



STATE OF CALIFORNIA

Department of Business Oversight

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

IN REPLY REFER TO:
FILE NO: _____

August 28, 2020

VIA EMAIL

Re: Request for Interpretive Opinion – _____

Dear Ms. _____:

Thank you for your letter dated June 1, 2020, as supplemented by your correspondence on July 27, 2020 and August 14, 2020. You request an interpretive opinion from the Department of Business Oversight (“Department”) as to whether _____ (“_____”) is required to obtain a license under the Money Transmission Act¹ (“MTA”).

Background

_____, an entertainment software and video game developer, plans to launch a new generation of interactive games, including _____ (“Game”), that use distributed ledger technology (“DLT”). DLT enables players of _____’s games (“Players”) to acquire, own, and sell digital assets for in-game use.

The Game includes two types of digital characters. The original, first-generation characters (“Original Characters”) are created by _____ for purchase by the Players. Players can also combine Original Characters they own to create new characters (“Blended Characters”) and customize the characters with various assets, features, accessories, or attributes. These characters and customizations are collectively “Assets.”

Players may acquire Assets by purchasing them from _____’s in-game store or earning them by playing the Game and completing certain tasks, levels, or achievements. To purchase Assets, Players may use either of the two in-game virtual currencies created by _____. The first currency (“Currency A”) can only be obtained by playing the Game. The second currency (“Currency B”) can only be purchased with U.S. dollars or other fiat currency. Currency A and Currency B can only be used in the Game and only to purchase Assets from _____. Neither currency has any real-world monetary value, can be redeemed for fiat or other virtual currency, can be transferred, or can be used in any way outside the Game.

¹ Fin. Code, § 2000 et seq.

The Game operates on a DLT-based platform, which allows Players greater flexibility in owning, managing, and transferring their Assets. The Smart Contract, a computer program that tracks each Asset, governs the functionality of each Asset, dictates the terms associated with the purchase and sale of each Asset (such as commissions payable to _____ and fees payable to third-party platforms on which the Game is offered and played), records any change of ownership, and enforces any specific restrictions or prohibitions imposed on the sale or transfer of Assets.

_____ has also created a Secondary Marketplace (“SM”) where Players can interact directly with other Players to sell and buy Assets using U.S. dollars or other fiat currency. _____’s role in the transaction differs depending on whether these secondary sales transactions occur in its own marketplace (“Hosted SM”) or a marketplace hosted by a third party (“Third-Party SM”), such as e-Bay. In both the Hosted SM and the Third-Party SM, a Player who sells an Asset must open an account with _____ to receive and hold the proceeds of the sale.

In the Hosted SM, _____ provides the platform facilitating the sale and transfer of Assets from the seller to the buyer but is not otherwise involved in the transaction. The buyer first purchases the Asset using a credit card, debit card, or funds in a PayPal account. _____, a division of _____, then processes the transaction and transfers the funds directly to the seller’s account with _____, another division of _____. (_____ and _____ are both divisions of _____, a money transmitter licensed under the MTA.) The Asset is transferred automatically from the seller to the buyer pursuant to the instructions in the Smart Contract, which also provides for the automatic transfer of fees and commissions on the sale to _____.

In a Third-Party SM, the buyer uses any one of the forms of payment accepted in the Third-Party SM to make the purchase. The Third-Party SM’s processor then settles the funds for the transaction into _____’s _____ account. After withholding its commission, _____ transfers the proceeds from the sale into the seller’s _____ account. The Asset is transferred automatically from the seller to the buyer pursuant to the instructions in the Smart Contract.

For both Hosted SM and Third-Party SM transactions, the seller may choose to retain the funds in the _____ account and use them to purchase additional Currency B or instruct _____ to disburse the funds to the seller’s external account.

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.²

² Fin. Code, § 2030, subd. (a).

“Money transmission” includes “selling or issuing stored value.”³ “Stored value” is “monetary value representing a claim against the issuer... stored on an electronic or digital medium... and... intended and accepted for use as a means of redemption for money or monetary value or payment for goods or services.”⁴ However, stored value does not include “closed loop transactions,” where stored monetary value is only redeemable for goods or services provided by the issuer or its affiliate.⁵ Thus, closed loop transactions do not constitute regulated money transmission under the MTA.

“Money transmission” also includes receiving money for transmission.⁶ “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.⁷

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 represents another, called the principal, in dealings with third persons.⁸ A “payee” is the provider of goods or services, who is owed payment of money from the payor for the goods or services.⁹ A “payor” is the recipient of goods or services, who owes payment of money to the payee for the goods or services.¹⁰

Analysis

The sale or issuance of Currency A and Currency B does not constitute money transmission.

Currency A and Currency B could be classified as monetary value representing a Player’s claim against _____, stored on an electronic or digital medium, and intended and accepted for use as a means of redemption for in-game goods. However, the sale or issuance of both currencies constitutes a closed loop transaction and is not money transmission because Currency A and Currency B are not transferrable and can only be used in the Game and redeemed with _____ for Assets.

_____ does not receive money for transmission in Hosted SM transactions.

In a Hosted SM transaction, _____ does not receive money for transmission; only _____, a separate money transmitter licensed under the MTA, will transfer funds from the buyer to the

³ Fin. Code, § 2003, subd. (q).

⁴ Fin. Code, § 2003, subd. (x).

⁵ *Id.*

⁶ Fin. Code, § 2003, subd. (q)(3).

⁷ Fin. Code, § 2003, subd. (u).

⁸ Fin. Code, § 2010, subd. (l)(1); Civ. Code, § 2295.

⁹ Fin. Code, § 2010, subd. (l)(2).

¹⁰ Fin. Code, § 2010, subd. (l)(3).

seller's account with _____ and disburse these proceeds to the seller. _____'s only involvement is collecting an administrative fee for the Players' use of the platform.

The Department declines to opine regarding the application of the agent-of-payee exemption to _____'s activities in receiving money for Third-Party SM transactions.

In a Third-Party SM transaction, _____ receives money for transmission; after the buyer submits payment to the operator of the Third-Party SM, _____ receives these funds from the operator and disburses them to the seller's account with _____. However, the Game's Terms of Use indicate _____ is acting as the seller's agent in receiving these funds and that the delivery of funds to _____ extinguishes the buyer's payment obligation to the seller. The Terms of Use state, in relevant part:

For transactions in web-hosted marketplaces, to the extent necessary, you agree that _____ is authorized and appointed to act as your agent for the limited purpose of collecting and receiving payments owed to you by a buyer of [the Asset] on your behalf for payment to you. You also agree that any payments to _____ on your behalf will be treated by you as if payment was made directly to you and that you will have no recourse against a buyer of the [Asset], to the extent of the amount received by _____ on your behalf, and that delivery of money to _____ by the buyer (or the buyer's agent) will satisfy the Buyer's payment obligation to you.

Under current law, it is not clear whether the agent-of-payee exemption applies to situations where multiple entities facilitate the settlement of funds for payment; here, the operator of the Third-Party SM and _____ are both payment intermediaries between the buyer and the seller. To clarify this issue, the Department has recently proposed a regulation regarding the agent-of-payee exemption. Due to this pending rulemaking, the Department declines to opine on the applicability of the agent-of-payee exemption to _____'s activities in Third-Party SM transactions. However, while the rulemaking is pending, the Department will not require _____ to report this activity as money transmission under the MTA.

Conclusion

_____ does not currently require an MTA license to perform the activities described in your letter.

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.

Sincerely,

Manuel P. Alvarez
Commissioner
Department of Business Oversight

By

Senior Counsel

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