



STATE OF CALIFORNIA

## Department of Financial Protection and Innovation

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

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

February 5, 2021

### VIA EMAIL

Re: Request for Interpretive Opinion – \_\_\_\_\_.

Dear Ms. \_\_\_\_\_:

Thank you for your letter dated December 23, 2020, requesting an interpretive opinion from the Department of Financial Protection and Innovation<sup>1</sup> (“Department”) as to whether \_\_\_\_\_ (“\_\_\_\_\_”), must obtain a license under the Money Transmission Act (“MTA”).<sup>2</sup> Due to the new facts in \_\_\_\_\_’s request, this letter supersedes the interpretive opinion issued by the Department on August 5, 2020.

### **Background**

\_\_\_\_\_ plans to offer its U.S.-based merchant clients (“Merchants”), primarily Daily Fantasy Sports providers, an ACH payment platform through which customers (“Customers”) may use their bank accounts to purchase credits for their accounts with Merchants (“Pay-in”). These credits are only redeemable for goods or services provided by the issuing Merchant and not with any other entity; for example, Customers may use credits issued by a particular Merchant to access and participate in that Merchant’s internet-based Daily Fantasy Sports tournaments, but not with any other Merchant.

Each Pay-in transaction is initiated by the Customer on the Merchant’s website. Customers are prompted to log into their personal bank accounts via an application programming interface integrating \_\_\_\_\_ directly with the Merchants’ website. \_\_\_\_\_, via its platform, verifies the Customer’s bank account, pulls money from the Customer’s bank account to \_\_\_\_\_’s account, and then transfers these funds (less \_\_\_\_\_’s processing fee) to the Merchant’s settlement account to complete the purchase.

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<sup>1</sup> The Department of Financial Protection and Innovation was previously the Department of Business Oversight.

<sup>2</sup> Fin. Code, § 2000, et seq.

Each Pay-in transaction is governed by the agreement between \_\_\_\_\_ and its Merchants (“Agreement”), which states:

PARTIES ACKNOWLEDGE AND AGREE THAT FOR THE TERM OF THIS AGREEMENT \_\_\_\_\_ IS ACTING AS MERCHANT’S AUTHORIZED AGENT FOR THE LIMITED PURPOSE OF ACCEPTING PAYMENTS ON THE MERCHANT’S BEHALF FROM MERCHANT’S CUSTOMERS/END USERS FOR GOODS AND/OR SERVICES SOLD BY MERCHANT, AND MERCHANT APPOINTS \_\_\_\_\_ AS ITS AGENT, AND EXPRESSLY AUTHORIZES \_\_\_\_\_ TO RECEIVE, SUCH END USER PAYMENTS ON MERCHANT’S BEHALF. PAYMENT FROM A MERCHANT’S END USER (VIA THE AUTOMATIC CLEARINGHOUSE NETWORK) TO \_\_\_\_\_ SHALL BE CONSIDERED PAYMENT TO MERCHANT, SATISFYING AND EXTINGUISHING THE PAYMENT OBLIGATION OF THE RELEVANT END USER TO THE MERCHANT (IN THE AMOUNT PAID BY SUCH END USER) AS IF THE RELEVANT END USER HAD PAID THE MERCHANT DIRECTLY.

### **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>3</sup> “Money transmission” includes “receiving money for transmission,” defined as receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means.<sup>4</sup>

“Money transmission” also includes “selling or issuing stored value.”<sup>5</sup> 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” but does not include “closed loop” transactions, where the stored monetary value is only redeemable for goods or services provided by the issuer or its affiliate.<sup>6</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 represents another, called the principal, in dealings with third persons.<sup>7</sup> A “payee” is the provider of goods or services, who is owed payment of

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

<sup>4</sup> Fin. Code, § 2003, subds. (q)(3) and (u).

<sup>5</sup> Fin. Code, § 2003, subd. (q)(2).

<sup>6</sup> Fin. Code, § 2003, subd. (x).

<sup>7</sup> Fin. Code, § 2010, subd. (l)(1); Civ. Code, § 2295.

money from the payor for the goods or services.<sup>8</sup> A “payor” is the recipient of goods or services, who owes payment of money to the payee for the goods or services.<sup>9</sup>

### **Analysis**

For each Pay-in transaction, \_\_\_\_\_’s services constitute “receiving money for transmission” because \_\_\_\_\_ receives money from the Customers for transfer to the Merchants. However, based on the information provided, \_\_\_\_\_’s Pay-in activities qualify for the agent-of-payee exemption. For each Pay-in transaction, the Merchant is the Payee, the Customer is the Payor, and \_\_\_\_\_ is the agent of the Merchant (i.e., agent of the payee). Also, under the Agreement, \_\_\_\_\_’s receipt of funds from the Customer satisfies the Customer’s payment obligation to the Merchant for the goods or services.

The agent-of-payee exemption is generally unavailable for payments for money transmission because the term “goods or services” as used in Financial Code section 2010, subdivision (l)(2) and (3) does not include money transmission. However, the exemption can be applied to transactions involving payments to purchase closed loop stored value because the sale or issuance of closed loop stored value is not money transmission. Here, the Pay-in transactions are all closed loop because the Customer’s stored value is only redeemable for goods or services provided by the issuing Merchant or its affiliate. Therefore, the exemption applies to the Pay-in transactions.

### **Conclusion**

To the extent the Pay-in services facilitate payment for goods and services, the Pay-in services are exempt from the MTA. With respect to payments processed by \_\_\_\_\_ and owed by Customers to Merchants for stored value, the exemption only applies to closed loop transactions and would not apply to open loop stored value.

Please note some of the proposed payments described in your request may involve illegal activities in California, such as sports betting.<sup>10</sup> This opinion applies only to activities that are currently legal in California and does not relieve \_\_\_\_\_ from its obligation to comply with other applicable state and federal laws. By issuing this opinion, the Department is not taking a position on the legality of Merchants’ activities. Also, the Department cannot issue an MTA license to \_\_\_\_\_ to engage in the transmission of money to facilitate unlawful activity.

This opinion is limited to the facts and circumstances described above. The Department’s opinion may change if any of the facts or circumstances change.

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<sup>8</sup> Fin. Code, § 2010, subd. (l)(2).

<sup>9</sup> Fin. Code, § 2010, subd. (l)(3).

<sup>10</sup> See Sen. Const. Amend. No. 6 (2019-2020 Reg. Sess.)

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Please contact me at \_\_\_\_\_ with questions regarding this matter.

Sincerely,

Manuel P. Alvarez  
Commissioner  
Department of Financial Protection and Innovation

By

\_\_\_\_\_

Senior Counsel

cc: Robert Venchiarutti, DFPI, Money Transmitter Division