

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

Jan Lynn Owen
Commissioner of Business Oversight

February 12, 2018

Re: _____ – Request for a legal opinion

Dear _____:

Thank you for your letter dated February 8, 2017 to Robert Venchiarutti, the Deputy Commissioner of the Money Transmitter Division in the Department of Business Oversight. As counsel for the Legal Division, I have been asked to respond to this matter.

Your letter asks whether the California Money Transmission Act (“MTA”) applies to the payment service to be offered _____. Your letter states that _____’s proposed service should be exempt from the MTA under the agent of payee exemption.¹ In a letter to the Department dated January 4, 2018, _____ of _____ provided a Merchant Agreement, a sample agreement between a merchant and a marketplace, and a flow of funds chart.

The Department intends to propose a regulation concerning the agent of payee exemption in the near future. While the Department engages in the rulemaking process, we decline to opine on the applicability of the exemption to _____’s proposed payment activity. However, the Department will not require _____ to license this activity under the MTA while the rulemaking is pending.

This letter is limited to the facts and circumstances presented to the Department in the correspondence listed above. Should any of the facts or circumstances change, the Department’s position may also change.

¹ Fin. Code § 2010, subd. (l).

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If you have any questions, please contact the undersigned at _____.

Sincerely,

Jan Lynn Owen
Commissioner
Department of Business Oversight

By

Pamela F. Hernandez
Counsel