



STATE OF CALIFORNIA

Department of Business Oversight

GOVERNOR Gavin Newsom • COMMISSIONER Manuel P. Alvarez

IN REPLY REFER TO:  
FILE NO: [REDACTED]

May 17, 2019

[REDACTED]

Re: [REDACTED] – Opinion Request

Dear Ms. [REDACTED]:

Thank you for your letter to the Department of Business Oversight (“Department”) dated December 5, 2018 as supplemented by your letter dated March 13, 2019. As Senior Counsel for the Department, I have been asked to respond to your request. [REDACTED] requests a determination by the Department regarding the applicability of the agent-of-the-payee exemption under the Money Transmission Act to [REDACTED]’s (“[REDACTED]”) direct-debit payment-processing services via the Automated Clearing House (“ACH”) network that [REDACTED] plans to introduce in California and throughout the United States.<sup>1</sup>

**Background**

[REDACTED] clients are Merchants (“Payees” or “Merchants”). [REDACTED]’ services enable Merchants to accept end-customer payments, i.e., the customer of the Merchant (“Payor” or “end-customer”), for purchases made with a Merchant in the form of a bank-account debit. In the United States, [REDACTED] will provide direct-debit payment-processing services via the ACH network to its Merchants. In providing this service, [REDACTED] will receive money from the end-customer as the Merchant’s agent pursuant to a preexisting written contract between [REDACTED] and the Merchant. The contract will appoint [REDACTED] as the Merchant’s agent for purposes of collecting payment from the Merchant’s end-customers, and provide that delivery of the money to [REDACTED] will satisfy the end-customer’s obligation to the Merchant. Specifically, the [REDACTED] Merchant Agreement provides:

Merchant hereby appoints [REDACTED] as its agent for accepting and processing payment from Customers on Merchant's behalf. Merchant authorizes [REDACTED] to receive payments on its behalf and deliver such payments, net of agreed-upon fees and other charges, to Merchant's designated bank account in accordance

<sup>1</sup> [REDACTED] is an affiliate of [REDACTED] that will be the operating entity providing the direct-debit payment-processing services in the United States.

with its instructions. Merchant represents and warrants that each payment that it directs ██████████ to process through the ██████████ Service is for the completed and fulfilled sale of goods or services from Merchant to a Customer. Merchant agrees and acknowledges that: (a) once ██████████ receives payment from a Customer, Merchant will treat the Customer as if Merchant has itself received the funds, regardless of whether Merchant actually receives the payment from ██████████, and (b) its sole recourse for nonpayment by ██████████ is against ██████████, and it will not seek any return, refund or payment directly or indirectly from Customers in the event of nonpayment by ██████████.

In other words, when an end-customer makes a purchase from a Merchant, the payment flows from the end-customer to ██████████, and then from ██████████ to the Merchant; and the actual payment amount is only transferred among the end-customer's, Merchant's, and ██████████ banks via the ACH network.

End-customers also enter into "contractual arrangements" with Merchants for the provision of goods and services. Through these arrangements, end-customers complete an electronic-direct-debit mandate authorizing ██████████ to collect payments from the end-customer. The mandate is a standard form authorization to the end-customer's bank instructing it to allow ██████████ as agent of the Merchant to collect the amount owed by the end-customer to the Merchant. Under this scheme, ██████████ will aggregate funds paid into ██████████' account on behalf of a Merchant, and then transfer the funds to the Merchant's pre-authenticated nominated bank account.

██████████ direct-debit payment-processing services also include allowing end-customers to receive refunds from Merchants through the ACH network by reversing payment transactions processed by ██████████. The refunded amount is a return of the end-customer's own funds. ██████████ describes this refund processing as the "ACH equivalent of a chargeback on a Visa or Mastercard payment."

### **Money Transmission Act**

The Money Transmission Act ("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.<sup>2</sup> Financial Code section 2003, subdivision (q) defines "money transmission" as: (1) selling or issuing payment instruments, (2) selling or issuing stored value, or (3) receiving money for transmission.

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

Financial Code section 2010 sets forth statutory exemptions from the MTA. Financial Code section 2010, subdivision (l) exempts transactions in which the transmitter operates as the “agent of the payee.” This exemption requires: (1) the “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>3</sup>

### Analysis

Because ██████████ receives money from end-customers into its sponsoring bank account for transmission to Merchants, ██████████ engages in the business of money transmission when it provides the ACH debit service to Merchants in California. Thus, ██████████ is subject to licensure under the MTA for its direct-debit payment-processing services.

The issue that you seek to resolve is whether ██████████ is eligible for the agent-of-payee exemption with respect to its ACH direct-debit payment-processing services under the MTA. Based on the information provided, the Department concludes that the MTA’s agent-of-payee exemption applies to ██████████ direct-debit payment-processing services via the ACH network.

The proposed language in the Merchant Agreement submitted with your letter shows that the Merchant is the Payee, the end-customer is the Payor, and ██████████ is the agent of the Merchant (i.e., agent of the payee). Furthermore, the agreement also shows that ██████████ receipt of funds from the end-customer satisfies any payment obligation the end-customer has to the Merchant.

Under these circumstances, ██████████ satisfies the requirements set forth in Financial Code section 2010, subdivision (l), and qualifies for the agent-of-the-payee exemption for its direct-debit payment-processing services via the ACH network.

### Conclusion

The Department finds that the direct-debit payment-processing services via the ACH network falls within the MTA’s definition of “money transmission”; however, the MTA does not apply to those transactions where ██████████ is receiving money from end-customers as part of the direct-debit payment-processing service because ██████████ is acting as an agent of payee pursuant to Financial Code section 2010, subdivision (l). The Department also grants

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<sup>3</sup> For the purposes of the agent-of-the-payee exemption, “agent” has the same meaning as that term is defined 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. (See Fin. Code, § 2010, subd. (l)(1)-(3).)

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[REDACTED] request for confidential treatment of its letters and other related materials submitted in connection with this opinion request.

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

If you have any questions, please feel free to contact me at [REDACTED] or [REDACTED].

Sincerely,

Manuel P. Alvarez  
Commissioner  
Department of Business Oversight

By

[REDACTED]  
Mark Ahn  
Senior Counsel

MA:

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