

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

Jan Lynn Owen
Commissioner of Business Oversight

June 6, 2017

Re: Interpretive Opinion Request

Dear _____:

Thank you for your letter to the Commissioner of Business Oversight, Jan Lynn Owen, dated July 27, 2016. As Counsel for the Legal Division, the Commissioner requested that I respond to this matter. In your letter, you ask that the Department of Business Oversight (“Department”) interpret Financial Code section 2040(e) to exclude receivables generated by transactions exempt from licensure under Financial Code section 2010(l) (“agent of payee exemption”) from the calculation of accounts receivable as “money transmission receivables.” The Department will issue a separate letter addressing which of _____’s services are exempt under the agent of payee exemption. You argue that even when such transactions are exempt from licensure, these payments still qualify as money transmission receivables. For reasons explained herein, we agree with your interpretation of Financial Code section 2040(e).

BACKGROUND

_____ is a wholly owned subsidiary of _____. Although _____ is a licensed money transmitter in California and 47 other states, you claim that the vast majority of _____’s money transmission activity in California is conducted by a merchant processing business that is exempt from the California Money Transmission Act (“MTA;” Fin. Code § 2000 et seq.) by virtue of the agent of payee exemption. Because _____ conducts both regulated money transmission activities pursuant to its license, and exempt money transmission activity under the agent of payee exemption, you have asked the Department for an opinion about whether

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receivables generated pursuant to transactions that are exempt under the agent of payee exemption are still money transmission receivables for purposes of calculating the tangible shareholder's equity ratio.

LEGAL ANALYSIS

Financial Code section 2040 requires licensed money transmitters to maintain tangible shareholder's equity ("TSE") in an amount specified by the Commissioner. Financial Code section 2040(e) specifies that a money transmitter must maintain a certain ratio of accounts receivable to TSE. Specifically, Financial Code section 2040(e) provides that "the aggregate value of a licensee's accounts receivable, *excluding money transmission receivables*...cannot exceed 50 percent of the licensee's tangible shareholder's equity without the advanced written approval of the commissioner" (emphasis added). The term "money transmission receivables" is not defined by the Financial Code.

You argue that Financial Code section 2040(e) should be interpreted to treat receivables generated by _____ 's exempt money transmission activities as money transmission receivables for purposes of determining compliance with Section 2040(e). You assert that if the Department adopts your interpretation, _____ will be in compliance with Financial Code section 2040(e).

First, you argue that, under prevailing principles of statutory construction, money received by an entity engaged in money transmission and only exempt from regulation by virtue of the agent of payee exemption is still generating "money transmission receivables." Second, you argue that funds received for exempt transactions cannot be properly labeled "accounts receivable," but are properly characterized as "money transmission receivables." Third, you suggest that the purpose of Financial Code section 2040(e) is not furthered by including business conducted pursuant to the agent of payee exemption in the calculations required under the MTA.

CONCLUSION

Although "money transmission receivables" is not defined in the Financial Code, we agree that this term encompasses transactions that are exempt from licensure under the agent of payee exemption. Even though money transmission services that satisfy the agent of payee exemption do not require licensure, the receivables generated from these exempt transactions are still money transmission receivables for purposes of calculating TSE under Section 2040(e). The agent of payee exemption is a limited carve-out from the licensing requirements of the MTA, but the exemption does not alter the character of these receivables as money transmission receivables.

The conclusions expressed in this letter are based on the facts and circumstances as presented by you in your request to the Department. The Department reserves the right to

June 6, 2017
Page 3

revisit any conclusions under other facts, or changed circumstances. Please contact the undersigned at _____ should you have any questions.

Sincerely,

Jan Lynn Owen
Commissioner of Business Oversight

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