



STATE OF CALIFORNIA

## Department of Business Oversight

GOVERNOR **Gavin Newsom** • COMMISSIONER **Manuel P. Alvarez**

IN REPLY REFER TO:  
FILE NO:

August 26, 2019

**VIA E-MAIL AND U.S. MAIL**

Re: Receipt of Request for Interpretive Opinion

Dear \_\_\_\_\_:

Thank you for your letters dated February 8, 2019 and March 14 to the Commissioner of Business Oversight, as well as your email correspondence dated April 22, April 27, May 16, May 23, and June 7. Your correspondence sets forth reasons why your client, \_\_\_\_\_ dba \_\_\_\_\_ (“\_\_\_\_\_”), should not be required to obtain a license under the California Money Transmission Act (“MTA”).

\_\_\_\_\_’s Services

\_\_\_\_\_ works with cannabis-related businesses (\_\_\_\_\_’s “customers”) to give them access to financial services provided by \_\_\_\_\_’s partner financial institutions. Currently, \_\_\_\_\_ has partnered with \_\_\_\_\_, an FDIC-insured, Missouri state-chartered bank, but it is in discussions with other financial institutions. \_\_\_\_\_ and \_\_\_\_\_ have entered into a Program Management Agreement (“Agreement”). Pursuant to this Agreement, \_\_\_\_\_ provides certain services in connection to a system that allows cannabis-related businesses to deposit funds into an account established at the bank. \_\_\_\_\_’s services include marketing and promotion, account application processing, transaction processing, accounting, arranging for currency transportation services from the customer to the bank’s custody, regulatory compliance functions, and customer service.

In order to deposit funds into an account at \_\_\_\_\_, the customer first applies for an account on \_\_\_\_\_’s website. Although \_\_\_\_\_ performs initial gathering and verification of the application, the bank has ultimate authority of whether a customer’s application is approved.

In your correspondence, you explained that \_\_\_\_\_ enables customers to have online and mobile access to banking services through \_\_\_\_\_’s website and facilitates all deposits, transfers, and withdrawals. You explained that, if \_\_\_\_\_ arranges for cash to be picked up from a cannabis-related business and then transported to \_\_\_\_\_, the funds remain the property of the cannabis-related business while in the armored car, and the

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armored car company (with its insurer) assumes liability for any loss. The money is taken to the armored car service's vault facility. The armored car service verifies the amount of money upon receipt at the facility and the customer's account balance is promptly credited. The funds are stored separately and securely, and are not to be commingled with any other client's funds during storage or processing. Pursuant to a Cash Vault Agreement, once the funds are accepted at the vault facility, they become the property of \_\_\_\_\_.

For electronic transfers, \_\_\_\_\_ provides the transaction information to the bank, and the bank performs the transfer. The Program Management Agreement states that \_\_\_\_\_ shall facilitate the settlement of all transactions initiated by the account holders.

Customers' funds are deposited in a \_\_\_\_\_-owned account at \_\_\_\_\_, which is a custodial account maintained for the benefit of the customers. In your email of April 27, you stated that the account is titled " \_\_\_\_\_, as Program Manager for \_\_\_\_\_, FBO \_\_\_\_\_ Customers."

Pursuant to the Program Management Agreement, \_\_\_\_\_ performs its duties as an agent of \_\_\_\_\_. The relevant portion of the Agreement states:

"Bank further appoints [\_\_\_\_\_] as its agent or authorized delegate, as the case may be, for the purpose of compliance with state money transmitter statutes and the Bank Secrecy Act. In particular, to the extent that [\_\_\_\_\_] may receive or handle [Customer] funds as part of the Program, it does so as Bank's agent, and the delivery of funds by [the Customer] to [\_\_\_\_\_] shall constitute receipt of those funds by Bank."

### Customer Disclosures

Customer disclosures titled "Terms and Conditions for the Account Application" and "Terms and Conditions Applicable to your Bank Account and the \_\_\_\_\_ Service," as well as other \_\_\_\_\_ marketing information, also explain that \_\_\_\_\_ is acting as an agent of a bank.

Specifically, the Terms and Conditions for the Account Application states:

"Thank you for applying for a deposit account [...] offered by our financial institution partner (the "Bank"), which will be serviced by \_\_\_\_\_, as an agent of the Bank. We look forward to getting to know you and your business better. This document constitutes the agreement ("Agreement") outlining the terms and conditions applicable to your application for an Account. To obtain an Account from the Bank you

must complete the application processes through the Bank's agent and service provider, \_\_\_\_\_ [...] in accordance with this Agreement. If the Bank determines your application and information meets its account opening requirements, then an Account will be opened at the Bank."

In the Terms and Conditions Applicable to your Bank Account and the \_\_\_\_ Services, the following disclosures are provided:

"These are the Terms and Conditions applicable to your use of the Services offered by \_\_\_\_ Financial and your Bank Account. Your Bank Account is serviced by \_\_\_\_\_, as agent for the Bank." [...]

"To the extent that \_\_\_\_ receives or handles your money for deposit into your Bank Account, we will only do so as the agent of the Bank." [...]

In your email of May 23, you provided an example of the current welcome letter provided to a customer when a customer has successfully opened an account at \_\_\_\_\_ through \_\_\_\_\_. The footer of each page of that letter states, in part, "\_\_\_\_\_ is an agent of its partnering financial institutions and licensed money transmitters." The second page of the welcome letter provides the account information, including the name of the bank where funds are held.

Additionally, you provided an example of a customer's monthly statement, which states, "Your client account is maintained at \_\_\_\_\_ (member FDIC) and serviced by \_\_\_\_\_, as Agent of \_\_\_\_\_."

### Money Transmitter 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. Financial Code section 2003, subdivision (k) defines "in California" to include from persons located in California. 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.

### *Agent of an Exempt Entity*

Financial Code section 2030, subdivision (a) prohibits a person from transmitting money in California without a license unless the person is exempt from the MTA, or is an agent of a

person licensed under or exempt from the MTA. Financial Code section 2010, subdivision (d) exempts from the MTA a commercial bank, the deposits of which are insured by the FDIC.

Analysis

The Program Management Agreement between \_\_\_\_\_ and \_\_\_\_\_ explicitly states that \_\_\_\_\_ is acting as an agent of \_\_\_\_\_ when it receives or handles customer funds and that any delivery of funds by the customer to \_\_\_\_\_ shall constitute receipt of those funds by Bank. \_\_\_\_\_'s marketing information and consumer disclosures inform customers that \_\_\_\_\_ is acting as an agent of a bank in performing its duties. Because \_\_\_\_\_ is acting as an agent of an FDIC-insured commercial bank, which is an entity exempt from the MTA, \_\_\_\_\_ is also exempt from the MTA pursuant to Financial Code section 2010, subdivision (d).

This opinion is based solely on the facts presented in your correspondence as it relates to \_\_\_\_\_. Any changes in the facts or circumstances, as we understand them, could lead to a different conclusion.

You may call me at \_\_\_\_\_ with any questions.

Sincerely,

Manuel P. Alvarez  
Commissioner  
Department of Business Oversight

By

\_\_\_\_\_  
Senior Counsel