



STATE OF CALIFORNIA

Department of Financial Protection and Innovation

GOVERNOR Gavin Newsom · COMMISSIONER Clothilde V. Hewlett

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

July 25, 2023

VIA EMAIL ONLY

Re: \_\_\_\_\_ - Request for Interpretive Opinion

Dear \_\_\_\_\_:

This letter responds to your e-mail on May 3, 2023, as supplemented by your e-mails on June 8, 2023 and June 20, 2023 and our discussion on June 22, 2023, seeking an interpretive opinion from the Department of Financial Protection and Innovation (“Department”) as to whether the proposed activities of \_\_\_\_\_ (“\_\_\_\_\_”) require licensure under the Money Transmission Act (“MTA”).<sup>1</sup>

**Background**

\_\_\_\_\_, a data processor, facilitates payments made by customers (each a “Customer”) to \_\_\_\_\_ contracting merchants (each a “Merchant”) in exchange for goods or services sold by Merchants. When a Customer authorizes a Merchant to debit the Customer’s transaction account on the automated clearinghouse<sup>2</sup> (“ACH”) network, the Customer’s account details at a U.S. financial institution are sent via secured internet connection to \_\_\_\_\_, which forwards the Customer’s account and transaction details to \_\_\_\_\_ partner banks or credit unions in the U.S. (each, a “Partner FI”). Pursuant to these instructions, the Partner FI submits the Customer’s payment order as an ACH debit entry in an amount equal to the purchase transaction, and the funds are received into a settlement account owned solely by the Partner

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

<sup>2</sup> The ACH system is a nationwide network governed by Nacha through which depository institutions send each other batches of electronic credit and debit transfers. ACH operators receive files of ACH payments from originating depository financial institutions, edit and sort the payments, deliver the payments to receiving depository financial institutions, and settle the payments by crediting and debiting the depository financial institutions’ settlement accounts. <[https://www.federalreserve.gov/paymentsystems/fedach\\_about.htm](https://www.federalreserve.gov/paymentsystems/fedach_about.htm)>.

FI for the benefit of Merchants (“Settlement Account”).<sup>3</sup> After waiting three business days, the Partner FI completes the transaction by transferring the funds from the Settlement Account to the Merchant’s account with a receiving depository financial institution in the U.S. via ACH.

\_\_\_\_\_ also facilitates refunds<sup>4</sup> initiated by Merchants and sent in the opposite direction to Customers. If the funds for the purchase transaction have not yet been pulled from the Customer’s account, \_\_\_\_\_ will cancel its original ACH instructions to the Partner FI. If the funds to be refunded are in the Settlement Account, \_\_\_\_\_ will send ACH instructions to the Partner FI to return the funds from the Settlement Account to the Customer’s account. If the funds to be refunded have been settled to the Merchant, \_\_\_\_\_ will forward ACH instructions to the Partner FI to transfer the funds from the Merchant’s account to the Settlement Account and then to the Customer’s account.

\_\_\_\_\_ is not a corporate affiliate of any Partner FI and does not, at any point, handle transferred funds or have custody of, legal ownership of, or rights to the transferred funds.

### **Money Transmission Act**

Under the MTA, a person shall not engage in money transmission in California, or advertise, solicit, or hold itself out as providing money transmission in California, unless the person is licensed, exempt from licensure, or an agent of a person licensed or exempt from licensure.<sup>5</sup> “Money transmission” includes, in applicable part, receiving money for transmission.<sup>6</sup> “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.”<sup>7</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, orders, or directions to transmit money or monetary value does not constitute “receiving money for transmission.”<sup>8</sup>

### **Analysis**

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<sup>3</sup> If the funds cannot be pulled from the Customer’s account, \_\_\_\_\_ will instruct the Partner FI to make two more attempts to collect the funds within the next 60 days, in accordance with Nacha Operating Rules for ACH payments.

<sup>4</sup> Refunds must be sent back to the Customer’s account used for the original transaction. For each refund, the Customer always receives the full amount of the original debit, including any fees.

<sup>5</sup> Fin. Code, § 2030, subd. (a).

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

<sup>7</sup> Fin. Code, § 2003, subd. (u).

<sup>8</sup> Cal. Code Regs., tit. 10, § 80.129.

\_\_\_\_\_ services, as described, do not constitute “receiving money for transmission” because \_\_\_\_\_ never actually or constructively receives, takes possession of, or holds money or monetary value for transmission; instead, it receives ACH instructions from Customers and Merchants to transmit money to each other and forwards those instructions to the Partner FI for processing on the ACH network. The financial institutions where Customers and Merchants hold their respective accounts and the Partner FI are solely responsible for payment and settlement in accordance with the instructions provided by \_\_\_\_\_.

Moreover, \_\_\_\_\_ website does not indicate \_\_\_\_\_ is advertising, soliciting, or holding itself out as providing money transmission in California.<sup>9</sup>

Therefore, \_\_\_\_\_ payment system does not constitute money transmission or require an MTA license.

This opinion 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 opinion may also change.

Please contact me at \_\_\_\_\_ with any questions.

Sincerely,

Clothilde V. Hewlett  
Commissioner  
Department of Financial Protection and Innovation

By

\_\_\_\_\_

\_\_\_\_\_  
Senior Counsel

<sup>9</sup> Fin. Code, § 2030, subd. (a).