



STATE OF CALIFORNIA
Department of Business Oversight

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

IN REPLY REFER TO:
FILE NO: _____

June 9, 2020

VIA EMAIL

Re: Request for Interpretive Opinion

Dear Mr. _____:

Thank you for your letter, dated May 14, 2020, seeking an interpretive opinion from the Department of Business Oversight (“Department”) as to whether _____ is required to obtain a license under the Money Transmission Act (“MTA”).¹ This letter responds to your request.

Background

_____, an alternative payments provider, offers a payment system which facilitates bank-to-bank transfers directly between consumers and merchants on the automated clearinghouse (“ACH”)² network, eliminating the need for face-to-face exchange of paper cash or the use of debit cards, credit cards, or near field technology. Prior to using the payment system, consumers and merchants must separately register with and subscribe to _____.

_____’s payment system includes 1) a consumer software application (typically, an application on a smartphone), 2) a merchant software application, and 3) a cloud-based software system. The consumer software application enables a consumer to initiate and confirm payments at enabled stores and engage with bank accounts associated with participating merchants. No personally identifiable information, such as banking information, resides on the application or needs to be entered for a transaction to initiate and complete. The merchant software application enables a merchant to identify transactions and charge customers for purchases. No business identifiable information resides on the application or needs to be entered for each transaction to initiate and complete. The cloud-based software

¹ Fin. Code, § 2000 et seq.

² The automated clearinghouse system is a nationwide network through which depository institutions send each other batches of electronic credit and debit transfers. ACH operators receive files of ACH payments from originating depository financial institutions, edit and sort the payments, deliver the payments to receiving depository financial institutions, and settle the payments by crediting and debiting the depository financial institutions’ settlement accounts. <https://www.federalreserve.gov/paymentsystems/fedach_about.htm>.

system records the transactions, maintains a record of all consumers and merchants who use the platform, and communicates with the relevant banks to perform the transfer.

After a consumer and merchant finalize the amount of a transaction through communications between their respective software applications, the final transaction data (including the consumer's user information, the merchant's user information, and the transaction amount) is sent to the cloud-based system to initiate a direct electronic transfer of funds between their respective bank accounts via the ACH network.

_____ does not, at any point, handle funds or have access to consumers' and merchants' confidential financial information, including bank balances, account numbers, and routing numbers. Instead, _____ uses a third-party bank verification partner, through which customers and merchants may log in to select bank accounts to transact with. This information is tokenized to ensure confidentiality on the _____ platform.

Money Transmission Act

Under the MTA, a person shall not engage in money transmission in California, unless the person is licensed, exempt from licensure, or an agent of a person licensed or exempt from licensure.³ "Money transmission" includes, in applicable part, receiving money for transmission.⁴ "Receiving money for transmission" means "receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means."⁵ To "receive money for transmission," a person must actually or constructively receive, take possession, or hold money or monetary value for transmission; merely receiving instructions, orders, or directions to transmit money or monetary value does not constitute "receiving money for transmission."⁶

Analysis

_____ 's payment system, as described in your May 14, 2020 correspondence, does not constitute money transmission because _____ never "receives money for transmission." _____ does not actually or constructively receive, take possession of, or hold money or monetary value for transmission; instead, it receives instructions from consumers and merchants to transmit money to each other and forwards these instructions for processing by their respective banks on the ACH network. The banks are solely responsible for payment and

³ Fin. Code, § 2030, subd. (a).

⁴ Fin. Code, § 2003, subd. (q).

⁵ Fin. Code, § 2003, subd. (u).

⁶ Cal. Code Regs., tit. 10, § 80.129.

settlement in accordance with these instructions. Thus, _____'s payment system does not constitute money transmission and does not require an MTA license.

_____’s website also confirms it is not advertising, soliciting, or holding itself out as providing money transmission in California.⁷ According to the website, money is securely sent via a direct bank transfer from the customer’s bank account to the merchant’s bank account.⁸

This opinion is limited to the facts and circumstances described above regarding the applicability of the MTA. Should any of the facts or circumstances change, the Department’s opinion may also change.

Please contact me at _____ with any questions.

Sincerely,

Manuel P. Alvarez
Commissioner
Department of Business Oversight

By

Senior Counsel

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

⁷ Fin. Code, § 2030, subd. (a).

⁸ <_____.>