

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

Jan Lynn Owen
Commissioner of Business Oversight

September 11, 2015

Re: _____ – Opinion Request

Dear _____:

Thank you for your letter dated June 12, 2015, in which you asked on behalf of _____ for a determination from the Department of Business Oversight (Department) about the application of an exemption from the Money Transmission Act to _____'s payment-processing service. _____ currently has a money transmission license with the Department.

Financial Code section 2010(l) exempts transactions where the recipient of the money or monetary value is an agent of the payee. This section also provides that the agent and payee must have a preexisting written contract and delivery of the money or other monetary value satisfies the payor's obligation to the payee.

In addition, the new exemption defines key terms, including agent, payee, and payor:

- (1) For purposes of this subdivision, "agent" has the same meaning as that term is defined in Section 2295 of the Civil Code.
- (2) For purposes of this subdivision, "payee" means the provider of goods or services, who is owed payment of money or other monetary value from the payor for the goods or services.
- (3) For purposes of this subdivision, "payor" means the recipient of goods or services, who owes payment of money or monetary value to the payee for the goods or services. (Fin. Code, § 2010(l).)

_____ asserts that the payment-processing service meets the criteria in Financial Code section 2010(l). _____'s payment-processing service (the "Service") involves receiving payment on behalf of third party merchants from individuals ("Users") who purchase goods or services from those merchants. The Users pay for the goods or services in person at physical retail merchant locations with whom _____ has contracted. The merchant operating the physical retail location accepts payment on behalf of _____ and the third party merchants from whom the User is purchasing the good or service. The

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merchant receiving cash payment remits the payment using _____'s electronic network, and issues a receipt to the User. The payment is then forwarded by _____ to the third party merchant that sold the good or service to the User.

In support of its assertion, _____ submitted existing written agreements with merchants who receive payment from individuals, third parties who sell goods or services to the individuals, and other payments processors, as well as receipts issued to Users.

For example, section 1.a of the Form Merchant Agreement expressly provides the following agency appointment language:

Merchant hereby non exclusively appoints _____ as its agent for the limited purpose of receiving payments on its behalf from Network users, directly and through all participating Payment Locations designated by _____ through separate agreements between _____ and the Payment Locations, and expressly authorizes all Payment Locations referred to in Schedule 1 to accept payment on its behalf only through the Network.

Section 1.a of the Form Processor Agreement expressly provides the following agency appointment language:

Pursuant to the authorization provided to Processor by its Clients in connection with certain services provided by Processor to its Clients, Processor, in its own capacity and on behalf of its Clients, hereby non exclusively appoints _____ as its and each of its Client's agent for the limited purposes of receiving payments on its and its Clients' behalf from Network users, directly and through all Participating Locations designated by _____ through separate agreements between _____ and the Payment Locations, and expressly authorizes all Payment Locations referred to on Schedule 1 to accept payment on its and its Clients' behalf only through the Network.

Furthermore, delivery of the money or other monetary value to the retail locations and _____ satisfies the User's obligation to the Payee. First, the receipt issued to the User evidences that payment has been made to the third party merchant. Second, the agreements with payees expressly provide that payment at the retail location and to _____ constitutes full and final settlement of amounts owed by the User to the payee.

For example, section 3.d of the Form Processor Agreement expressly provides the following:

Actual receipt of payment for Offerings from users by _____ and/or Payment Locations on behalf of Client and/or Processor in connection with Network transactions shall be deemed receipt of payment from users by such Client and will satisfy the obligations owed to Client by users in the amount of the applicable payment by the user, even if payment is not received by Processor or Client from _____, rather Processor's recourse is to _____. Processor acknowledges and agrees for itself and each of its Clients, that it and each Client has no (and shall not assert any) claim for payment against any user after receipt of payment from such user by a Payment Location and will not otherwise allow or take any action or fail to take any action adverse to a user as a result of any such failure to subsequently receive payment from _____.

Other agreements have substantially similar language.

The Department has reviewed these agreements and the receipts issued to Users, and determined that the two requirements in Financial Code section 2010(I) have been met. Specifically, the agreements establish that (1) _____ is the agent of the payee for purposes of receiving payments from payors, and (2) _____'s receipt of any payor's money satisfies the payor's obligation to the payee.

Therefore, the Department confirms that the Service offered by _____ is exempt from the Money Transmission Act pursuant to Financial Code section 2010(I) and reporting for this service is not required.

This opinion only applies to the Service. It does not apply to any other money transmission service, including without limitation, _____'s bill payment service for which it does not have any contracts with third party merchants. This opinion is based solely on the facts as represented in your correspondence, and may change if any of the conditions or circumstances under which _____ provides products or services are altered in the future. If you have any questions, please feel free to contact me at (916) 322-5983.

Sincerely,

Jan Lynn Owen
Commissioner
Department of Business Oversight

By

Manuela Rumsey
Senior Counsel

MR:is

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