

DEPARTMENT OF FINANCIAL INSTITUTIONS

TEVEIA R. BARNES, Commissioner of Financial Institutions
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COMMISSIONER'S OPINION – No. 002

Disclosure requirements for persons that advertise, solicit or hold themselves out as providing money transmission in this state and who are not licensees, exempt from licensure, or agents of licensees or exempt entities

This Opinion provides guidance on disclosure requirements for persons who advertise, solicit, or hold themselves out as providing money transmission in this state. Financial Code (FC) § 2030(a), Division 1.2 of the FC (commencing with FC § 2000), the Money Transmission Act, provides: "A person shall not engage in the business of money transmission in this state, or advertise, solicit, or hold itself out as providing money transmission in this state, unless the person is licensed or exempt from licensure under this division or is an agent of a person licensed or exempt from licensure under this division." This means that only a licensed or exempt person (or an agent of such a person) can engage in the business of money transmission in this state, or advertise, solicit, or hold itself out as providing money transmission in this state. A person (other than a licensed or exempt person, or an agent of such a person) shall not advertise that it is providing money transmission in this state or solicit money transmission for itself in this state. FC 2030(a) also prohibits a person from advertising for or soliciting money transmission on behalf of a person that is not licensed or not an exempt person, or an agent of such a person. FC 2030(a), however, does not prohibit a person from advertising or soliciting money transmission on behalf of licensed or exempt persons or agents of such persons as long as the advertisement or solicitation is unambiguous as to the identity of the money transmission provider and the provider is a licensed or exempt person or agent thereof.

Thus, in order to be in compliance with FC § 2030(a), a person, whether or not the person is itself a licensed or exempt person or agent thereof, who advertises or solicits money transmission in this state on behalf of another person, may only do so on behalf of licensed (or exempt) money transmitters or their agents and must provide a disclosure in the person's advertising or solicitation materials that identifies: (1) the licensee(s), (2) the exempt person(s), or (3) the agent(s) and the licensee(s) or exempt person(s) that are their principals, as the entity(s) providing the money transmission. Examples of advertising materials, solicitations or other efforts to hold oneself out as providing money transmission that require such a disclosure include, but not are limited to: printed documents, website, emails, or display on electronic communication devices.

This Opinion also provides guidance on the definition of "agent" set forth in FC § 2003(b). The term "agent" is defined as a person (as defined in FC § 2003(r)) that "provides money transmission in California on behalf of the licensee, provided that the licensee becomes liable for the money transmission from the time money or monetary value is received by that person." This means that in order to meet the definition in FC § 2003(b), a person must receive money or monetary value. Therefore, a person, who merely advertises or solicits money transmission on behalf of a licensee, but who does not receive money or monetary value, does not meet the definition of an "agent."

Dated: April 18, 2013.

/s/

TEVEIA R. BARNES

Commissioner of Financial Institutions