IN REPLY REFER TO:

FILE NO: _____

October 13, 2020

VIA EMAIL & U.S. MAIL

Re: _____ - Request for Interpretive Opinion

Dear Mr. _____:

Thank you for your letter dated July 30, 2020 to the California Department of Financial Protection and Innovation (formerly Department of Business Oversight) ("Department"). On behalf of _____ ("_____"), you request an interpretive opinion as to whether _____'s proposed activities require a license under the California Money Transmission Act, Financial Code section 2000 et seq. ("MTA").

I. Background

_____, a Delaware corporation, proposes to offer Automated Clearing House ("ACH") services to merchants through a service called _____. _____ is an integrated payment gateway powered by _____ to aid merchants with online and offline stores in collecting cross-border payments via _____ and _____. Based on the information in your request and correspondences with the Department, the _____ payment process through _____ has five steps.

The first step involves a foreign customer buying goods or services from a merchant in the U.S. The U.S.-based merchant and the foreign customer come to an agreement on the price in U.S. dollars ("USD") for the goods or services.

In the second step, the U.S.-based merchant uses the _____ payment software to scan the quick response code ("QR code").

In the third step, _____ or _____, upon confirmation from the foreign customer, withdraws a USD equivalent amount of payment in Chinese Renminbi ("RMB") from the foreign customer's _____ or _____ digital wallet. Through _____, the U.S. merchant can track the payment deduction from the foreign customer's _____ or _____ wallet.

In step four, _____ or _____ use foreign exchange services provided by _____ to convert the RMB amount into the correct corresponding USD amount. _____ or _____ then instructs _____ to remit an aggregate amount in USD to _____'s U.S. bank account in California, provided the aggregate amount due to the U.S. merchant is at least $5,000 USD.

In the fifth step, _____ distributes the customer's payment from its California bank account through _____ to the merchant's U.S. bank account. The U.S. merchant can track the progress of the payment of the amount due through _____.

II. Money Transmission Act

Financial Code section 2003, subdivision (q), defines "money transmission" to include receiving money for transmission. Financial Code section 2003, subdivision (u), defines "receiving money for transmission" as "receiving money or monetary value in the United States for transmission… by electronic or other means…" Here, _____ is receiving money or monetary value in California for transmission in the United States.

Financial Code section 2030 prohibits a person from engaging in the business of money transmission in California unless the person is licensed or exempt from licensure or is an agent of a person licensed or exempt from licensure. Financial Code section 2010, however, provides enumerated entities and persons exemption from licensure in California.

III. Exemptions from Licensure

In your request you cite to two exemptions. Specifically, you cite to section 2010, subdivisions (g) and (h). It is not clear from your request which exemption you rely on based on the use of the singular in the statement, "[b]ased on the aforementioned, we believe _____ falls under this definition." I address both subdivisions cited in this response.

(a) Registration as Clearing Agency Exemption

Section 2010, subdivision (g), exempts a person providing clearance or settlement services registered as a clearing agency or exempted from registration in its operation of such services under federal securities laws. Section 17A of the Securities Exchange Act of 1934 and Rule 17Ab2-1 require entities to register with the U.S. Securities and Exchange Commission prior to performing the functions of a clearing agency.

_____ has not supplied any evidence to show it is registered as a clearing agency or exempt from registration under federal securities law. Based on the information supplied in your opinion request, _____ is not exempt from MTA licensure under section 2010, subdivision (g).

(b) Operation of Payment System Between Excluded Persons Exemption

Section 2010, subdivision (h), exempts an operator of a payment system that provides processing, clearing, or settlement services between persons excluded by section 2010 in connection with certain transfers including ACH transfers.

_____ has not supplied any evidence to show the payment system it operates for ACH transfer is between persons excluded by section 2010. Therefore, _____ is not exempt from MTA licensure under section 2010, subdivision (g).

(c) The Public Interest Exemption

Financial Code section 2011 authorizes the Commissioner of the Department to exempt from the MTA any person or transaction if the Commissioner finds such action is in the public interest and the regulation of such person or transaction is not necessary. The California Code of Regulations provides factors the Commissioner may consider when deciding whether to grant such exemption.[1]

_____ has not requested an exemption under section 2011. However, if _____ wishes to request such exemption, please provide the Department with all relevant facts, documents, and legal arguments to support its request.[2] _____'s request for an order of exemption should discuss the factors listed in California Code of Regulations, title 10, section 80.3002.

Absent _____ receiving an exemption to MTA licensure, it will need to apply for and receive an MTA license to engage in money transmission in California.

This conclusion 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 conclusion may also change.

Sincerely,

Manuel P. Alvarez
Commissioner
Department of Financial Protection and Innovation

By   /s/

_____

          Counsel

_____

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[1] 10 CCR § 80.3002, subd. (b).
[2] 10 CCR § 80.3002, subd. (c).