

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

Jan Lynn Owen
Commissioner of Business Oversight

February 27, 2018

RE: _____ and _____

Dear _____:

Thank you for your letter dated August 3, 2017 to Robert Venchiarutti, Deputy Commissioner of the Money Transmitter Division of the Department of Business Oversight. As Counsel for the Legal Division, I have been asked to respond to this matter. Your letter requests a determination that the California Money Transmission Act (“MTA”) agent-of-payee exemption applies to payment processing conducted by _____ (“_____”) in connection with _____’s (“_____”) bill payment service (the “Service”). Your letter also requests a determination that _____ is not engaged in money transmission under the MTA.

For the reasons discussed below, the Department concludes that the MTA does not apply to those transactions where _____ is receiving customer payments because it is acting as an agent of payee. Additionally, if _____’s role in the Service is limited to providing data processing services, corporate services, marketing, business development, and technology solutions, _____ is not subject to the MTA. However, the language of the agreements between _____ and the billers does not make it clear to the biller that _____ never receives money for transmission. Therefore, the Department cannot confirm that _____ does not ever receive money for transmission.

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Background

Bill Payment Service

_____ is not a licensed money transmitter in California. Rather, _____ contracts with billers to accept payments from the biller's customers.¹ In the Service described in your letter,² customers transmit payments using _____'s website, mobile application, interactive voice response system, or customer service application, or another online, mobile, or interactive voice response that the biller hosts or owns.

When using the Service, the customer agrees that _____ and its affiliate, _____, (collectively, "_____") can process the payment and charge his or her credit card or debit the customer's bank account. The payment is processed through an Automated Clearing House and credited to the biller's bank account.

Contractual Language

In light of regulatory changes in various states regarding which payment processing models would not be considered reportable as money transmission, _____ and _____ clarified the nature of _____'s contractual relationship with its billers. In 2016, _____ required its existing billers to sign an acknowledgement letter. This letter stated, in part, that:

1. The funds comprising the Customer Payments are [biller's] property.
2. _____ and [_____] are acting as [biller's] authorized agents for the limited purpose of receiving Customer Payments from Customers on the [biller's] behalf and [biller] expressly authorizes _____ and [_____] to receive Customer Payment funds on [biller's] behalf.
3. Payment from Customer to _____ or [_____] shall be considered payment to [biller], extinguishing Customer's payment obligation to the [biller] (in the amount paid by Customer) as if the Customer had paid the [biller] directly. Such is the case even if the Customer Payments is not received by [biller] from _____ or [_____].
4. _____, and not the individual Customer, is solely liable to [biller] for Customer Payment funds if _____ or [_____] fails to remit Customer Payment funds to [biller]."

¹ In your letter, you noted that in a limited number of circumstances, _____ is the contracting party.

² You acknowledged that _____ may separately contract with financial institutions, or its service providers, to act as a "back office processor" and facilitate the processing of the financial institutions' bill payment services. This letter does not address that type of service.

In your letter, you stated that, as of March 30, 2017, all of the existing billers had acknowledged and agreed to these terms, or entered into an amendment to their agreement containing substantially similar statements as the acknowledgement letter. For any new billers, an addendum to the form agreement that these new billers sign designates _____, as agent of the biller, to be joined as a party to the agreement for the limited purpose of receiving customer payments. The addendum contains substantially the same four terms quoted from the acknowledgement letter above.

Roles of _____ and _____ in Providing the Service

In your letter, you explained that _____ is not currently involved in the receipt of funds.³ Rather, it only provides data processing services, corporate services, marketing, business development, and technology solutions by designing, operating and servicing the systems that allow customers to make payments. You explained that although technology owned by _____'s parent, _____, receives payment *instructions* from customers, it is _____ that processes the payments.

You also explained that the funds never are held in _____'s name, treated as an asset of _____, or available for _____'s use. Instead, the funds are held in _____ accounts and reflected on _____'s financial statements.

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.⁴ Financial Code section 2003, subdivision (q) defines "money transmission" in relevant part as receiving money for transmission. Financial Code section 2003, subdivision (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.

As explained in your letter, _____ receives customer payments from customers and holds the funds in a _____ bank account. _____ therefore receives money for transmission under Section 2003, subdivision (u). _____ is already licensed under the MTA, and the transactions it processes for the Service are subject to the reporting requirements of the MTA, unless there is an exemption for those transactions.

³ The acknowledgement letter and addendum contemplate _____, and not just _____, as acting an agent of the biller for purposes of receiving customer payments. However, in your letter, you explained that _____ is not receiving funds, but that if funds start to instead be processed through _____ bank accounts, _____ may seek confirmation from the Department that an exemption to the MTA licensing and reporting requirements applies. This letter does not address that hypothetical situation.

⁴ Fin. Code, § 2030, subd. (a).

Agent of Payee Exemption

Financial Code section 2010, subdivision (l) exempts from the MTA transactions in which a money transmitter acts as the “agent of the payee.” Under this subdivision, the transaction is exempt if the transmitter 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 services⁵ provided.

The acknowledgement letter and the addendum are written agreements stating that, when _____ receives money for transmission: (a) _____ is acting as the biller’s authorized agent for purposes of receiving customer payments; and (b) _____’s receipt of payment from the customer satisfies the payor’s (customer’s) obligation to the payee (biller). The transactions that _____ processes for this Service satisfy the requirements of Section 2010, subdivision (l) because _____ act as the agents of the payee pursuant to a preexisting written contract. Therefore, the MTA does not apply to the transactions where _____ receives the customer payments as the biller’s agent.

Determination Whether _____ is Receiving Money for Transmission

Your letter requests a determination that _____ is not engaged in money transmission under the MTA. As stated earlier, you explain that _____ currently only provides data processing services, corporate services, marketing, business development, and technology solutions by designing, operating and servicing the systems that allow customers to make payments. Based on that description, your conclusion that _____ is not currently engaged in money transmission seems accurate.

However, the language of the agreements between _____ and the billers does not make it clear to the biller that _____ does not *ever* receive money for transmission. Rather, as you pointed out in your letter, the agreements contemplate the possibility of _____ receiving the funds instead of _____. As such, the Department cannot confirm that _____ does not ever receive money for transmission.

Conclusion

The Department finds that the Service falls within the MTA’s definition of “money transmission;” however, the MTA does not apply to those transactions where _____ is receiving payments because _____ is acting as an agent of the payee pursuant to Financial Code section 2010, subdivision (l). The Department’s

⁵ This letter does not opine whether the goods and services provided by each biller are the type contemplated in Financial Code section 2010, subdivision (l) because the Department is currently drafting regulations to clarify this topic. Therefore, the Department is not considering this factor in its opinion regarding whether this Service qualifies for the agent of payee exemption.

determination is limited to _____'s activities related to receiving money for transmission for the Service, and does not extend to _____'s other activities. Based on the information you provided, the Department cannot confirm that _____ never receives money for transmission.

This opinion is limited to the facts and circumstances described above regarding the application of 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

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Counsel