

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

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

IN REPLY REFER TO:  
FILE NO:

December 21, 2017

Re: Agent of Payee – Payment Processing– Opinion Request

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

Thank you for your letter to Assistant Deputy Commissioner Julio Prada, dated November 3, 2017. As Senior Counsel for the Legal Division, I have been asked to respond to this matter. In your letter, you request a determination that payment-processing services provided by \_\_\_\_\_ meets the requirements of the agent of payee exemption in the Money Transmission Act (“MTA”).

**I. BACKGROUND**

According to your letter, \_\_\_\_\_ provides payment-processing services for mobile and web-based merchants that provide goods or services. A consumer makes a payment to a merchant using a credit or debit card. \_\_\_\_\_ is authorized to charge the amount owed the merchant. The amount is processed through \_\_\_\_\_’s network partners and transferred into an account held by \_\_\_\_\_’s financial institution, for the benefit of \_\_\_\_\_’s customers. \_\_\_\_\_’s financial institution then transfers the consumer’s payment into the merchant’s deposit account.

\_\_\_\_\_ has submitted its existing click-through online agreement (“Agreement”) that all merchants must agree to in order to set up and use \_\_\_\_\_’s payment-processing services. The Agreement specifies that the merchant appoints \_\_\_\_\_ as its payment collection agent solely for the limited purpose of accepting and processing customer payments. The Agreement further provides that delivery of the payment by a customer to \_\_\_\_\_ acting as an agent of the merchant satisfies the customer’s obligations to the merchant.

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## II. MONEY TRANSMISSION ACT

Financial Code section 2003, subdivision (q)(3), defines "money transmission" to include receiving money for transmission. Section 2003, subdivision (u), defines "receiving money for transmission" to mean receiving money or monetary value in the United States for transmission within or outside the United States by electronic or other means.

Financial Code section 2030 prohibits a person from engaging in the business of money transmission in this state, unless the person is licensed or exempt from licensure or is an agent of a person licensed or exempt from licensure.

Financial Code section 2010, subdivision (l), exempts from the MTA transactions in which the recipient of the money is an agent of the payee pursuant to a preexisting written contract, and delivery of the money to the agent satisfies the payor's obligation to the payee. For purposes of Section 2010, subdivision (l), "agent" has the same meaning as that term is defined in Civil Code section 2295.<sup>1</sup> Agent is defined as one who represents another, called the principal, in dealings with third persons.<sup>2</sup> "Payee" means the provider of goods or services, who is owed payment of money from the payor for the goods or services.<sup>3</sup> "Payor" means the recipient of goods or services, who owes payment of money to the payee for the goods or services.<sup>4</sup>

\_\_\_\_\_ asserts that transactions processed through its payment service are exempt under the agent of payee exemption. Pursuant to the Agreement between \_\_\_\_\_ and merchants, the merchant meets the definition of "payee" because the merchant provides the goods and/or services purchased by the customer (i.e., payor). The Agreement also specifies that (1) \_\_\_\_\_ acts as the agent of payee, and (2) delivery of the payment by a customer to \_\_\_\_\_ satisfies the customer's (i.e., payor's) obligation to the merchant (i.e., payee). Therefore, the MTA licensure requirement does not apply to transactions processed via \_\_\_\_\_'s payment service.

## III. CONCLUSION

The Department finds that the transactions processed through \_\_\_\_\_ fall within the MTA's definition of "money transmission;" however, the MTA licensure requirement does not apply to these transactions because \_\_\_\_\_ is an agent of the payee pursuant to Financial Code section 2010, subdivision (l).

This opinion is based solely on the facts as represented in your correspondence, and the Department's understanding of those representations. The Department may reach a different conclusion under other facts and circumstances. This letter only expresses an opinion regarding the application of the MTA to SPC's payment processing services.

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<sup>1</sup> Fin. Code, § 2010, subd. (l)(1).

<sup>2</sup> Civ. Code, § 2295.

<sup>3</sup> Fin. Code, § 2010, subd. (l)(2).

<sup>4</sup> Fin. Code, § 2010, subd. (l)(3).

If you have any questions, please feel free to contact me.

Sincerely,

Jan Lynn Owen  
Commissioner  
Department of Business Oversight

By

JAMES M. PATTEN-LEO  
Senior Counsel