligible security. Specifically, it sets forth the requirements for a money transmitter's ownership of an eligible security. Subdivision (a)(2) of that section provides that an eligible security must not be subject to any pledge, lien, or security interest. On April 15, 2015, Assistant Deputy Commissioner Oscar Lumen from the Department's Money Transmitter Division advised _____ that it did not have adequate eligible securities because its financial statements reported that "substantially all of the assets of the Company are pledged as collateral..." On June 30, 2015, your office submitted a letter that it had received from _____, dated June 24, 2015 (June 24 letter), with whom _____ has entered several lien agreements (Security Agreements), which are

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described in _____'s financial statements. In that letter, _____ identified its liens with _____ and expressly acknowledged that the liens exclude "certain customer funds deposited with _____ for the benefit of its customers." This written assurance satisfies the Department that _____'s transmission money is not subject to the Security Agreements. Accordingly, the Department concludes that _____ has not violated Financial Code section 2084(a)(2).

3. Deposit Account Control Agreement

You argued in your May 14, 2015 letter that a third reason that _____ satisfies the requirements for eligible securities set forth in Financial Code section 2081(a) is because "there is no Deposit Account Control Agreement covering the _____ Account." Financial Code section 2084(a)(3) provides that "a licensee shall be deemed to own an eligible security" only if, among other things, the licensee is able to "freely negotiate, assign, or otherwise transfer the eligible security." A deposit account control agreement would significantly interfere with the free negotiation, assignment, or transfer of a bank account and therefore disqualify it from consideration as an eligible security. _____ acknowledged in its June 24 letter that it does not have a deposit account control agreement with _____ concerning its deposit accounts at _____ Bank. Thus, the Department is satisfied that _____'s custodial account at _____ Bank is not subject to any deposit account control agreement with _____.

For the reasons set forth above, the Department finds that _____ has satisfactorily demonstrated that its custodial account for transmission money at _____ Bank may be deemed an eligible security pursuant to Financial Code section 2084(b)(3) based on the factors set forth in Financial Code section 2084(c). The Department's position is based solely on the representations contained in your correspondence. Any change in the facts or circumstances, as we understand them, could lead to a different conclusion.

Sincerely,

Jan Lynn Owen
Commissioner of Business Oversight

By
Manuela Rumsey
Senior Counsel

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