



April 11, 2023

SENT BY EMAIL

[REDACTED]

This letter is in response to your August 24, 2022 letter requesting confirmation that [REDACTED] does not require either an internet escrow agent license or a money transmitter license in the state of California in connection with its proposed business model (Proposed Model).

[REDACTED]

Factual Background

[The Factual Background section has been omitted due to confidentiality granted to the requestor pursuant to California Code of Regulations, title 10, section 250.10.]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Escrow Law

The Escrow Law states that it is unlawful for any person to engage in business as an escrow agent within this state except by means of a corporation duly organized for that purpose licensed by the commissioner as an escrow agent.¹

Financial Code Section 17003, subdivision (a) defines “escrow” as:

any transaction in which one person, for the purpose of effecting the sale, transfer, encumbering, or leasing of real or personal property to another person, delivers any written instrument, money, evidence of title to real or personal property, or other thing of value to a third person to be held by that third person until the happening of a specified event or the performance of a prescribed condition, when it is then to be delivered by that third person to a grantee, grantor, promisee, promisor, obligee, obligor, bailee, bailor, or any agent or employee of any of the latter.²

In 1999, in recognition of the growing use of the internet, Financial Code section 17003, subdivision (b) was added to capture the type of transactions handled by internet escrow companies, stating:

¹ Fin. Code, § 17005.4

² Fin. Code, § 17003, subd. (a)

██████████

With regard to Internet escrow companies, “escrow” also includes any transaction in which one person, for the purpose of effecting the sale or transfer of personal property or services to another person, delivers money, or its Internet-authorized equivalent, to a third person to be held by that third person until the happening of a specified event or the performance of a prescribed condition, when it is then to be delivered by that third person to a grantee, grantor, promisee, promisor, obligee, obligor, bailee, bailor, or any agent or employee of any of the latter.³

“Internet escrow agent” means any person engaged in the business of receiving escrows for deposit or delivery over the Internet.⁴

██████████ fits the definition of “escrow” because the ██████████ paying the ██████████ or ██████████ for services delivers money to ██████████ the third person, and ██████████ releases the money to the ██████████ or ██████████ upon the happening of a specific event: ██████████

You argue ██████████ is not a neutral third party but that ██████████ is an agent of the ██████████ or ██████████ to be paid. This is not supported by the facts because ██████████ holds the funds until the ██████████ notifies ██████████ that the specified event or condition--the ██████████--has occurred. It is only at this point that ██████████ releases the funds to the ██████████ or ██████████

Further, your assertion that “escrow agents remain bound by pre-established escrow instructions regarding timing of when to release funds” is not accurate. Escrow instructions provide a condition upon which the escrow agent must release funds, but typically do not address when they must release them.

In any proceeding under the Escrow Law, the burden of proving an exemption or an exception from a definition is upon the person claiming it.⁵ You have not demonstrated that the Proposed Model is exempt from the Escrow Law.

Money Transmission Act

██████████ argues that the Proposed Model meets the definition of stored value but qualifies for several exemptions under the MTA, including the payroll processor and agent of the payee exemptions. ██████████ also argues that ██████████ funds used to pay ██████████ are closed loop transactions excluded from the definition of stored value.

³ Fin. Code, § 17003, subd. (b)

⁴ Fin. Code, § 17004.5

⁵ Fin. Code, § 17200

[REDACTED]

Although [REDACTED] may resemble stored value under the MTA, based on the information you provided, the money [REDACTED] actually comes under the control of [REDACTED], to be released by [REDACTED] when an agreed-upon event happens, as described above. The [REDACTED] are not stored value under the definition in Financial Code section 2003, subdivision (x), because they do not represent a claim against the issuer; rather, the money comes under [REDACTED] possession and control and therefore must be placed in an escrow trust account.⁶ An escrow trust account is not the same as stored value. Because the transaction is not stored value, it is unnecessary to address your remaining arguments regarding the MTA.

Sincerely,

Clothilde V. Hewlett
Commissioner
Department of Financial Protection and Innovation

By

[REDACTED]

[REDACTED]

⁶ Fin. Code, §§ 17409 and 17409.1; Cal. Code Regs., tit. 10, § 1737.1