



STATE OF CALIFORNIA

Department of Business Oversight

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

IN REPLY REFER TO:
FILE NO: _____

June 29, 2020

VIA E-MAIL ONLY

Re: _____ – Opinion Request

Dear Mr. _____:

Thank you for your letter to the Commissioner of Business Oversight, Manuel P. Alvarez, dated June 1, 2020. As senior counsel for the Legal Division, the Commissioner requested that I respond to this matter. In your letter, you request confirmation that _____'s ("_____") transactions are exempt from the requirements of the Money Transmission Act ("MTA") pursuant to Financial Code section 2010, subdivision (l). As detailed below, we agree that the transactions described in your letter are exempt from the MTA.

Factual Background

In your letter, you explain that _____ will contract with a merchant to collect funds from the merchant's customer for payment of goods or services provided by the merchant. These transactions are done on _____'s digital platform. When a customer places an order on the digital platform, the merchant initiates a payment request. The customer authorizes the payment through the platform from a verified bank account.¹ Once it is verified that the customer has sufficient funds in its account, the customer's bank transfers the funds to _____'s bank account through an ACH transfer. Then, _____ sends the funds, minus its fees, to the merchant's bank account.

¹ To use the platform, the merchant and customer each provide a financial data aggregator with their bank account information. The financial data aggregator verifies the account information and confirms with _____ that the customer and merchant can use the platform to make purchases and receive payments, respectively. Also, the financial data aggregator processes ACH payment information of each to facilitate the transfer of funds from the customer to _____ and then to the merchant. Prior to the funds being pulled from the customer's bank account, the financial data aggregator will verify the customer has sufficient funds to complete the purchase.

Law

Financial Code section 2030 prohibits a person from engaging in the business of money transmission in this state unless the person is licensed or exempt from licensure or is an agent of a person licensed or exempt from licensure.

Financial Code section 2003, subdivision (q), defines “money transmission” to include receiving money for transmission. 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.

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. “Payee” means the provider of goods or services, who is owed payment of money from the payor for the goods or services.² “Payor” means the recipient of the goods or services, who owes payment of money to the payee for the goods or services.³

Analysis

In your letter, you explain that the contract _____ will enter into with its merchants explains that _____ is acting as an agent of that merchant and that the customer’s delivery of funds to _____ will extinguish the customer’s payment obligation to the merchant. Specifically, the contract states, in relevant part:

In connection with the Payment Services, you acknowledge and agree that payment made by your customers through the Platform, shall be considered the same as a payment made directly to you. You authorize us to act as your agent for the purposes of holding, receiving, and disbursing funds on your behalf.

[...]

Your customer's payment obligation arises when you authorize us to collect funds on your behalf. The payment of the agreed-upon amount will be credited from your customer at the time the transaction is processed. Upon our receipt of transaction funds, your customer's payment obligation to you for the agreed-upon amount is extinguished, and we are responsible for remitting to you funds actually received by us on your behalf, less amounts owed to us [...].

² Fin. Code, § 2010, subd. (l)(2).

³ Fin. Code, § 2010, subd. (l)(3).

We agree that for the transactions performed pursuant to this contract, _____ is exempt from the requirements of the MTA as an agent of the payee (here, the merchant). _____ is receiving money as an agent of the merchant pursuant to a preexisting written contract, and delivery of the money to _____ satisfies the customer's obligation to the merchant for a good or service provided by the merchant.

This opinion is based solely on the facts presented in your correspondence. Any changes in the facts or circumstances, as we understand them, could lead to a different conclusion.

You may call me at (____) _____ with any questions.

Sincerely,

Manuel P. Alvarez
Commissioner
Department of Business Oversight

By

Senior Counsel

cc: _____
Robert Venchiarutti, Deputy Commissioner, Money Transmitter Division