

DEPARTMENT OF BUSINESS OVERSIGHT*Ensuring a Fair and Secure Financial Services Marketplace for all Californians***Jan Lynn Owen****Commissioner of Business Oversight**

June 23, 2014

Nicole Ibbotson
General Counsel
ITC Financial Licenses, Inc.
1200 Brookstone Centre Parkway, Suite 220
Columbus, Georgia 31904

Re: Treatment of Bill Payment Activities under the California Money Transmission Act

Dear Ms. Ibbotson:

This is to follow up on your request that the Department of Business Oversight (Department) make a determination of whether certain bill payment activities by ITC Financial Licenses, Inc. (ITC) would be subject to the California Money Transmission Act (Financial Code § 2000 et seq.) (MTA). ITC is currently a licensee under the MTA. As used herein, the term “FC” means “Financial Code section.” Capitalized terms not otherwise defined herein shall have the meaning assigned to them in your letter.

You have also asked if any exemptions from licensure under the MTA would apply, such as a “payee agent model,” and what conditions must be met in order to rely on such exemption.

It is the Department’s view that licensing under the MTA is required where the Provider accepts payments from customers of a Biller and remits the funds to the Biller or otherwise, including as the authorized agent of the Biller even if payment to the Provider constitutes payment to the Biller. That the transaction is complete from the customer’s perspective at the time the money is tendered to the Provider because the customer’s payment obligation to the Biller is extinguished when the customer pays the Provider is not determinative of whether the Provider is engaged in money transmission under the MTA.

Pursuant to FC 2003(s), “receiving money for transmission” is not defined by the respective liability of the transaction’s parties; it is defined as “receiving money... for transmission.” The fact that the customer’s liability to the Biller is satisfied when the customer’s bill is paid has no bearing on whether money is being received for transmission. Moreover, whether or not a Provider, such as ITC, is acting as a payment agent for a Biller, the Provider is nonetheless transmitting money between the customer and the Biller. All of the agents of the Biller in the transaction (i.e. ITC) hold the Biller’s funds before transmitting the money to the Biller.

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In summary, the Provider stands as an intermediary between the customer and the Biller, transmitting monetary value between them. The conduct of transmitting money from one person to another person falls squarely within the meaning of money transmission under the MTA. Thus, any Provider transactions involving the payee-agent structure require licensing under the MTA. There is no statutory exemption from the MTA for an agent of a payee.¹

Please be advised that Assembly Bill 2209, introduced in the 2013-2014 regular session of the Legislature, provides for a statutory exemption from the MTA for certain transactions involving agents of a payee. Should this bill be passed by the Legislature and signed by the Governor this year, it would become effective on January 1, 2015.

This opinion is based solely on the facts presented in your correspondence and the Department's understandings of those facts. The Department may reach a different conclusion under other facts and circumstances. If you have any questions or comments, please contact me at 213.897.2172.

Sincerely,

JAN LYNN OWEN
Commissioner of Business Oversight

By

WALLACE M. WONG
Senior Counsel

WMW:jg

¹ See also Payee-Agent and Factoring Arrangements under the MTA, Department of Business Oversight, March 3, 2014. Available at: http://www.dbo.ca.gov/Laws_&_Regs/dfi_orders_files/2014_MTA_redacted_letter.3.4.14.pdf