



Illinois Department of Financial and Professional Regulation

Division of Financial Institutions

JB PRITZKER
Governor

DEBORAH HAGAN
Secretary

FRANCISCO MENCHACA
Director
Division of Financial Institutions

November 2, 2020

Re: Company B Corporation and COMPANY A of Illinois, LLC, Request for Non-Binding Statement

VIA ELECTRONIC MAIL

Non-Binding Statement 2020-11

Dear Ms. Broeker and Ms. McCraw:

Thank you for your letter emailed on April 10, 2020. You requested a non-binding statement pursuant to Title 38, Section 200.310 of the Illinois Administrative Code addressing whether ____ (“Company A”) proposed disbursement of loan proceeds via prepaid debit cards requires licensure under the Illinois Transmitters of Money Act (“TOMA”) and whether ____ (“Company B”) is required to appoint Company A as an authorized seller pursuant to TOMA to distribute loan proceeds via prepaid cards (the “Service”). You have requested confidential treatment.

Please be advised that consistent with governing law, the Division of Financial Institutions 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 Division has not independently verified any represented facts, and instead has relied upon the statements and representations contained in your correspondence.

FACTS

Company A provides consumer installment loans to Illinois consumers and is a licensee under the Consumer Installment Loan Act. Company B is a licensee under TOMA.

Company A would like to provide its customers with the option of receiving their installment loan proceeds through a general-purpose, reloadable, prepaid debit card (the “Card”). Company A and Company B represent that the Card is issued by the ____ (“Bank C”), , pursuant to a license from ____ (“Company D”) and may be used by cardholders where debit cards participating in the card network are accepted.

When Company A approves a consumer for an installment loan, Company A will provide disbursement options to the consumer including the Card. If the consumer voluntarily selects to have the loan disbursed through the Card, the consumer will need to be approved for the Card through a Consumer Identification Program (“CIP”) check. This process verifies the customer’s identity and eligibility to receive the Card. Bank C has engaged Company B to perform the CIP check as well as to provide

marketing services, technology development, customer service, and compliance support services. Upon passing the CIP check, Company A will electronically disburse the loan to the Card and provide the Card to the consumer who has immediate access to the loan proceeds. Each business day Company A will transfer loan proceeds disbursed to Cards to an FDIC insured custodial account owned and controlled by Bank C for the benefit of the consumer. However, Company A and Company B assert that the customer will have immediate access to the loan proceeds upon receipt of the Card even before Company A transfers the funds to Bank C.

Company A and Company B represent that consumers will not be required to receive their loan proceeds on the Card and that Company A will not charge the consumer any fees if they choose to receive their loan proceeds on the Card. However, Bank C may charge the Card user various fees. The fees include, but are not limited to, monthly card fees, various out-of-network ATM fees and fees for foreign transactions. Company A and Company B represent that the monthly fee is waived for the first sixty days. Company A and Company B assert that the Card will provide various consumer protections such as Regulation E rights and Company D Zero Liability for unauthorized transactions.

Company A and Company B represent that at no time will they receive, hold, or transmit any customer funds in relation to the Service. Company A and Company B assert that they will not accept funds from consumers to load onto the Card. Company A and Company B represent that the placement of funds on customers' cards is not impacted by Company A subsequently sending funds to Bank C and the customer would have no liability for any error Company A makes in sending or not sending the funds to Bank C. Company A and Company B further represent that they have an integrated system and the loan proceeds are automatically loaded onto the Card if the customer selects the Card as the disbursement method, and that the process of loading money to the Card is not manual (*i.e.* an employee cannot mis-key or load the wrong amount on the Card). Company A and Company B state that if an issue occurred with the disbursement of required funds to the Card, an additional check could be immediately issued to the customer for the difference or Company A's corporate office could immediately place the additional funds on the customer's Card.

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 sellers¹ does any of the following in this State:

- (1) Sells or issues payment instruments.
- (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.²

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."³

¹ "Authorized seller" means a person not an employee of a licensee who engages in the business regulated by this Act on behalf of a licensee under a contract between that person and the licensee.

² 205 ILCS 657/5.

³ *Id.*

"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.⁴

State and federal chartered financial institutions are exempt pursuant to TOMA.⁵

CONCLUSION

If all of the facts provided by Company A and Company B are true and correct, the Division would not recommend that enforcement action be initiated against Company A or Company B if they proceeded with the proposed service without Company B appointing Company A as an authorized seller.

The Division 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/ David Berland
David Berland
Deputy General Counsel

⁴ *Id.*

⁵ 205 ILCS 657/15(6).