



IDFPR

Illinois Department of Financial and Professional Regulation

Division of Financial Institutions

<https://idfpr.illinois.gov>

JB PRITZKER
Governor

MARIO TRETO, JR.
Secretary

FRANCISCO MENCHACA
Director

July 20, 2022

VIA ELECTRONIC MAIL

Non-Binding Statement 2022-7

Dear _____:

Thank you for your letter and supplemental responses. You requested a non-binding statement pursuant to Title 38, Section 200.310 of the Illinois Administrative Code requesting confirmation that _____ is not required to obtain a license and exempt under the Illinois Transmitters of Money Act (“TOMA”) because it would be acting as a third-party payment processor. 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 (“Division” or “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 Division has not independently verified any represented facts, and instead has relied upon the statements and representations contained in your correspondence.

FACTS

_____ is an affiliate of Company X¹ and the operating entity in the United States. _____’s clients are Merchants (“Merchants”) and _____ proposes to expand their services beyond its automated clearing house (“ACH”) debit service², by offering Merchants domestic and international payment processing services (the “Proposed Services”) in connection with the sale and purchase of goods and/or services. The Proposed Services will be offered through an agreement (“Merchant Agreement”) and enable _____ to receive payments from end customers of Merchants (“Customers”). _____ intends to process payments made by U.S. Customers to U.S. Merchants (“Domestic Payment Processing”); and also process payments made by (1) U.S. Customers to foreign non-U.S. Merchants; and (2) foreign non-U.S. Customer to U.S. Merchants (“International Payment Processing”). _____ represents that the Proposed Services will also include the processing of refunds to Customers which they stated is an essential and fundamental component to merchant payment processing. _____ further represents that no fees will be

¹ Company X is a private limited company incorporated in the United Kingdom and a payment institution registered with the Financial Conduct Authority, the regulator for financial service firms and markets in the UK.

² The Department previously addressed the ACH services in a letter dated December 14, 2018.

charged to Customers and disclosure³ of _____'s role as an agent of the Merchant will be made to Customers.

The Merchant Agreement provides in pertinent part:

- Merchant hereby appoints _____ as Merchant's agent for accepting and processing payment from Customers on Merchant's behalf.
- Merchant authorizes _____ to receive payments on its behalf and deliver such payments, net of agreed-upon fees and other charges, to Merchant's Nominated Account in accordance with its instructions.
- Merchant represents and warrants that each payment that it directs _____ to process through the _____ Service ... the completed and fulfilled sale of goods or services from Merchant to a Customer. Merchant agrees and acknowledges that: (a) once _____ receives payment from a Customer, Merchant will treat the Customer as if Merchant has itself received the funds, regardless of whether Merchant actually receives the payment from _____, and (b) its sole recourse for nonpayment by _____ is against _____, and it will not seek any return, refund or payment directly or indirectly from Customers in the event of non-payment by _____.
- The Merchant must satisfy _____'s know-your-customer and anti-money laundering checks and requirements.

Domestic Payment Processing

- _____ represents that the U.S. Customer makes payment to Merchant by transferring funds to _____. using a variety of methods, including but not limited to a bank account, stored value account (*i.e.* PayPal) and credit/debit cards; and intermediaries such as bill payers or credit/debit card processors to facilitate transfer of funds from the U.S. Customer.
- Funds received by _____ go into a designated bank account established for the purpose of receiving Customer funds ("Collection Account").
- _____ sends payment from its Collection Account, net of its service fee, and disburses payment to Merchant's designated bank account.⁴

International Payment Processing – Non-U.S. Customer/U.S. Merchant

- Non-U.S. Customer makes payment to U.S. Merchant by transferring funds to _____'s foreign affiliate (*e.g.* licensed financial institutions), which _____ represents serves as its collection agent, to receive funds from non-U.S. Customers. Funds will go into a designated bank account ("Foreign Affiliate Collection Account") established for the purpose of receiving Customer funds.
- If currency conversion is required, _____'s foreign affiliates may transfer funds to a licensed money transmitter/FX service provider for (1) conversion to USD and (2) to move

³ _____ represents those disclosures may be made on Merchant's payment interface and/or terms and conditions, or via interfaces provided by _____ or its affiliates.

⁴ _____ represents that it may enter into other service fee arrangements with Merchants, where _____ passes entire payment to Merchant and Merchant subsequently settles the service fee to _____ per agreement between _____ and the Merchant.

funds to _____'s Collection Account for disbursement, net of its service fee, to the U.S. Merchant's designated bank account.

- As an alternative, _____'s foreign affiliates may conduct the currency conversions without using the services of a licensed money transmitter/FX service provider, and transfer the converted funds directly to _____ (*i.e.* Collection Account) such as by using the services of their banking service providers. _____ then sends payment, net of its service fee, to U.S. Merchant's designated bank account.

International Payment Processing – U.S. Customer/Non-U.S. Merchant

- U.S. Customer makes payment to Non-U.S. Merchant by transferring funds to _____'s Collection Account.
- _____ will transfer funds, net of its service fee, to a licensed money transmitter/FX service provider for foreign currency conversion.
- Converted funds will be transferred to _____'s foreign affiliate (*i.e.* Foreign Affiliate Collection Account) and _____'s foreign affiliate will transfer funds to Non-U.S. Merchant's designated bank account.
- As an alternative, _____ may conduct the currency conversion and transfer the funds directly to its foreign affiliate, without using the services of a licensed money transmitter/FX service provider, such as by using the services of their banking service providers. _____'s foreign affiliate transfers the funds to the Non-U.S. Merchant's designated bank account.

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.⁵
- (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.⁶

⁵ "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.

⁶ *Id.*

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.”⁷

State and federal chartered financial institutions are exempt pursuant to TOMA.⁸ 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.⁹

CONCLUSION

If all the facts provided in _____’s December 14, 2021 letter and supplemental correspondence are true and correct, the Division would not recommend that enforcement action be initiated against _____ for commencing the Proposed Services as it pertains to Domestic Payment Processing services. _____ would not be required to obtain a TOMA license for Domestic Payment Processing services because it is consistent with the Division’s prior guidance on third-party payment processors.¹⁰ However, with respect to the International Payment Processing services, the Division is declining to issue findings pursuant to Title 38, Section 200.310(b)(2) of the Illinois Administrative Code.¹¹

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/ Helen Kim
Helen Kim
Associate General Counsel

⁷ *Id.*

⁸ 205 ILCS 657/15(6).

⁹ *Id.*

¹⁰ See Statement Regarding Third-Payment Processors and the Transmitter of Money Act, available at <https://www.idfpr.illinois.gov/forms/DFI/CCD/07292015StatementThirdPartyProcTOMA.pdf>

¹¹ _____’s proposed agreements with affiliates or third-party service providers are material to the Department’s non-binding statement, however on or about June 24, 2022 _____ informed the Department that such agreements are not yet available.