



STATE OF CALIFORNIA

Department of Business Oversight

GOVERNOR Gavin Newsom • COMMISSIONER Manuel P. Alvarez

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

July 10, 2020

VIA EMAIL

Re: \_\_\_\_\_ – Opinion Request

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

Thank you for your letter to the Department of Business Oversight (“Department”) dated May 22, 2020. You request an opinion confirming the applicability of the agent-of-payee exemption under the Money Transmission Act (“MTA”) to \_\_\_\_\_’s \_\_\_\_\_ Card Reader and the associated payment processing services provided by \_\_\_\_\_.

**Background**

\_\_\_\_\_ (“\_\_\_\_\_”) provides financial management solutions for businesses, consumers, accounting professionals, and financial institutions. In 2013, \_\_\_\_\_ (“\_\_\_\_\_”), a wholly-owned subsidiary of \_\_\_\_\_, obtained a license under the MTA to engage in money transmission activity.

\_\_\_\_\_ also offers payment processing services to merchants who use its products (“Merchants”) through another wholly-owned subsidiary, \_\_\_\_\_ (“\_\_\_\_\_”). \_\_\_\_\_’ payment processing services enable \_\_\_\_\_’s Merchants to accept payments from their customers (“Customers”) for goods and services in various ways, including through mobile card readers marketed under the \_\_\_\_\_ brand. \_\_\_\_\_ allows Merchants to use mobile devices to capture credit and debit card information and consists of both a mobile application and a physical device; Merchants may either use the reader to capture card information or manually enter the card information into the associated mobile application. Merchants may also capture Customers’ card information through \_\_\_\_\_’s financial management software, through traditional point of sale credit card terminals, and through web-based e-commerce solutions.

Regardless of the mechanism used, once the card information is captured and the Customer authorizes payment, \_\_\_\_\_ uses the information to process the payment. In providing these services, \_\_\_\_\_, as the Merchant’s agent, receives money from the Customer (via the relevant

card company) pursuant to a preexisting written contract between \_\_\_ and the Merchant (“Agreement”). The Agreement appoints \_\_\_ as the Merchant’s agent for collecting payment from Customers and provides that delivery of the money to \_\_\_ satisfies the Customer’s payment obligation to Merchant. The Agreement states:

In connection with enabling you to receive payments from customers through the Services, you hereby appoint [\_\_\_\_\_] as your limited payments agent for the purpose of receiving, holding, and settling payments to you pursuant to this Agreement. You further agree and understand that a payment received by [\_\_\_\_\_] , on your behalf, satisfies your customer’s obligation to pay you, regardless of whether [\_\_\_\_\_] actually settles such payment to you. In the event that [\_\_\_\_\_] does not make any such payment to you as described in this Agreement, you will have recourse against only \_\_\_ and not against your customer.

When a Customer makes a purchase from a Merchant, the payment flows first from the Customer to \_\_\_ via the Customer’s card company, and then from \_\_\_ to the Merchant.

### **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 an agent of a person licensed or exempt from licensure.<sup>1</sup> “Money transmission” includes receiving money for transmission.<sup>2</sup> “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.<sup>3</sup>

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. An “agent” is one who represent another, called the principal, in dealings with third persons.<sup>4</sup> A “payee” is the provider of goods or services, who is owed payment of money from the payor for the goods or services.<sup>5</sup> A “payor” is the recipient of goods or services, who owes payment of money to the payee for the goods or services.<sup>6</sup>

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

<sup>2</sup> Fin. Code, § 2030, subd. (q)(3).

<sup>3</sup> Fin. Code, § 2003, subd. (u).

<sup>4</sup> Fin. Code, § 2010, subd. (l)(1); Civ. Code, § 2295.

<sup>5</sup> Fin. Code, § 2010, subd. (l)(2).

<sup>6</sup> Fin. Code, § 2010, subd. (l)(3).

**Analysis**

\_\_\_' payment processing services constitute "receiving money for transmission" because \_\_\_ receives money from Customers, via the relevant card company, for transfer to the Merchants.

However, \_\_\_' services, as described in your letter, satisfy the requirements in Financial Code section 2010, subdivision (I), and therefore qualify for the agent-of-payee exemption. \_\_\_ acts as the agent of the Merchant (Payee) pursuant to a preexisting written contract, and \_\_\_' receipt of payment satisfies the Customer's (Payor's) obligation to the Merchant (Payee) for goods or services.

**Conclusion**

The Department concludes \_\_\_' payment processing services fall within the definition of "money transmission" but are exempt from the MTA to the extent \_\_\_\_, as the Merchant's agent, receives money from Customers, via the relevant card company, as payment for goods or services.

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

If you have questions regarding this opinion, please contact me at \_\_\_\_\_.

Sincerely,

Manuel P. Alvarez  
Commissioner  
Department of Business Oversight

By \_\_\_\_\_  
/s/  
Senior Counsel

cc: Robert Venchiarutti, Department of Business Oversight, San Francisco  
Jonathan Lee, Department of Business Oversight, Los Angeles