



STATE OF CALIFORNIA
Department of Business Oversight

GOVERNOR Gavin Newsom · COMMISSIONER Manuel P. Alvarez

IN REPLY REFER TO:
FILE NO: _____

January 27, 2020

Re: _____ – Opinion Request

Dear Mr. _____:

Thank you for your letter to the Department of Business Oversight received on December 10, 2019 following earlier correspondence dated June 6, 2018 and August 28, 2018. You request confirmation that the payment processing services conducted by _____ (“_____”) under the revised Merchant Services Agreement meet the requirements of the agent of payee exemption1 in the Money Transmission Act (“MTA”).

BACKGROUND

_____ is a Delaware corporation with a principal place of business in New York and offices in Delaware. _____ provides payment processing services to merchants who sell goods and services online. To provide its payment processing services, _____ enters into a Merchant Services Agreement with merchants and processing agreements with card companies.2 The payment processing services involve the following steps: (1) When a purchaser seeks to make an online purchase via credit or debit card, _____ requests a purchase authorization from the relevant card company. If authorization is granted, _____ communicates the authorization to the merchant selling the goods or services; (2) _____ submits required data about the purchase to the card company; and (3) _____ settles the payment owed to the merchant (collectively, “Settlement Activities”).

In connection with the Settlement Activities, a card company may use _____’s platform to transfer funds to merchants. The Settlement Activities are comprised of two steps: the relevant card company will transfer funds to _____’s bank account, and _____ will transfer funds to the merchant’s bank account.

1 Fin. Code, § 2010, subd. (l).

2 Card companies include _____ (“_____”), _____ (“_____”), and _____ (“_____”).

Recently, _____ revised the Merchant Services Agreement to state the following: “[_____] is acting as Merchant’s authorized agent for the limited purpose of accepting payments on the Merchant’s behalf from Merchant’s customers (‘Customer Payments’) for goods or services sold by Merchant, and Merchant appoints [_____] as its agent, and expressly authorizes [_____] to receive, such Customer Payments on Merchant’s behalf. Payment from a Merchant’s customer (via a Card Association) to [_____] shall be considered payment to Merchant, satisfying and extinguishing the payment obligation of the relevant customer to the Merchant (in the amount paid by such customer) as if the relevant customer had paid the Merchant directly.”

MONEY TRANSMISSION ACT

The MTA prohibits a person from engaging in the business of money transmission in California, unless the person is licensed or exempt from licensure or is an agent of a person licensed or exempt from licensure.³ Financial Code section 2003, subdivision (q)(3) defines “money transmission” to include receiving money for transmission. Financial Code section 2003, subdivision (u) defines “receiving money for transmission” to mean receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means.

_____ receives money in an Illinois bank account for transfer to merchant bank accounts. This constitutes receiving money for transmission pursuant to Financial Code section 2003, subdivision (u).

Financial Code section 2010, subdivision (l) exempts from the MTA transactions in which the recipient of the money is an agent of the payee pursuant to a preexisting written contract and delivery of the money to the agent satisfies the payor’s obligation to the payee for the goods or services provided. “Agent” is defined as one who represents another, called the principal, in dealings with third persons.⁴ “Payee” means the provider of goods or services, who is owed payment of money from the payor for the goods or services.⁵ “Payee” means the recipient of goods or services, who owes payment of money to the payee for the goods or services.⁶

To use _____’s payment processing services, merchants must now enter into a revised Merchant Services Agreement. The revised Merchant Services Agreement states that _____ acts as the merchant’s authorized agent for the limited purpose of accepting payments on the merchant’s behalf from the merchant’s customers for goods or services sold by the merchant. It also states that payments from a merchant’s customer to _____

³ Fin. Code, §2030, subd. (a).

⁴ Fin. Code, § 2010, subd. (l)(1) and Civ. Code, § 2295.

⁵ Fin. Code, § 2010, subd. (l)(2).

⁶ Fin. Code, § 2010, subd. (l)(3).

will be considered payment to the merchant, satisfying and extinguishing the payment obligation of the customer to the merchant as if the customer had paid the merchant directly. The requirements of Section 2010, subdivision (l) are satisfied because _____ will act as the agent of the payee pursuant to a preexisting written contract and receipt of payment by _____ will satisfy the customer's (payor's) obligation to the merchant (payee). Therefore, _____ is exempt from licensure under the MTA.

This opinion is based solely on the facts represented in your correspondence. If 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 (____) _____.

Sincerely,

Manuel P. Alvarez
Commissioner
Department of Business Oversight

By

_____/s/_____
Pamela F. Hernandez
Counsel

PFH:ss

cc: Robert Venchiarutti, Deputy Commissioner, Money Transmitter Division