



STATE OF CALIFORNIA
Department of Business Oversight

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

IN REPLY REFER TO
FILE NO.: _____

February 19, 2020

Via Email

Re: _____'s Request for Determination

Dear Ms. _____:

Thank you for your August 21, 2019 letter to the Deputy Commissioner of the Money Transmitters Division, Robert Venchiarutti, supplemented by phone conversations, emails and your supplemental letter dated January 24, 2020 with attachments. In your letters, you request a determination whether _____ (_____) will require a money transmitter license under the California Money Transmission Act (MTA). Specifically, you ask whether the sale by _____ of digital and stored value devices for corporate reward and incentive programs constitutes money transmission, and if it does, whether it qualifies for an exemption from the MTA. _____ offers two reward options which are the subject of _____'s request: bank-issued Visa and Mastercard open-loop gift cards without cash access and a nonprofit organization (NPO) option.

For the reasons set forth below, the Department of Business Oversight (Department) concludes that the MTA does not apply to the bank-issued open-loop gift cards but does apply to the NPO option. _____ does require a money transmitter license to offer the NPO reward option in California.

I. FACTS

_____ is headquartered in the State of Washington. _____ fulfills digital and physical (plastic gift cards) stored value orders for corporate reward and incentive programs. _____ sells reward programs only to businesses (Clients). Clients commonly use the rewards to incentivize purchases by their own customers, reward customer loyalty and reward employee performance.

Clients set up customized reward catalogs. In most cases, Clients prepay for the catalog options. _____ deposits money received from Clients into a _____ operating account at

Wells Fargo Bank, N.A. _____'s operating account also includes profit from prior customer purchases of rewards and money received from _____'s largest investor, a venture capital firm. _____ maintains subledgers for its operating account for each Client, listing the amount of rewards purchased. Funds are debited from the Client's subledger each time a Client requests that a reward be fulfilled.

Clients provide _____ the email addresses and at times names of reward recipients. _____ sends reward recipients an initial email notifying the recipient of the reward. Recipients click on a link in the email which takes them to a landing page specifying the recipient's two options: the open-loop gift card or a donation to an NPO. Ninety-nine percent of the orders fulfilled by _____ are for open-loop gift cards. NPO donations equate to one percent of activity.

Gift Cards

_____ buys the open-loop gift cards which it offers Clients from _____ (____). _____ is the program manager and card supplier of the Visa and Mastercard open-loop gifts cards, issued by FDIC-insured _____ (____). _____ uses money from _____'s operating account to periodically fund a _____ account at _____. Recipients selecting a gift card are routed to _____'s website to make their gift card selections. _____ fulfills the card order and simultaneously debits payment from _____'s balances in _____'s _____ account.

All further actions and communications involving the gift card selection are between the recipient and _____. _____ and _____ perform all legal compliance responsibilities, including obtaining information required under Anti-Money Laundering and the Office of Foreign Assets Control laws and regulations. Clients and reward recipients must provide satisfactory "Know Your Customer" information before the open-loop cards are issued. All outstanding balances on gift cards are held in _____'s _____ account. _____ has no outstanding stored value that it owes reward recipients.

The agreement under which _____ purchases the open-loop gift cards from _____ provides that "Cards are the sole property of the issuing bank and are subject to the expiration date on the face of the card."¹ The Agreement also clarifies that issuing bank _____, Mastercard and Visa have sole control, authority and discretion over the program and its requirements.²

¹ Master Client Agreement, March 23, 2015, § 5.

² Id, at § 15: "Client [____] understands that Mastercard, Visa..., _____ and/or...issuing bank [____] has the right at its sole discretion...to immediately or at any other time specified require that the program be modified in order to continue or to withdraw consent to the program or to audit [____]'s] pertinent records for compliance with standards and program requirements."

NPO Option

NPO selections are effectuated exclusively by _____. When a reward recipient selects the NPO donation option, _____ moves the donation amount from the Client's ledger to a specific NPO ledger in _____'s operating account. NPO donations selected by reward recipients are held in _____'s operating account until transmitted, weekly, to the selected NPOs.

II. MONEY TRANSMISSION ACT

A person may not engage in the business of money transmission in California unless he or she is licensed or exempt from licensure under the MTA.³ Money transmission includes selling or issuing stored value or receiving money for transmission.⁴

Stored value is monetary value stored on an electronic medium that is intended and accepted for use as a means of redemption for money or monetary value or payment for goods or services.⁵ The stored value "issuer" is the entity that is liable to the holder of the stored value and is obligated to pay the stored value.⁶ The term "stored value" does not apply to transactions where the stored value is only redeemable for goods or services provided by the issuer.⁷ In those instances, known as "closed-loop transactions," the money stays with the issuer and is not transferred. _____ acknowledges that the gift cards _____ sells Clients are open-loop and fall within the MTA's definition of stored value.

_____ asserts three bases for inapplicability of the MTA to the two reward options offered: 1. business-to-business activity; 2. sale of bank-issued cards; and 3. NPO donation activity. As further detailed below, the Department disagrees with the first and third bases _____ asserts. The Department agrees that the MTA does not apply to _____'s sale of the Visa and Mastercard prepaid open-loop gift cards issued by FDIC-insured _____.

Business-to-Business Activity

_____ argues that the MTA's focus is consumers. We disagree that this is a basis for exempting _____'s activity. The MTA provides no exemption for money transmission activities between businesses.

³ Fin. Code, § 2030, subd. (a).

⁴ Fin. Code, § 2003, subd. (q).

⁵ Fin. Code, § 2003, subd. (x).

⁶ Fin. Code, § 2003, subd. (l).

⁷ *Id.*

Sale of Bank-issued Cards

The Department agrees that the MTA does not apply to _____'s sale of the Visa and Mastercard prepaid open-loop gift cards issued by FDIC-insured _____.

The MTA does not apply to commercial banks, the deposits of which are insured by the Federal Deposit Insurance Corporation.⁸ Similarly, MTA implementing regulations exempt the sale of a product of a person exempt under Financial Code section 2010, the section under which FDIC-insured commercial banks are exempt from the MTA.⁹

_____ contracts with _____ to manage its card program and supply the cards to purchasers. _____'s Master Client Agreement with _____ specifies that the _____-issued cards are the sole property of _____. As the issuer of the cards, _____ is liable and obligated to pay the stored value to the reward recipient. As _____'s Program Manager, _____ maintains all gift card balances in its account with _____. The Master Client Agreement also specifies that _____, Visa and Mastercard have sole authority and control over the cards and the program under which _____ buys the cards.

The above-cited regulation specifies that the sale of products issued by FDIC-insured commercial banks, like the banks themselves, are also exempt from the MTA. The MTA does not apply to _____'s sale of _____-issued gift cards through program manager _____.

NPO Donation Activity

The Department disagrees that _____'s NPO donation activity is exempt from the MTA. While MTA regulations exempts public benefit corporations which are tax exempt under Internal Revenue Code Section 501(c)(3),¹⁰ neither the MTA nor its regulations exempt *donations* to NPOs. The consumer protection mission of the MTA compels insuring that monies donated to NPOs are in fact transmitted to these NPOs. In aggregating and sending designated donations weekly to the NPOs selected by the reward recipients, _____ is engaging in money transmission covered under the MTA.

III. CONCLUSION

_____ 's two reward options include _____-issued gift cards managed by program

⁸ Fin. Code, § 2010, subd. (d).

⁹ Cal. Code Regs., tit. 10, § 80.3002, subd. (a)(1).

¹⁰ Cal. Code Regs., tit. 10, § 80.3002, subd. (a)(2).

manager _____. FDIC-insured commercial banks are exempt under Financial Code section 2010, as are the sale of products of persons exempt pursuant to Financial Code section 2010.¹¹ The _____-issued open-loop gift cards are exempt from the MTA.

Transmitting money to designated NPOs is a regulated activity under the MTA. _____ must obtain a money transmitter license to offer such reward option in California.

If you have any questions, please call me at _____.

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

¹¹ Cal.Code Regs., tit. 10, § 80.3002, subd. (a)(1).