

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

September 11, 2018

Re: Opinion Request – _____

Dear _____:

Thank you for your letter dated June 13, 2018, to Robert Venchiarutti, Deputy Commissioner, Money Transmitter Division, Department of Business Oversight (“Department”). You have requested a determination that the transaction activity conducted by _____ (“_____”) for its contracted payee _____ (“_____”), a wholly-owned subsidiary of _____, meets the requirements of the agent of payee exemption¹ in the Money Transmission Act (“MTA”).

I. BACKGROUND

On or about August 21, 2015, _____ (now known as _____) requested application of the agent of payee exemption for its transaction activity for _____. On December 15, 2015, the Department denied the request for the reasons stated in the letter from Wallace Wong to _____.

_____ is now requesting the Department to reconsider its determination of the applicability of the agent of payee exemption to the aforementioned transaction activity on the basis of new facts related to (1) _____’s status as a “payee” and (2) which customers are the “payors.” Specifically, in its present request, _____ clarifies unequivocally that “_____ provides the _____ brand utility services to the payor and is therefore owed payment for such goods and services.”

_____ has supported its claim with _____’s Form 10-K filed with the Securities and Exchange Commission, which represents that _____ is a holding company with operations conducted by its subsidiaries. _____ has also now clarified that the payors are _____’s customers (not _____’s customers) that receive the utility services that _____ provides.

¹ Fin. Code, § 2010, subd. (l).

II. MONEY TRANSMISSION ACT

Financial Code section 2003, subdivision (q), 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 2295.² Agent is defined as one who represents another, called the principal, in dealings with third persons.³ “Payee” means the provider of goods or services, who is owed payment of money from the payor for the goods or services.⁴ “Payor” means the recipient of the goods or services, who owes payment of money to the payee for the goods or services.⁵

_____ asserts that _____ is a payee because _____’s operations are conducted by its subsidiaries, and _____ is a subsidiary. While this operational structure may have always existed (i.e., that _____ is only a holding company that does not itself conduct any operations, and _____ branded operations are conducted through its subsidiaries), it was not clear until _____’s current request that _____ is the *specific* subsidiary that provides the _____ branded *utility* services to payors. This fact is crucial. That is, no other _____ subsidiaries would qualify as a “payee” for purposes of the agent of payee exemption unless the subsidiary provided the specific service for which it was owed payment. There must be a direct correlation between the specific service provided and the payment owed. For example, suppose _____ had two subsidiaries: Subsidiary A and Subsidiary B. Subsidiary A provides A Services, and Subsidiary B provides B services. For purposes of the agent of payee exemption, Subsidiary A could not be a payee for B services because Subsidiary A did not provide B services.

² Fin. Code, § 2010, subd. (l)(1).

³ Civ. Code, § 2295.

⁴ Fin. Code, § 2010, subd. (l)(2).

⁵ Fin. Code, § 2010, subd. (l)(3).

Being a subsidiary in and of itself, which conducts operations on behalf of a parent, does not make a subsidiary a payee for all the services of all other subsidiaries.

In its current request, however, _____ has now established that _____ is the payee for _____ branded utility services because _____ has expressly represented that _____ is the entity that provides the _____ branded utility services. _____ seeks to be an agent of _____ to accept payments for these utility services.

_____’ current request also clarifies that the payors are the customers who receive the utility services that _____ provides. Previously, it was the Department’s understanding that _____ was the entity that provided utility services to its customers, and therefore, the payors were _____’s customers who received the utility services from and owed payment to _____. Consequently, there was an apparent disconnect between the payors (i.e., customers), who owed payment to the payee (i.e., _____), and _____ who was receiving payments on behalf of _____, which we understood at the time to not be the payee.

In the current request, _____ has established that it receives, as an agent of the payee (_____), payment from the appropriate payor (the customer of _____).

_____ has also provided a copy of the Master Services Agreement between _____ and _____ (now _____), which specifies that (1) _____ designates _____ as its agent, and (2) receipt of funds from a customer by _____ is the same as receipt by _____ itself, such that customers are given credit by _____ for having paid regardless of whether _____ ever remits the money to _____.

III. CONCLUSION

The Department finds that the transaction activity conducted by _____ for _____ falls within the MTA’s definition of “money transmission;” however, the MTA does not apply to those transactions conducted on behalf of _____ because _____ is acting as an agent of payee pursuant to Financial Code section 2010, subdivision (l). The Department’s determination is limited to _____’s transactions conducted on behalf of _____. It does not extend to _____’s other activities.

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

Sincerely,

Jan Lynn Owen
Commissioner
Department of Business Oversight

By

Jennifer L.W. Rumberger
Senior Counsel

JLWR:acp

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