



STATE OF CALIFORNIA  
**Department of Financial Protection and  
 Innovation**

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

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

February 11, 2021

*SENT VIA EMAIL*

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

Your September 17, 2020 letter to Deputy Commissioner Robert Venchiarutti regarding \_\_\_\_\_ dba \_\_\_\_\_ (\_\_\_\_\_) \_\_\_\_\_ transactions was referred to me for response. By email dated October 19, 2020, \_\_\_\_\_, \_\_\_\_\_'s Chief Compliance Officer, sent me additional information and documents. \_\_\_\_\_ is licensed by the Department of Financial Protection and Innovation (Department) under the Money Transmission Act (MTA).<sup>1</sup> You request an interpretive opinion from the Commissioner as to whether \_\_\_\_\_ transactions are subject to the MTA.

FACTS

\_\_\_\_\_ offers \_\_\_\_\_ transactions to enable customers to send money from the U.S. to Africa. During \_\_\_\_\_'s last regulatory examination, the Department determined that \_\_\_\_\_'s \_\_\_\_\_ transactions, which constitute a large percentage of \_\_\_\_\_'s business, were actually paid out to beneficiaries before \_\_\_\_\_ received any money from the sender. \_\_\_\_\_ then inquired through its request for an interpretive opinion whether the \_\_\_\_\_ transactions are subject to the MTA and regulation and supervision by the Department. \_\_\_\_\_ has other business that requires a MTA license, so \_\_\_\_\_ would need to keep its MTA license regardless of the Department's determination as to whether \_\_\_\_\_ transactions are also subject to the MTA.

In \_\_\_\_\_ transactions, \_\_\_\_\_ obtains a payment authorization on the customer's debit card for the transaction. The debit card authorization puts a hold on the cardholder's funds for the \_\_\_\_\_

<sup>1</sup> Fin. Code, § 2000, et seq.

purchase and guarantees that \_\_\_\_\_ will be paid. Once the \_\_\_\_\_ customer hits the button authorizing \_\_\_\_\_ to process the transaction, \_\_\_\_\_ instantly moves the specified amount of funds from \_\_\_\_\_'s master disbursal account in Africa into the designated recipient's mobile wallet or bank account. These funds can be used immediately by the recipient.

\_\_\_\_\_’s process to reimburse itself for the money paid to designated recipients is a two-step process. The hold \_\_\_\_\_ places on a sender’s debit card does not initiate the transfer of funds to \_\_\_\_\_. To be reimbursed, \_\_\_\_\_ must take a second step, which is the actual direction to process payment, converting the hold status to payment/post status. The second step occurs only after \_\_\_\_\_ has sent the funds to the recipient.

Money collected from \_\_\_\_\_ customers moves from \_\_\_\_\_’s collection account in the U.S. to \_\_\_\_\_’s master disbursal account in Africa. U.S. dollars are converted into the local currency, available to be paid out to mobile wallets and bank accounts of future designated recipients. \_\_\_\_\_ continually moves funds through this process to maintain funds available to instantly pay recipients.

## LAW

The MTA prohibits a person from engaging in the business of money transmission unless the person is licensed or exempt from licensure or is an agent of a person licensed or exempt from licensure.<sup>2</sup>

The Legislature specified reasons for enactment of the MTA, including:

The failure of money transmission businesses to fulfill their obligations would cause loss to consumers, disrupt the payments mechanism in this state, undermine public confidence in financial institutions doing business in this state, and adversely affect the health, safety, and general welfare of persons in this state.<sup>3</sup>

“Money transmission” is defined to include receiving money for transmission.<sup>4</sup> “Receiving money for transmission” is defined to mean receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means.<sup>5</sup>

To “receive money for transmission,” a person must actually or constructively receive, take possession, or hold money or monetary value for transmission; merely receiving instructions,

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<sup>2</sup> Fin. Code, § 2030

<sup>3</sup> Fin. Code, § 2001, subd. (c)

<sup>4</sup> Fin. Code, § 2003, subd. (q)(3)

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

orders, or directions to transmit money or monetary value does not constitute receiving money for transmission.<sup>6</sup>

### ANALYSIS

\_\_\_\_\_ transactions do not constitute money transmission because \_\_\_\_\_'s first action after receiving instructions from its customers is to instruct \_\_\_\_\_'s bank to immediately disburse the requested amount to the recipient. \_\_\_\_\_ places a hold on sender's debit card; however, this hold does not initiate the transfer of funds to \_\_\_\_\_. Only *after* \_\_\_\_\_ has paid the beneficiary is the hold status converted to a payment/post status, and the reimbursement to \_\_\_\_\_ finalized. Under this payment reimbursement model, \_\_\_\_\_ never "receives money for transmission." \_\_\_\_\_ does not actually or constructively receive, take possession of, or hold money or monetary value for transmission. Since funds are not transferred to reimburse \_\_\_\_\_ until after the designated beneficiary has been paid, \_\_\_\_\_ incurs no transmission liability and consumer funds are not at risk.

### CONCLUSION

For the reasons stated herein, \_\_\_\_\_ transactions are not subject to the MTA. 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.

Sincerely,

Manuel P. Alvarez  
Commissioner  
Department of Financial Protection and Innovation

By

Senior Counsel

cc: Robert Venchiarutti, Department of Financial Protection and Innovation, San Francisco  
Oscar Lumen, Department of Financial Protection and Innovation, San Francisco

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<sup>6</sup> Cal. Code Regs., tit. 10, § 80.129