



IN REPLY REFER TO:  
 FILE NO:

July 11, 2024

**VIA E-MAIL ONLY**

Re: - Request for Interpretive Opinion

Dear :

Thank you for your email in which you attach a letter from your client dated November 1, 2023, requesting an interpretive opinion from the Department of Financial Protection and Innovation (“Department”) regarding the applicability of the Money Transmission Act (“MTA”)<sup>1</sup> to certain payment processing services offered by your client, (“”). The Department has reviewed the November 1, 2023, letter and March 4, 2024, follow-up submission in response to the Department’s comment letter.

**I. BACKGROUND**

states it is a global marketing and services firm. Through its , provides channel marketing and advertising services for clients and market development fund administration. Through (“”) and in conjunction with , provides payment remittance for payouts of commissions, performance incentives, and rebates to a client’s partner or distributor (collectively “Partners”) in connection with a client’s promotional program. Partner sales representatives who receive payment of sales commissions, performance incentives, or rebates are employees of the Partners, and not clients. Clients pay a separate fee for , which is based on the number of payments processed. currently does not offer the service as a standalone service. Therefore, clients can only receive the service with the . has two clients headquartered in California.

As part of its services, reviews claims submitted by Partners to clients to verify the Partners meet the conditions of the promotional program. technology and software support the portal where the Partners submit claims. Once verifies a Partner claim, sends the client a payment request for the Partner claim it processed. The client can then send the specified amount of money to a bank account owned and controlled by .

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

Once \_\_\_\_\_ receives the funds, it will then remit the funds to the appropriate Partner via ACH or wire depending on the requirement of the particular program.

## II. ANALYSIS

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 2003, subdivision (r), defines “money transmission” as selling or issuing payment instruments, selling or issuing stored value, or 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 within or outside the United States by electronic or other means. 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>2</sup>

\_\_\_\_\_ services, as described, constitute “receiving money for transmission” because \_\_\_\_\_ actually receives client money via wire to an account owned and controlled by \_\_\_\_\_. Once \_\_\_\_\_ receives money from the client, it issues payment to the applicable Partner via ACH or wire from the account it owns and controls. Therefore, \_\_\_\_\_ payment remittance service is subject to the licensing requirements of the MTA unless an exemption applies.

### i. Payment Instrument

\_\_\_\_\_ argues that under the MTA a payment instrument does not include an instrument that is not sold to the public but issued and distributed as part of a loyalty, rewards, or promotional program. However, as explained above, \_\_\_\_\_ is receiving money for transmission. Its argument regarding payment instruments is inapplicable.

### ii. Payroll Processing Exemption

\_\_\_\_\_ argues the payroll processing exemption applies. Financial Code section 2010, subdivision (j) exempts from the MTA a person that (1) delivers wages or salaries on behalf of employers to employees or (2) facilitates the payment of payroll taxes to state and federal agencies, makes payments relating to employee benefit plans, makes distribution of other authorized deductions from employees’ wages or salaries, or (3) transmits other funds on behalf of an employer in connection with transactions related to employees. \_\_\_\_\_ services, as described, do not meet any prong of subdivision (j). \_\_\_\_\_ is not transmitting wages, taxes, or other funds on behalf of an employer. The payments \_\_\_\_\_ provides are to its clients’ partners or distributors, which are not employees of the clients.

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<sup>2</sup> Cal. Code Regs., tit. 10, § 80.129.

**i. Order of Exemption under Section 2011**

Absent a finding by the Department that \_\_\_\_\_ is exempt under an express provision of the MTA, \_\_\_\_\_ requests an exemption in the public interest under Financial Code section 2011.

Financial Code section 2011 provides that the Commissioner may, by regulation or order, exempt a person or transaction from the MTA if such exemption would be in the public interest and the regulation of such person or transaction is not necessary for the purposes of the MTA. California Code of Regulations, title 10, section 80.3002, subdivision (b), provides factors the Commissioner may consider when deciding whether to grant such an exemption.

Section 80.3002, subdivision (b)(1)(A)-(F) allows the Commissioner to consider whether a person is licensed and examined by a government agency for factors such as the nature and volume of the established business; the amount, nature, quality, and liquidity of its assets; the amount and nature of its liabilities; the amount of earnings and income; and the quality of its operations and management. \_\_\_\_\_ acknowledges that although it is registered as a money services business with the Financial Crimes Enforcement Network (“FinCEN”), it is not subject to licensure and examination by a government agency that examines for the factors in section 80.3002, subdivision (b)(1)(A)-(F). The Department finds this factor does not weigh in favor of exempting \_\_\_\_\_.

Under section 80.3002, subdivision (b)(2), the Commissioner can consider whether the transmission activity is necessary and incidental to the performance of the business transaction. \_\_\_\_\_ claims that the \_\_\_\_\_ service is ancillary to its core business and the transfer of funds is necessary and incidental to the \_\_\_\_\_ of accompanying services that clients seek from \_\_\_\_\_. However, not all of \_\_\_\_\_ clients use the \_\_\_\_\_ services. Those who choose to use it must pay for it separately. These facts indicate the \_\_\_\_\_ service is not necessary or incidental.

Section 80.3002, subdivision (b)(3) allows the Commissioner to consider the risk and potential harm of \_\_\_\_\_ activities to persons located in California. \_\_\_\_\_ suggests that the risk and potential harm of the \_\_\_\_\_ service to its two California clients is low because it provides the payment processing under contracts with large corporations and holds the funds received from clients on its balance sheet for the sole purpose of paying the client’s designated recipients. The Department agrees the overall risk to persons in California is relatively low in terms of number of people affected.

However, the Commissioner may also consider the actual or projected nature and volume of transactions with persons located in California under section 80.3002, subdivision (b)(4). \_\_\_\_\_ states that the actual nature and volume of transactions for its two California clients for Q3 2023 amounted to approximately \_\_\_\_\_ transactions totaling \$ \_\_\_\_\_. The Department finds \_\_\_\_\_ actual volume of transactions with its California clients is high.

Finally, the Commissioner may consider other relevant factors under section 80.3002, subdivision (b)(5). [redacted] argues that the Commissioner should consider it does not publicly market its payment processing service and only offers it as part of a bundled service with the [redacted]. The Department does not find that this is a basis to exempt [redacted] from licensure.

After consideration of the above factors, the Commissioner declines to grant [redacted] an exemption under Financial Code section 2011.

**III. CONCLUSION**

[redacted] service falls within the purpose and scope of the MTA and is not exempt. [redacted] may not provide these services without an MTA license. This opinion is based solely on the facts as represented in your client's correspondence, and the Department's understanding of those representations.

If you have any questions, please contact me at [redacted].

Sincerely,

Clothilde V. Hewlett  
Commissioner  
Department of Financial Protection and Innovation

By

\_\_\_\_\_

Senior Counsel

cc: Robert Venchiarutti, Deputy Commissioner, Money Transmitter Division