



Illinois Department of Financial and Professional Regulation
Division of Financial Institutions

JB PRITZKER
Governor

DEBORAH HAGAN
Secretary

FRANCISCO MENCHACA
Director
Division of Financial Institutions

September 4, 2020

Re: _____, Request for Non-Binding Statement

VIA ELECTRONIC MAIL

Non-Binding Statement 2020-8

Dear _____:

Thank you for your letter emailed on June 12, 2020 and your supplemental letters emailed on July 31, 2020, August 12, 2020, and August 19, 2020. You requested a non-binding statement pursuant to Title 38, Section 200.310 of the Illinois Administrative Code addressing whether _____, a _____ Company (“_____”) is required to obtain a license under the Illinois 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. 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

_____ plans to facilitate the sale of goods by merchant retailers in the capacity of a data processor, and, in some situations, also as a payment processor.

Data Processing Function

When acting solely as a data processor, _____ creates daily transaction files and instructions which it submits to a partner federal or state-chartered financial institution. The financial institution uses the transaction files and instructions provided by _____ to direct the debiting and crediting of accounts, as necessary to settle payments owed by purchasers of goods to merchant retailers. Both the merchants and customers will be able to use their own, pre-existing bank accounts when _____ is acting solely as a data processor.

_____ represents that when it acts solely as a data processor no funds will flow through _____’s own bank accounts and the funds will not appear on _____’s balance sheet.

Payment Processing Function

_____ represents that when it acts as a payment processor it will enter into a formal written agreement with the merchant. The agreement expressly provides that _____ is a payment service provider, not a bank, acts as the merchant's authorized agent for purposes of receiving payments, and that receipt of a customer's payment satisfies the customer's obligation to the merchant.

The funds will be settled through an omnibus account at one of ___'s partner financial institutions. When acting a payment processor, each merchant who uses the _____ platform has their own "for the benefit" ("FBO") account at a federal or state chartered financial institution partnered with _____.¹ _____ represents it will provide the consumer an e-Wallet within the merchants' FBO accounts held at the federal or state chartered financial institution. However, _____ expressly represents that the e-Wallets will be used simply as a "pass-through" (*i.e.* the consumer e-Wallets operate as a ledger credit, and _____ represents the funds will immediately settle to the merchant/payee). _____ represents consumers may not store funds in the e-Wallet for future transactions and all funds temporarily in the e-Wallet will be sent to the merchant-payee as payment for the goods or services purchased.

_____ represents that it will provide a receipt for each transaction which will include the following information: a) Payment date; b) Payment amount; c) Payee's name; d) Payee's location; e) that _____ is the processor for payment; and f) a customer service/support e-mail and telephone number.

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

State and federal chartered financial institutions are exempt pursuant to TOMA.⁴ 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.⁵

¹ _____ represents the financial institution will own and control the FBO accounts managed by _____. _____ represents FBO accounts will not hold more than \$250,000.00 in any one day and will be federally insured.

² 205 ILCS 657/5.

³ *Id.*

⁴ 205 ILCS 657/15(6).

⁵ 205 ILCS 657/15(6).

CONCLUSION

If all of the facts provided in _____ counsel's June 12, 2020, July 31, 2020, August 12, 2020, and August 19, 2020, letters are true and correct, the Division would not recommend that enforcement action be initiated against _____ if it commenced the described activities without a TOMA license.⁶ _____'s business model is materially analogous to the model addressed by the Division in Non-Binding Statement 2020-06 and is consistent with the Division's prior guidance on third-payment processors.⁷

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

⁶ _____ represents that when customer uses credit or debit cards funds will flow through a "merchant card processor or acquirer bank account." _____ must ensure that any merchant card processor or acquiring bank used is either a licensed money transmitter or is exempt from licensure pursuant to TOMA. For example, merchant card processor or acquiring bank would not require TOMA licensure to the extent "it provides processing, clearing, or settlement services between or among persons exempt under [Section 15 of TOMA] in connection with wire transfers, credit card transactions, debit card transactions, stored value transactions, automated clearing house transfers, or similar funds transfers.").

⁷ See Non-Binding Statement 2020-06 available at https://www.idfpr.illinois.gov/Forms/DFI/Non-Binding%20Statement%202020_06%20Redacted.pdf; Statement Regarding Third-Payment Processors and the Transmitter of Money Act, available at <https://www.idfpr.illinois.gov/forms/DFI/CCD/07292015StatementThirdPartyProcTOMA.pdf>