

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

Jan Lynn Owen
Commissioner of Business Oversight

March 23, 2015

Re: _____ – Opinion Request

Dear _____:

This is in response to _____ letter dated January 28, 2014, as supplemented by your email dated November 21, 2014. The Department of Business Oversight (Department) previously sent an acknowledgment letter dated June 17, 2014. You have requested clarification of the Department’s interpretation of the definition of “stored value” as set forth in Financial Code section 2003(x) of the Money Transmitter Act (Financial Code section 2000 et seq.) as applied to _____.

BACKGROUND

_____ is the issuer of the Gift Cards. Through the _____ marketplace, _____ parent company, _____, makes available to _____ phone users mobile device applications or "apps," entertainment and news media content and hardware. In order to be used on _____, a Gift Card must first be activated and registered with _____ to a particular user's online _____ account. A user may purchase digital content (but not hardware) on _____ with a Gift Card. Gift Cards may not be used to purchase hardware, or physical goods, such as mobile phones and accessories, on _____.

Gift Cards can also be used on a _____ -owned channel to purchase digital content sold by _____. Gift Cards can be used to pay for purchases or rentals of movies on _____, a wholly-owned subsidiary of _____. _____ is the seller of the movies under its distribution agreements with the movie studios, regardless of whether the movies are sold or rented by _____ on the _____ marketplace or on _____.

_____ asserts that it is the “provider” of all goods and services purchased with the Gift Cards via _____ because _____ is in sole control of the _____ marketplace. Examples of how _____ controls the _____ marketplace include:

1515 K Street, Suite 200
 Sacramento, CA 95814-4052
 (916) 445-7205

One Sansome Street, Suite 600
 San Francisco, CA 94104-4428
 (415) 972-8565

320 West 4th Street, Suite 750
 Los Angeles, CA 90013-2344
 (213) 576-7500

1350 Front Street, Room 2034
 San Diego, CA 92101-3697
 (619) 525-4233

45 Fremont Street, Suite 1700
 San Francisco, CA 94105
 (415) 263-8500

300 S. Spring Street, Suite 15513
 Los Angeles, CA 90013
 (213) 897-2085

7575 Metropolitan Drive, Suite 108
 San Diego, CA 92108
 (619) 682-7227

Gift Cards are only redeemable by _____, the issuer of the Gift Cards. Only _____ can approve a transaction where a Gift Card will be used as payment. No other entity is authorized to approve transactions with a Gift Card or to redeem or accept value associated with Gift Cards.

- _____ is the only location at which goods and services are provided to a user when redeeming a Gift Card.

- _____, through _____, participates in every sale of goods because the sale is subject to contractual terms agreed to (1) by the user with _____ and, separately, (2) by the developer with _____. These terms govern refund policies, restrictions on content, marketing restrictions, privacy and data security requirements, etc.

- _____ has the sole discretion to approve or decline the participation of any party seeking to purchase or to provide content and apps through _____. This control is enforced through various methods of monitoring by _____, such as monitoring of URL content, monitoring transactions for fraudulent and money laundering activities, and verification of merchant identity before payout.

- _____ provides the receipt to the purchaser identifying _____ as the online marketplace where the purchase occurred, and the Gift Card was redeemed.

- _____ is solely responsible for the delivery of digital content to the purchaser over the Internet. All content is stored on _____ controlled servers, and _____ initiates the electronic download to the purchaser. If the purchaser does not receive content that was purchased on _____, the purchaser contacts _____ (not the developer), and _____ is responsible for re-delivery of content to the purchaser.

- _____ provides the guarantee and customer service for delivery of purchased content. Thus, there is no payment risk to the Gift Card user from availability of content from developers on the _____ marketplace.

MONEY TRANSMISSION ACT

Financial Code section 2003(q)(2) defines "money transmission" to include selling or issuing stored value.

Financial Code section 2003(x) defines "stored value" to mean "monetary value representing a claim against the issuer that is stored on an electronic or digital medium and evidenced by an electronic or digital record, and that is intended and accepted for use as a means of redemption for money or monetary value or payment for goods or services. The term does not include a credit card voucher, letter of credit, or any stored value that is only redeemable by the issuer for goods or services provided by the issuer or its affiliate, except to the extent required by applicable law to be redeemable in cash for its cash value."

Therefore, Financial Code section 2003(x) provides for an exemption from the definition of stored value for any stored value that is only redeemable by the issuer for goods or services "provided by" the issuer or its affiliate. The customary meaning of "provide" is "an act of furnishing or supplying a person with a product."¹ Thus, an issuer of stored value may meet the "provided by" exemption if the issuer or its affiliate is the legal seller (i.e., title owner to the goods or services being sold) or if the issuer or its affiliate otherwise furnishes, makes available, or supplies the goods/services that are being purchased with the stored value issued by it. The question of whether an issuer meets this standard is a factual one.

APPLICATION OF MONEY TRANSMISSION ACT TO _____ GIFT CARDS

_____ is the issuer of the Gift Cards. _____ and its affiliate, _____, have demonstrated that the Gift Cards are only redeemable by _____, and they are the "provider" of the digital goods and services purchased with the Gift Cards via _____ because _____ is in sole control of the _____ marketplace.

A. _____ Gift Cards Are "Only Redeemable" by the Issuer.

With regard to the process for redeeming the value of a Gift Card, only _____ can approve transactions with a Gift Card or accept value associated with a Gift Card. A user must have a _____ account with _____ to use a Gift Card, and _____ determines whether or not to approve a transaction where the Gift Card will be used as the payment method. Gift Cards can only be redeemed for purchases made on the _____ marketplace. _____ provides the receipt for purchases made with Gift Cards, and the receipt identifies _____ as the online marketplace where the purchase occurred. Every sale is subject to contractual terms agreed to (1) by the user with _____ and as to the user's _____ account, with _____, and, separately, (2) by the developer with _____ and _____. For these reasons, the Gift Cards are only redeemable by _____.

B. Digital Content Sold on the _____ Marketplace Is "Provided by" _____ affiliate, _____.

With regard to the _____ marketplace, _____ is solely responsible for the delivery of digital content to the purchaser over the Internet. The Gift Cards may only be used to pay for digital content, not hardware or physical goods, on _____. All digital content is stored on _____ controlled servers, and _____ initiates the electronic download to the purchaser. If there is a problem with the delivery of

¹ Black's Law Dict., Online Legal Dict. (2nd ed. 2004) <<http://thelawdictionary.org/provide>> [as of March 23, 2015]; see also Merriam-Webster Dict. <<http://www.merriam-webster.com/dictionary/provide>> [as of March 23, 2015] ("to supply or make available").

purchased content, the purchaser contacts _____ (not the developer), and _____ is responsible for re-delivery of content to the purchaser. Because _____ provides the guarantee for delivery of purchased content, there is no payment risk to the Gift Card user. For these reasons, _____ provides the digital content and services purchased with the Gift Cards via the _____ marketplace.

Gift Cards can also be used to pay for purchases or rentals of movies on _____, a wholly-owned subsidiary of _____. Because _____ is the seller of these movies under its distribution agreements with the movie studios, it is provider of this content as well.

CONCLUSION

For all of the foregoing reasons, the Department has determined: (1) the Gift Cards are only redeemable by the issuer, _____; and (2) its affiliate, _____, provides the digital goods and services through the _____ marketplace and _____. Therefore, because _____ is the issuer of the Gift Cards, and the Gift Cards are redeemable by _____; for digital goods or services provided by it and its affiliate, the Gift Cards are exempt from the definition of stored value pursuant to Financial Code section 2003(x).

If you have any questions, please feel free to contact me at (415) 263-8528.

Sincerely,

Jan Lynn Owen
Commissioner of Business Oversight

By

Jennifer L.W. Rumberger
Senior Counsel

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