



Illinois Department of Financial and Professional Regulation
Division of Financial Institutions

JB PRITZKER
Governor

DEBORAH HAGAN
Secretary

FRANCISCO MENCHACA
Director
Division of Financial Institutions

March 31, 2021

Amended Non-Binding Statement 2020-12

Dear ____:

Thank you for your letters dated October 26, 2020 and February 12, 2021. You requested a non-binding statement pursuant to Title 38, Section 200.310 of the Illinois Administrative Code addressing whether ____ is required to report “payment processing activities” as money transmission pursuant to the Transmitters of Money Act (“TOMA”). 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, and 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

____ is licensed under the Transmitters of Money Act. ____ represents it offers the following “payment processing services” to corporate and governmental entities (“Billers”) including, but not limited to: utility companies, institutions of higher education, and the Internal Revenue Service (“IRS”). ____ provided the following description of its payment processing services:

1. ____ enters into a written agreement with each Biller.
2. The Billers provide various services to their respective customers and bills the customer for their services.
3. Customers, via either the Automated Clearing House (“ACH”) or credit card networks, transmit payments to the Biller through the Biller’s website, ____’s website, Biller’s interactive voice response (“IVR”) system, or ____’s IVR system.
4. The customer agrees that ____ may process the payment on behalf of the Biller.
5. The customer’s funds are sent to ____ by the customer’s bank or credit card issuing bank through the ACH system and are deposited in an ____ account held at ____.

6. On a daily basis ____ credits the Biller's bank account via the ACH system in the amount submitted to ____ by the customer(s) and provides corresponding payment information to enable the Biller to properly credit the customer's account.

____ represents it has required or will require all Billers to enter into a written agreement appointing ____ as the agent of the Biller for purposes of receiving payments on the Biller's behalf. ____ further represents the agreement provides that (1) receipt by ____ satisfies the customer's obligation to Biller to the extent of the amount of the payment, (2) that the Biller must fulfill its obligations to the customer as if Biller received the payment directly from the customer, and (3) that the Biller's only recourse for ____'s failure to remit the funds is against ____ and not the customer.¹

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.
- (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 Bill payment service "means the business of transmitting money on behalf of an Illinois resident for the purpose of paying the resident's bills."⁴

CONCLUSION

If all of the facts provided in ____'s October 26, 2020, and February 12, 2021, are true and correct, ____ would not be required to report the "payment processing services" as money transmission pursuant to TOMA. The Division would not recommend that enforcement action be initiated against ____ if it failed to report the described activities as money transmission to the Division. This amended response supersedes the Department's original response dated November 13, 2020.

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

¹ ____ represents that some of its existing agreements and its agreement with the IRS contain slightly different language, but that in all cases the contractual language appoints ____ as agent of the Biller for purposes of collecting and remitting customer payments.

² 205 ILCS 657/5

³ *Id.*

⁴ *Id.*

Director, Division of Financial Institutions

By,

s/ David Berland _____

David Berland

Deputy General Counsel