

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

Jan Lynn Owen
Commissioner of Business Oversight

December 21, 2018

Re: Request for Interpretive Opinion – _____

Dear _____:

This letter is in response your e-mail dated August 9, 2018 to _____, the Deputy Commissioner of the Money Transmitter Division in the Department of Business Oversight, as supplemented by your emails dated September 7 and October 29. In your correspondence, you request a determination that your client, _____, Inc. (“_____”), is not subject to, or is exempt, from the Money Transmission Act.

Background

Money Transmission Act

The MTA 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.¹

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.

_____ Activities

In your correspondence, you provided an overview of the cross-border payment service offered by _____ (“_____”), _____, and _____ (“Payment System”). You

¹ Fin. Code, § 2030, subd. (a).

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explained that U.S. merchants can use this service to facilitate payments from the merchant's customers in China. _____ is responsible for pulling money from a customer's account, converting the funds into U.S. Currency, and wiring it to the _____ ("_____"), which is an FDIC-insured commercial bank. The funds are deposited into an "____-_____ Account", owned and managed by _____, and _____ becomes liable for the money. From the _____-_____ Account, _____ deducts an operational fee and routes the remaining funds to the merchant's settlement account, which is owned by _____. At that point, _____ provides the agreed upon amount to the merchant's account, with the balance, representing _____'s transaction fee, going to _____'s account.

_____ enrolls merchants to use the Payment System and provides customer service to these merchants. It also provides the merchant access to a third-party online system on which the merchant can review its transactions with its customers. You confirmed in your emails that _____ does not assume responsibility for customer funds and is not directly involved in sending money from China to the United States, nor the clearing and settlement of funds before the funds are transmitted to the merchant.

Analysis

_____ does not receive money for transmission in relation to this Payment System. Rather, _____ is providing the technological and customer service support that allows _____ to receive money for transmission in the U.S. Therefore, _____ is not subject to the requirements of the MTA because it is not conducting money transmission. And, as a commercial bank whose deposits are insured by the FDIC, _____ is exempt from the requirements of the MTA.²

This opinion is based solely on the facts as represented in your correspondence, and the Department's understanding of those representations. The Department may reach a different conclusion under other facts and circumstances. If you have any questions, please feel free to contact me at _____.

Sincerely,

Jan Lynn Owen
Commissioner
Department of Business Oversight

By

JJ:bkn

² Fin. Code, § 2010, subd. (d).