



STATE OF CALIFORNIA

## Department of Business Oversight

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

IN REPLY REFER TO:  
FILE NO:

October 10, 2019

Re: Request for Interpretive Opinion (Agent of Payee Exemption) –

Dear Mr. \_\_\_\_\_ :

Thank you for your letter dated June 4, 2019, supplemented by \_\_\_\_\_'s letter dated August 15, 2019, requesting an interpretive opinion from the Department of Business Oversight ("Department") as to whether \_\_\_\_\_ ("\_\_\_\_\_") is exempt from the requirement to obtain a license under the Money Transmission Act<sup>1</sup> ("MTA").

### **Background**

\_\_\_\_\_ provides an online platform ("Platform") through which \_\_\_\_\_ bands ("Bands") may sell band inventory, including \_\_\_\_\_, to their fans ("Customers") in exchange for Customers' payments. To provide flexibility to Platform users, \_\_\_\_\_ offers three different options for these transactions.

Under Option One, the Bands sell inventory directly to the Customers, and the Customers pay the Bands directly for the inventory without using \_\_\_\_\_ as an intermediary. For this option, \_\_\_\_\_ does not collect any money from the parties to the transaction other than an administrative fee from the Bands for using the Platform.

Under Option Two, the Bands authorize \_\_\_\_\_ to sell inventory to Customers on behalf of the Bands, bill the Customers for these purchases, and collect payments from the Customers pursuant to a pre-existing written contract between \_\_\_\_\_ and the Band ("Band Agreement"). The Band Agreement appoints \_\_\_\_\_ as Band's agent to collect payments from Customers who purchase inventory sold by the Band through the Platform and states \_\_\_\_\_' receipt of Customer's payments due to the Band for inventory sold through the Platform satisfies the Customers' obligation to the Band. Once \_\_\_\_\_ receives payment from the Customer, \_\_\_\_\_ forwards this money to the Band after deducting its own fees.

Option Three is the same as Option Two, except the Band can also use the Platform to order inventory from a third-party supplier ("Supplier") to help fulfill orders made by the Customer. After a Customer orders and purchases the inventory, the Band orders this inventory from the Supplier. \_\_\_\_\_ first receives payment on behalf of the Band, as it does in Option Two, but then, pursuant to the Band's

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<sup>1</sup> Fin. Code, § 2000 et seq. All references in this letter to "Section" are to the Financial Code.

instruction, \_\_\_\_\_ pays the Supplier pursuant to \_\_\_\_\_' pre-existing written contract with the Supplier ("Supplier Agreement"). The Supplier Agreement appoints \_\_\_\_\_ as Supplier's agent to collect payments owed by the Band for inventory furnished by the Supplier and states \_\_\_\_\_, receipt of payments due from the Band for Supplier's inventory satisfies the Band's payment obligation to the Supplier.

### **Money Transmission Act**

Under the MTA, a person shall not engage in money transmission in California, unless the person is licensed, exempt from licensure, or an agent of a person licensed or exempt from licensure.<sup>2</sup> "Money transmission" includes: (1) selling or issuing payment instruments, (2) selling or issuing stored value, or (3) receiving money for transmission.<sup>3</sup> "Receiving money for transmission" is defined as "receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means."<sup>4</sup>

Section 2010 establishes various statutory exemptions from the MTA and, in subdivision (l), exempts transactions where the recipient of money or monetary value is an "agent of the payee." This agent-of-payee exemption requires: (1) "a transaction in which the recipient of the money or other monetary value is an agent of the payee pursuant to a preexisting written contract"; and (2) "delivery of the money or other monetary value to the agent satisfies the payor's obligation to the payee."<sup>5</sup> For purposes of this exemption, "agent" has the same meaning as that in Civil Code section 2295, "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," and "payor" means "the recipient of goods or services, who owes payment of money or monetary value to the payee for the goods or services."<sup>6</sup>

### **Analysis**

Under Option One, \_\_\_\_\_ does not engage in money transmission because it does not sell or issue payment instruments, sell or issue stored value, or receive money for transmission. Instead, \_\_\_\_\_ collects an administrative fee from the Band for using the Platform to connect with Customers.

Under Option Two, \_\_\_\_\_ engages in money transmission by receiving money from Customers for transmission to the Band. However, based on the information provided, the Department concludes \_\_\_\_\_' activities under this option qualify for the agent-of-payee exemption. The proposed language in the Band Agreement shows the Band is the Payee, the Customer is the Payor, and \_\_\_\_\_ is the agent of the Band (i.e., agent of the payee). Moreover, Schedule B of the Band Agreement states \_\_\_\_\_' receipt of funds from the Customer satisfies the Customer's payment obligation to the Band.

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<sup>2</sup> Fin. Code, § 2030, subd. (a).

<sup>3</sup> Fin. Code, § 2003, subd. (q).

<sup>4</sup> Fin. Code, § 2003, subd. (u).

<sup>5</sup> Fin. Code, § 2010, subd. (l).

<sup>6</sup> Fin. Code, § 2010, subd. (l)(1)-(3).

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Under Option Three, when it acts as the agent of the Supplier, \_\_\_\_\_ is engaged in money transmission by receiving money for transmission to the Supplier. However, based on the information provided, the Department concludes \_\_\_\_\_' services to the Supplier also qualify for the agent-of-payee exemption. The proposed language in the Supplier Agreement shows the Supplier is the Payee, the Band is the Payor, and \_\_\_\_\_ is the agent of the Supplier (i.e., agent of the payee). Moreover, according to Section 3.1 of the Supplier Agreement, \_\_\_\_\_' receipt of funds owed by the Band satisfies the Band's payment obligation to the Supplier for the inventory sold.

### **Conclusion**

The Department finds the services provided by \_\_\_\_\_ under Options 2 and 3 fall within the MTA's definition of "money transmission"; however, the MTA does not apply to these transactions because \_\_\_\_\_ is acting as an agent of the payee pursuant to Section 2010, subdivision (l).

This opinion is limited to the facts and circumstances described above regarding the applicability of the agent-of-payee exemption under the MTA. Should any of the facts or circumstances change, the Department's opinion may also change.

Please contact me at \_\_\_\_\_ or \_\_\_\_\_ with any questions.

Sincerely,

Manuel P. Alvarez  
Commissioner  
Department of Business Oversight

By

\_\_\_\_\_

Senior Counsel

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