



JB PRITZKER
Governor

MARIO TRETO, JR.
Secretary

FRANCISCO MENCHACA
Director

May 17, 2022

VIA ELECTRONIC MAIL

Non-Binding Statement 2022-5

Dear _____:

Thank you for your letters emailed on February 2, 2022 and April 1, 2022, your supplemental correspondence and responses to requests for clarification. You requested a non-binding statement pursuant to Title 38, Section 200.310 of the Illinois Administrative Code inquiring whether _____'s proposed activities would require compliance with requirements set forth in the Illinois Transmitters of Money Act ("TOMA").¹ You have requested confidential treatment.

Please be advised that consistent with governing law, the Illinois Department of Professional and Financial Regulation, Division of Financial Institutions ("Department"), does not render formal legal opinions or interpretations and non-binding statements do not have precedent value.

In addition, facts, or conditions different than those presented will require different conclusions. Persons other than those requesting the statement should not rely on this statement. The Department has not independently verified any represented facts, and instead has relied upon the statements and representations contained in your correspondence.

FACTS

_____ intends to offer two types of services and represents as follows:

A. Service 1

Service 1 is a payment processing services offered to businesses to allow consumers to use money held in the consumer's third-party e-wallet (*i.e.*, PayPal or Citibank) ("Wallet") to purchase goods and services at a physical retail store ("Merchant"). _____ will enter into written agreements with both the Wallet provider² and the Merchant. The consumer will not have any direct contact or relationship with _____. The consumer is not charged any fees for using this payment method.

¹ _____ has an active license and seeking to determine whether _____'s proposed activities would require licensure for purposes of reporting transaction volume.

² _____ represents that the Wallet providers own the relationship with the consumer, and therefore responsible for completing "Know Your Customer" requirements.

Instead, the Merchant agrees to pay _____ a Merchant Fee for settling the transaction. The Wallet provider is entitled to a portion of the Merchant Fee per its agreement with _____. Wallet provider will either (1) take its portion from the transaction amount prior to sending to _____ via ACH, or (2) send transaction amount less entire Merchant fee and give _____ its portion separately.

A consumer makes a purchase with a participating Merchant in the following manner:

- The consumer selects option to make an in-store payment to purchase goods via the Wallet app.
- The Wallet app displays a limited-time barcode for consumer to present to cashier.
- The cashier scans barcode which initiates an authorization request through _____'s payment system.
- If authorization is approved, the merchant completes transaction and issues receipt. The consumer leaves store with purchased goods.
- The consumer's Wallet is debited only for the purchase price of goods.

_____ 's proposed agreement with the Wallet provider provides in relevant part:

With respect to [Wallet purchases], _____ warrants that payment by [the Wallet provider] to _____ will satisfy any obligation [the Wallet provider] may have, whether in contract, tort, equity, or otherwise, to pay Merchant.

_____ 's proposed agreement with the Merchant expressly "grants _____ the authority to accept Third-Party Payments on [Merchant's] behalf." Additionally, "with respect to [Wallet] Account Purchases, [Merchant] warrants that:

- The consumer's obligation to [Merchant] shall be satisfied when the [Wallet] Account Payment is approved and such approval is sent to [Merchant] through _____, whether or not [Merchant] ever received payment from _____ in accordance with this Agreement.
- Once the [Wallet] Account Provider has paid _____, [Merchant] will consider the [Wallet] Account Provider to have paid [Merchant] and any obligation that the [Waller] Provider may have had to pay [Merchant], whether in contract, tort, equity, or otherwise, shall be extinguished, whether or not _____ ever pays [Merchant] for such [Wallet] Account Purchase in accordance with this Agreement.
- [Merchant] will seek payment solely from _____ and not from the [Wallet] Account Provider or the consumer."

B. Service 2

Service 2 is a service offered to business entities that offer various types of user accounts to their customers (each a "Business Payee"), such as Netflix, a mobile phone service provider, an online gambling operator, or a Wallet provider, which allows the Business Payee to offer its customers the option to add funds to their account or to add minutes to a prepaid mobile phone account by using cash at a participating Merchant location. Business Payees would potentially fall into the following categories:

- Transportation – top up or purchase transit fares
- Telecom – top up or purchase telecom handsets or plans
- Food/beverage – to enable cashless payments
- Ecommerce – to enable cashless payments
- Subscriptions – top up or purchase entertainment subscriptions
- Gaming – top up online sports betting or gaming accounts
- Credit/loan – to make bill payments to loan providers
- Licensed money service businesses such as PayPal, Green Dot, Crypto.com, etc.

A consumer makes a payment to the Business Payee in the following manner:

- Via the Business Payee app, the consumer selects option to “Add Funds/Cash in Store,” selects a participating Merchant, enters amount of money, and reviews applicable fees disclosed in the app.³
- A limited-time barcode appears on the Business Payee app which consumer shows cashier to scan at the point-of-sale device.
- Cashier accepts payment from consumer and provides consumer a receipt.
- Consumer also receives a receipt of the load from the Business Payee via email and/or in the app.
- Funds are available in the consumer’s account with the Business Payee within approximately 10 minutes.

The agreement between _____ and the Business Payee provides that after the Business Payee transmits an approval to _____ in response to a consumer’s request, (1) Business Payee will load the appropriate account; (2) funds will be available to the consumer; (3) the consumer will be entitled to the funds and the consumer’s obligation to pay the Business Payee will be considered extinguished, regardless of whether _____ ever pays the Business Payee under the agreement; and (4) Business Payee will seek payment solely from _____ and not from the Merchant nor from the consumer.

_____ represents that it will enter into agreements with participating Merchants and “appoint [Merchant] as an authorized delegate of _____ for purposes of initiating the [transfer of money to a consumer’s account.]” As with Service 1, the consumer will not have any direct contact or relationship with _____.

There are two payment flows with Service 2. As an authorized delegate of _____ the Merchant will transmit the funds to _____ via daily ACH settlement. From that point the funds flow to Business Payee in one of two ways: (1) _____ will settle the funds directly to the Business Payee via ACH, or (2) in some cases, _____ will use an arrangement with a third-party (“Aggregator”) in which _____ will transfer funds to Aggregator for disbursement to Business Payee. _____ represents that Aggregators are used for efficiency where the Aggregator has contractual relationships with a number of Business Payees.

³ _____ represents that some Wallet providers require the Merchant to remit the entire amount and include a load fee, or in some cases Wallet providers do not assess a fee and willing to take a discount and absorb the fee.

LAW

Pursuant to Section 5 of TOMA a money transmitter is:

[A] person who is located in or doing business in this State and who directly or through authorized sellers does any of the following in this State:

- (1) Sells or issues payment instruments.⁴
- (2) Engages in the business of receiving money for transmission or transmitting money.
- (3) Engages in the business of exchanging, for compensation, money of the United States Government or a foreign government to or from money of another government.⁵

TOMA applies to the “transmission of money by any means, including transmissions to or from locations within the United States or to and from locations outside of the United States by payment instrument, facsimile or electronic transfer, or otherwise, and includes bill payment services.”⁶

State and federal chartered financial institutions are exempt pursuant to TOMA.⁷ An operator of a payment system is exempt from licensure pursuant to TOMA to the extent that it provides processing, clearing, or settlement services between or among persons exempt under this Section in connection with wire transfers, credit card transactions, debit card transactions, stored value transactions, automated clearing house transfers, or similar funds transfers.⁸

CONCLUSION

If all of the facts provided in _____’s February 2, 2022 and April 1, 2022 letters, supplemental correspondence and responses to requests for clarification are true and correct, the Department would not recommend that enforcement action be initiated against _____ if it commenced the described activities as it pertains to the Service 1 services without complying with the requirements set forth in TOMA.⁹ However, the Department declines to issue findings with respect to the

⁴ "Payment instrument" means a check, draft, money order, traveler's check, stored value card, or other instrument or memorandum, written order or written receipt for the transmission or payment of money sold or issued to one or more persons whether or not that instrument or order is negotiable. Payment instrument does not include an instrument that is redeemable by the issuer in merchandise or service, a credit card voucher, or a letter of credit. A written order for the transmission or payment of money that results in the issuance of a check, draft, money order, traveler's check, or other instrument or memorandum is not a payment instrument. "Stored value card" means any magnetic stripe card or other electronic payment instrument given in exchange for money and other similar consideration, including but not limited to checks, debit payments, money orders, drafts, credit payments, and traveler's checks, where the card or other electronic payment instrument represents a dollar value that the consumer can either use or give to another individual. 205 ILCS 657/5.

⁵ *Id.*

⁶ *Id.*

⁷ 205 ILCS 657/15(6).

⁸ *Id.*

⁹ _____ shall clearly disclose to consumers that the Service 1 service is not covered by its TOMA license and that therefore protections contained in TOMA do not apply to those transactions.

described activities pertaining to the Service 2 services pursuant to Title 38, Section 200.310(b)(2) of the Illinois Administrative Code.

The Department expressly disclaims any obligation to advise you of any changes in the circumstances, laws or events that may occur after this date or otherwise update this response. This letter does not address the applicability of any law except TOMA.

Sincerely,

Francisco Menchaca
Director, Division of Financial Institutions

By,

s/ Helen Kim
Helen Kim
Associate General Counsel