



STATE OF CALIFORNIA

Department of Business Oversight

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

IN REPLY REFER TO:
FILE NO: _____

July 1, 2020

SENT VIA EMAIL

Re: _____ – Opinion Request

Dear Ms. _____:

Thank you for your letter to the Department of Business Oversight (“Department”) dated May 12, 2020, June 25, 2020 conference call, and supplemental emails. I have been asked to respond to your request, which you submitted on behalf of your client, _____ (____). Your client requests a determination by the Department regarding whether its proposed business activity—providing an online foreign currency exchange service—is subject to licensure under the Money Transmission Act (MTA).¹

Background

____ operates a network of retail branches. ____ buys and sells select foreign currency at these retail locations. These branches provide an influx of foreign currency that ____ can, in turn, make available for sale to customers and a wholesale network. In addition to buying and selling foreign currency in its retail branches, ____ offers customers the option of buying foreign currency through ____’s website and having the currency delivered to the billing address of the customer’s debit or credit card. ____’s online foreign currency exchange service is currently being offered in some other jurisdictions. The service has not been opened to California consumers.

____ can fill orders of many different currencies. ____ currently maintains in two vaults an inventory of ____ “major” currencies (____ country-specific currencies and the Euro, which is used

¹ Fin. Code, § 2000, et seq.

in 19 countries) and ___ minor currencies, all listed on ___'s website.² ___ maintains inventory levels based on historical data, seasonality, geographic region served and major events. If ___ runs out of a currency at the closest vault, the operations team that fills the order has access to view inventory at the other vault as well as ___'s retail branches. In the rare event that both of those options fail, ___ would place an order with one of its vendors to restock that currency to a level that would be acceptable for the historic demand. Once this currency is restocked to normal levels, ___ would fulfill the online customer's order by mailing the foreign currency via FedEx directly to the person making the purchase.

Consumers will be capped at ordering \$2,999.99 worth of foreign currency per person, per day. Consumers must use a debit or credit card for payment. Consumers are only able to receive orders at the billing address on their debit or credit card, which is verified using anti-fraud software. Packages cannot be shipped to a P.O. Box. All packages must be signed for by the consumer.

Law

The MTA provides that a person shall not engage in the business of money transmission in California unless the person is licensed or exempt from licensure under the MTA, or is an agent of a person licensed or exempt from licensure.³

Financial Code section 2003, subdivision (q) defines "money transmission" as: (1) selling or issuing payment instruments, (2) selling or issuing stored value, or (3) receiving money for transmission.

"Payment instrument" is defined as "a check, draft, money order, traveler's check, or other instrument for the transmission or payment of money or monetary value, whether or not negotiable. The term does not include a credit card voucher, letter of credit, or any instrument that is redeemable by the issuer for goods or services provided by the issuer or its affiliate."⁴

"Stored value" is defined as "monetary value representing a claim against the issuer that is stored on an electronic or digital medium and evidenced by an electronic or digital record, and that is intended and accepted for use as a means of redemption for money or monetary value or payment for goods or services. The term does not include a credit card voucher, letter of credit, or any stored value that is only redeemable by the issuer for goods or services provided by the issuer or its affiliate, except to the extent required by applicable law to be redeemable in cash for its cash value."⁵

² < _____ > (as of June 19, 2020).

³ Fin. Code, § 2030, subd. (a).

⁴ Fin. Code, § 2003, subd. (s).

⁵ Fin. Code, § 2003, subd. (x).

“Receiving money for transmission” or “money received for transmission” is defined as “receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means. The term does not include sale or issuance of payment instruments and stored value.”⁶

Analysis

In your letter, you contend that ___’s proposed business activity—providing an online foreign currency exchange service—is not subject to licensure under the MTA.

___’s online foreign currency exchange service does not involve “payment instruments” or “stored value” as defined in Financial Code section 2003, subdivisions (s) and (x). Currency—both foreign and domestic—is not a payment instrument under the definition provided in Financial Code section 2003, subdivision (s). ___ cannot sell or issue stored value because all transactions will be completed in a single purchase and sale transaction. ___ will not issue any record indicating stored monetary value that is intended and accepted as a means of redemption.⁷

Lastly, there is no indication that ___ will receive money for transmission as it is defined in Financial Code section 2003, subdivision (u). Customers will use the online foreign currency exchange service strictly for purchasing foreign currency. This activity involves a straightforward online retail purchase between ___ and the consumer purchaser, like other online retail purchases. A consumer places an order for foreign currency. ___ mails the desired good to the consumer’s residence. The consumer pays for the currency through ___’s website.

Under these circumstances, the Department agrees that ___’s foreign currency exchange service is not money transmission under the MTA.

Conclusion

The Department finds that ___ is not subject to licensure under the MTA for its proposed business of providing an online foreign currency exchange service.

This opinion is limited to the facts and circumstances described above regarding licensure under the MTA. Should any of the facts or circumstances change, the Department’s opinion may also change. This opinion is limited to licensure requirements under the MTA. This opinion may not be construed as interpreting any other state or federal laws regulating foreign currency exchange, to which ___ may be subject.

⁶ Fin. Code, § 2003, subd. (u).

⁷ See Fin Code, § 2003, subd. (x).

If you have any questions, please feel free to contact me at (____) _____ or
_____.

Sincerely,

Manuel P. Alvarez
Commissioner
Department of Business Oversight

By

Senior Counsel

cc: Robert Venchiarutti, Department of Business Oversight