

**DEPARTMENT OF BUSINESS OVERSIGHT***Ensuring a Fair and Secure Financial Services Marketplace for all Californians*

**Jan Lynn Owen**  
**Commissioner of Business Oversight**

November 7, 2016

Re: Opinion Letter

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

Thank you for your dated August 15, 2016 letter to the Deputy Commissioner of the Money Transmitters Division, Robert Venchiarutti. As Counsel for the Legal Division, I have been asked to respond to your letter. You have asked for a no action letter, or a letter finding that \_\_\_\_\_'s online filing service, the \_\_\_\_\_ (“\_\_\_\_\_”) is exempt from the licensing requirements of the California Money Transmission Act (“MTA”). You provided additional information regarding \_\_\_\_\_ and its activities on September 16, October 6, and October 17, 2016.

**BACKGROUND**

\_\_\_\_\_’s membership is comprised of \_\_\_ regulators in each of the 50 states, the District of Columbia, Canada, Mexico, Puerto Rico, and the U.S. Virgin Islands. The Department of Business Oversight is a member of \_\_\_\_\_.

Since December 15, 2014, \_\_\_\_\_ has hosted on its website the \_\_\_\_\_ database. The \_\_\_\_\_ allows \_\_\_\_\_ issuers to submit \_\_\_\_\_ forms and pay related fees to state regulators.<sup>1</sup> \_\_\_\_\_ regulators in 45 states and U.S. territories accept forms submitted via the \_\_\_\_\_, including California. Before the \_\_\_\_\_, \_\_\_\_\_ issuers had to individually file forms with each state. The \_\_\_\_\_ allows issuers to submit forms to multiple states at once.

There are several steps that occur to transfer a filing fee from a \_\_\_\_\_ issuer to a state regulator. First, the issuer enters its bank account information into the \_\_\_\_\_ and authorizes the amount of filing fees, plus system fees, for withdrawal.<sup>2</sup> The funds are transferred from the issuer’s bank account to a \_\_\_\_\_-maintained automated

<sup>1</sup> Specifically, the \_\_\_\_\_ currently accepts the \_\_\_\_\_, which is a form used to claim an exemption under \_\_\_\_\_. See \_\_\_ C.F.R. § \_\_\_, and Corp. Code, § \_\_\_\_\_.

<sup>2</sup> The system fee to use the \_\_\_\_\_ is \$150 per form submitted. For example, if the same form is submitted to 20 states, the issuer is charged \$150.

clearinghouse account at \_\_\_\_\_ Bank (“Bank”), a Mississippi state-chartered bank. Once the Bank receives the funds, it holds the funds in the clearinghouse account for at least two full business days. Next, the state’s filing fee is sent to an intermediate bank account controlled by \_\_\_\_\_. Once a week, the funds are transferred out of the intermediate account to the state’s treasury account.

Once a form is submitted on the \_\_\_\_\_, the \_\_\_\_\_ provides an electronic receipt as proof that the \_\_\_\_\_ form was submitted and of the amount of fees paid. State regulators review the filings submitted through the \_\_\_\_\_ and can contact issuers directly if there are any issues with a specific filing. At no charge, members of the public can search all filings submitted to the \_\_\_\_\_.

### **MONEY TRANSMISSION ACT**

Financial Code section 2030, subdivision (a) provides that a person shall not engage in the business of money transmission in California unless the person is licensed or exempt from licensure under the MTA, or is an agent of a person licensed or exempt from licensure. Section 2003, subdivision (q)(3) defines “money transmission” to include receiving money for transmission.

One exemption from the MTA’s licensing requirement is found in Financial Code section 2010, subdivision (c). This section exempts public entities including “state, county, city, or any other governmental agency or governmental subdivision of a state.”

Additionally, Financial Code section 2011 authorizes the Commissioner to exempt from the MTA any person or transaction, if the Commissioner finds such action to be in the public interest and that the regulation of such person or transaction is not necessary. To make that determination, the Commissioner can consider various factors, such as whether the person is licensed by a government agency and the risks and potential harm to persons in California.<sup>3</sup>

### **ANALYSIS**

\_\_\_\_\_ receives money for transmission within the meaning of the MTA. Specifically, it receives money from issuers and transmits the money to state regulators, including the Department. Therefore, \_\_\_\_\_ must be licensed as a money transmitter in California unless an exemption applies.

While the \_\_\_\_\_ is not a subdivision or department of any government, state regulators entirely comprise its voting membership. Because \_\_\_\_\_ is composed of state regulators, the risk of not regulating \_\_\_\_\_’s money transmission activities is very low. Further, allowing \_\_\_\_\_ to transmit filing fees to state \_\_\_\_\_ regulators promotes the efficient regulation of \_\_\_\_\_, benefiting issuers as well as state governments and as a result, the \_\_\_\_\_

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<sup>3</sup> Cal. Code Regs., tit. 10, § 80.3002, subdivision (b).

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public. Although \_\_\_\_\_ does not qualify for the exemption for government agencies, \_\_\_\_\_ exists to further the purposes of government agencies. Based on these factors, the Commissioner finds that, pursuant to Financial Code section 2011, it is in the public interest to exempt \_\_\_\_\_ from the MTA's licensing requirements. An Order of Exemption for that purpose is enclosed.

This opinion is based solely on the facts as represented in your correspondence, and may change if any of the conditions or circumstances under which \_\_\_\_\_ provides services is altered.

If you have any questions, please feel free to contact the undersigned at \_\_\_\_\_.

Sincerely,

Jan Lynn Owen  
Commissioner of Business Oversight

By

Julie L. Jacob  
Counsel

JJ:is

cc: Robert Venchiarutti, Department of Business Oversight, San Francisco