

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

Jan Lynn Owen
Commissioner of Business Oversight

October 2, 2014

Re: Eligible Securities Request

Dear _____:

This is in response to your letter dated June 24, 2014 and follows Oscar Lumen's letter to you dated July 29, 2014. This letter only addresses the issue of the account titles for the accounts that _____ seeks approval to include as eligible securities pursuant to Financial Code (FC) § 2084 of the Money Transmitter Act (MTA). The matter of the account title terminology is a threshold issue, and therefore, that issue must be resolved before we can address the merits of your arguments regarding the factors in FC § 2084(c).

The Department has reviewed the account titles of _____ various bank accounts, which _____ asserts qualify as eligible securities. _____ account titles do not satisfy the standard set forth in FC § 2084(b)(3).

FC § 2084(b)(3) allows a pooled account to qualify as an eligible security if the pooled account is “titled in the name of the licensee for the benefit of its customers” provided that the Commissioner makes the determination in FC § 2084(c). Other pooled accounts that do not meet this title requirement may not be considered an eligible security.

Thus, FC § 2084(b)(3) requires accounts that qualify as eligible securities to be titled: (i) “for the benefit of” and (ii) “its customers.”

Most of _____ account titles state “_____ as Agent for its Billers and/or Consumers.” These account titles are problematic for two reasons. First, the account titles do not use the terminology “for the benefit of.” _____ usage of the phrase “Agent for” is not an equivalent phrase of “for the benefit of.” Second, the account titles do not state “its customers.” While “customer” is not a defined term in the MTA, the Financial Code sections that use the term customer demonstrate that the customer constitutes the sender.¹ For example, FC § 2103 states: “The receipt presented to each customer for money received for

¹ See, e.g., FC §§ 2101, 2102, and 2103.

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transmission . . ." Thus, the "customer" is the entity who gives money to the licensee for transmission. The customer is not the beneficiary.

It appears from _____ account titles that the accounts are being held as agent of beneficiaries and/or customers (i.e., "billers and/or consumers"). _____ billers are beneficiaries, not customers, for purposes of FC § 2084(b)(3). An account would not qualify as an eligible security if it were held for the benefit of the beneficiary because beneficiaries are not "customers" as contemplated by the MTA.

For those _____ accounts that use the phrase "for the benefit of," it is unclear based on the account title whether the accounts are for the benefit of the customer or the beneficiary. To the extent those account titles reference the beneficiary, those accounts would also not qualify as eligible securities for the reasons stated above.

Therefore, if _____ wishes to include these accounts as eligible securities, _____ would first need to change the account titles to comply with FC § 2084(b)(3). An example of an account title that would satisfy FC § 2084(b)(3) is: "_____ as agent and custodian for the benefit of its customers."

The FDIC guidance as described in your letter is broad regarding permissible titles of fiduciary accounts. However, the MTA is specific as to how an account must be titled in order to qualify as an eligible security.

Mr. Lumen's letter dated July 29, 2014, indicated that any approval under FC § 2084(c) would apply only to accounts that are titled in the name of _____ as agent and custodian "for the benefit of its customers." For the reasons stated above, none of _____ current account titles appear to satisfy the standard set forth in FC § 2084(b)(3). Therefore, _____ must amend its account titles before the Department can make any determination under FC § 2084(c).

If you have any questions, please feel free to contact Oscar Lumen, Assistant Deputy Commissioner, at (415) 263-8577, or me at (415) 263-8528.

Sincerely,

Jan Lynn Owen
Commissioner of Business Oversight

By

Jennifer L.W. Rumberger
Senior Counsel

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cc: Robert Venchiarutti, Department of Business Oversight, San Francisco
Oscar Lumen, Department of Business Oversight, San Francisco