



STATE OF CALIFORNIA

## Department of Business Oversight

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

July 23, 2019

IN REPLY REFER TO:  
FILE NO.: \_\_\_\_\_

*SENT VIA EMAIL*

Re: \_\_\_\_\_ – Opinion Request

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

This is in response to your letter dated March 6, 2019, in which \_\_\_\_\_ (\_\_\_\_\_) requests a determination by the Department of Business Oversight (Department) that \_\_\_\_\_'s Guest Checkout product meets the requirements of the "agent of the payee" exemption<sup>1</sup> from the Money Transmission Act (Act).<sup>2,3</sup>

### I. FACTS

\_\_\_\_\_ is a licensed money transmitter under the Act. \_\_\_\_\_ offers multiple products. You request the agent of the payee exemption specifically and exclusively for \_\_\_\_\_'s Guest Checkout product.

\_\_\_\_\_ 's Guest Checkout feature allows consumers to check out with an online merchant which has contracted with \_\_\_\_\_ to provide the Guest Checkout service on behalf of the merchant. The payor has the option to pay with an existing \_\_\_\_\_ account or to create a \_\_\_\_\_ account during the checkout process, but is not required to do so. Payors not having or wishing to create a \_\_\_\_\_ account may make the specific purchase as a "guest." The payor simply enters his or her payment card information to pay for that specific purchase. \_\_\_\_\_ receives and processes the payment on behalf of the merchant. The payment screens are

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

<sup>2</sup> Fin. Code, § 2000, et seq.

<sup>3</sup> Your letter also included a request regarding eligible securities. By letter to you dated May 16, 2019, Counsel Stephanie Pham responded to your request regarding eligible securities.

branded “\_\_\_\_\_” because \_\_\_\_\_ is the provider of the Guest Checkout service on behalf of the merchant.

Prior to providing the Guest Checkout service, \_\_\_\_\_ enters into a written agreement with each merchant. All merchants offering the Guest Checkout option must first click through and accept the terms of \_\_\_\_\_’s Guest Checkout agreement (Agreement). The Agreement specifies that the merchant designates \_\_\_\_\_ as its limited agent solely for the purpose of receiving payments from the merchant’s payors and that upon \_\_\_\_\_’s receipt of payment, the merchant will be deemed to have received payment from the payor. The Agreement further provides that delivery of the payment by a payor to \_\_\_\_\_ satisfies the payor’s obligations to the merchant, any claim against such payor is extinguished, and that the merchant is obligated to deliver the goods or services to the payor.

## II. LAW

The agent of the payee exemption from the Act specifies:

This division does not apply to the following:

- (l) 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 delivery of the money or other monetary value to the agent satisfies the payor’s obligation to the payee.
- (1) For purposes of this subdivision, “agent” has the same meaning as that term is defined in Section 2295 of the Civil Code.
- (2) For purposes of this subdivision, “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.
- (3) For purposes of this subdivision, “payor” means the recipient of goods or services, who owes payment of money or monetary value to the payee for the goods or services.

## III. ANALYSIS

The Guest Checkout product meets the requirements of the agent of the payee exemption. \_\_\_\_\_ provides its Guest Checkout services pursuant to a preexisting written agreement. Merchants must first click through and agree to the Agreement before \_\_\_\_\_ will provide the Guest Checkout product. \_\_\_\_\_ is the agent of the merchant payee for the purpose of receiving

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payments from payors. \_\_\_\_\_'s receipt of money from the payor satisfies the payor's obligation to the payee.

#### IV. CONCLUSION

\_\_\_\_\_ 's Guest Checkout product is exempt from the Act under the agent of the payee exemption.

This opinion is based solely on the facts as represented in your correspondence, and may change if any of the conditions or circumstances under which \_\_\_\_\_ provides the Guest Checkout product is altered in the future. If you have any questions, please feel free to contact me at 213.897.2160, or [mary.audick@dbo.ca.gov](mailto:mary.audick@dbo.ca.gov).

Sincerely,

Manuel P. Alvarez  
Commissioner  
Department of Business Oversight

By:

Mary Dean Audick  
Senior Counsel

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