

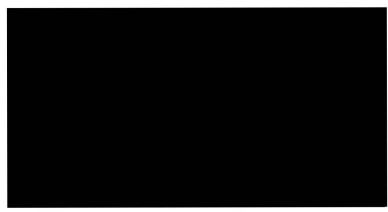


STATE OF CALIFORNIA  
**Department of Business Oversight**

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

IN REPLY REFER TO:  
FILE NO: [REDACTED]

July 18, 2019



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 28, 2019. As Senior Counsel for the Department, I have been asked to respond to your request, which you submitted on behalf of your client, [REDACTED]. Your client requests a determination by the Department regarding whether his proposed business activity—providing online foreign currency exchange services—is subject to licensure under the Money Transmitter Act.

**Background**

Your client plans to establish a company, [REDACTED] (“[REDACTED]”), that will provide “online foreign currency exchange services” through a website. The website will allow customers to order and pay online for foreign currency, which is then delivered to their home via courier. Customers can also exchange any “residual foreign funds” back into U.S. currency, which is then deposited via ACH transfer into the customer’s bank account, debit/credit card, or digital account. All exchanges are “systematically limited to less than \$1,000 USD per customer per day[.]”

Furthermore, custodial services are not provided to customers. Customer funds are not held beyond the time required for order fulfillment. Indeed, the “Online Currency Exchange Flow-of-Funds” chart you submitted as Attachment A describes two transactions: (1) customers selling currency to the company; and (2) customers purchasing currency from the company. The chart indicates that customer funds are only held for the limited time necessary to complete a transaction for selling or purchasing currency.

Initially, the company will have two primary types of customers: returning travelers and pre-trip travelers. Targeted customers may also include students who study abroad, customers of travel agents, and business travelers.

### 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>1</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. The MTA also defines the material components of the definition for “money transmission.”<sup>2</sup>

“Payment instrument” is defined as “a check, draft, money order, traveler's check, or other instrument for the transmission or payment of money or monetary value, whether or not negotiable. The term does not include a credit card voucher, letter of credit, or any instrument that is redeemable by the issuer for goods or services provided by the issuer or its affiliate.”<sup>3</sup>

“Stored value” is defined as “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.”<sup>4</sup>

“Receiving money for transmission” or “money received 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. The term does not include sale or issuance of payment instruments and stored value.”<sup>5</sup>

### Analysis

In your letter, you contend that your client’s proposed business activity—providing online foreign currency exchange services—is not subject to licensure under the MTA.

In essence, the company will provide a service that allows customers to purchase and sell currency through an online exchange platform. Customers will be able to purchase foreign currency in U.S. dollars and sell foreign currency for U.S. dollars, and vice versa.

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<sup>1</sup> Fin. Code, § 2030, subd. (a).

<sup>2</sup> Fin. Code, § 2003, subds. (s), (u), & (x).

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

These anticipated transactions do not involve “payment instruments” or “stored value” as defined in Financial Code section 2003, subdivisions (s) and (x). Currency—both foreign and domestic—is not a payment instrument under the definition provided in Financial Code section 2003, subdivision (s), and thus, the company cannot issue or sell payment instruments. Also, the company cannot sell or issue stored value because all transactions will be completed using only currency in single purchase or sale transactions; the company will not issue any record indicating stored monetary value that is intended and accepted as a means of redemption.<sup>6</sup>

Lastly, there is no indication that the company will receive money for transmission as it is defined in Financial Code section 2003, subdivision (u). Customers will use the online foreign currency exchange services strictly for purchasing or selling currency. These two categories of transactions are the only ones contemplated by Mr. [REDACTED] as seen in his Flow-of-Funds chart and Business Plan. Based on the information provided, customers will not be able to provide the company with currency or monetary value for transmission by any means.

Under these circumstances, the Department agrees that your client’s company will not be engaging in business activities that qualifies as money transmission under the MTA.

### **Conclusion**

The Department finds that your client’s company, [REDACTED], is not subject to licensure under the MTA for his proposed business of providing online foreign currency exchange services to customers.

This opinion is limited to the facts and circumstances described above regarding licensure under the MTA. Should any of the facts or circumstances change, the Department’s opinion may also change. Furthermore, because this opinion is limited to licensure requirements under the MTA, it should not be construed as interpreting any other state or federal laws regulating foreign currency exchange.

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<sup>6</sup> See Fin Code, § 2003, subd. (x).

[REDACTED]  
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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 (via email)  
Oscar Lumen, Department of Business Oversight, San Francisco (via email)

[REDACTED], Vice President, [REDACTED]

(via email: [REDACTED])

[REDACTED], Compliance Consultant, [REDACTED]

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[REDACTED], Founder & CEO, [REDACTED]

(via email: [REDACTED])