

DEPARTMENT OF BUSINESS OVERSIGHT*Ensuring a Fair and Secure Financial Services Marketplace for all Californians***Jan Lynn Owen****Commissioner of Business Oversight**

IN REPLY REFER TO:

FILE NO: _____

November 29, 2018

Re: Request for a Legal Opinion – _____

Dear _____:

Thank you for your letter dated June 26, 2018 to the Department of Business Oversight (“Department”). As Senior Counsel for the Legal Division, I have been asked to respond to this matter. Your letter requests confirmation that the California Money Transmission Act (“MTA”) (Fin. Code, § 2000 et seq.) does not apply to the _____ software service offered by _____, which facilitates ACH transactions between licensed financial institutions and licensed cannabis dispensaries. You provided the terms and conditions and additional information in emails dated July 17, 2018 and September 6, 2018, and in phone calls on August 1 and 3, 2018. For the reasons discussed below, the Department concludes that _____’s software service does not require a MTA license.

Background

_____ provides its customers a mobile application and website through which cashless payments can be made at the point-of-sale for licensed cannabis retailers (the “Merchant”). The settlement services are provided by _____, a payment processor. You represent that although _____ facilitates payment through its software, at no time does _____ actually or constructively receive money for transmission. The _____ Merchant Agreement Terms and Conditions (“Merchant Agreement”) state that _____ transmits money from the _____ customer’s bank account to the Merchant’s bank account using the ACH network. In a separate transaction, _____ periodically invoices Merchants for a processing fee as well as other related costs owed to _____ for providing its software to the Merchant.

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The Merchant Agreement also states that customers can use a “_____ payment card” to access the service. In your email dated September 6, 2018, however, you represented that while at one time, it was contemplated that a payment card might be used to access the _____ service, there actually is currently no _____ payment card. _____ does not offer stored value¹ or any other type of prepaid card.

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.² 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. California regulations specify that “receiving money for transmission” means actually or constructively receiving or taking possession of or holding any money or monetary value for transmission, which does not include only receiving payment instructions or directions to transmit money or monetary value.³

“Receiving Money for Transmission”

_____ is a software service that facilitates payments from customers to Merchants. More specifically, _____ sends instructions to _____ so that _____ can transmit money from a customer’s bank account to a Merchant’s bank account. _____ never takes possession of the money being transmitted; rather, _____ gives instructions to _____, which takes possession of customer funds and transmits those funds to the Merchant. Therefore, _____ is not “receiving money for transmission” under Section 2003, subdivision (u). As a result, the software service is not subject to the licensure requirements of the MTA.

Conclusion

The definition of receiving money for transmission does not include only sending instructions or directions to transmit money. Thus, _____’s software services do not fall within the purpose and scope of the MTA, and it is unnecessary for _____ to apply for a money transmission license.

¹ Fin. Code, § 2003, subd. (x) (definition of stored value).

² Fin. Code, § 2030, subd. (a).

³ Cal. Code Regs., tit. 10, § 80.129.

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. Notably, this opinion relies upon your representation that _____ is not issuing stored value. If _____ chooses to offer a stored value product in the future, _____ is advised to contact the Department for a determination of whether licensing is required.

This opinion does not address whether _____'s financial institution partners or other affiliates require a license under the MTA.

Please contact me at _____ if you have any questions.

Sincerely,

Jan Lynn Owen
Commissioner
Department of Business Oversight

By

Jennifer L.W. Rumberger
Senior Counsel

JLWR:acp