



IDFPR

Illinois Department of Financial and Professional Regulation

Division of Financial Institutions

www.idfpr.com

JB PRITZKER
Governor

MARIO TRETO, JR.
Acting Secretary

FRANCISCO MENCHACA
Director

June 24, 2021

Re: _____

VIA ELECTRONIC MAIL

Non-Binding Statement 2021-03

Dear _____:

Thank you for your letter emailed on April 28, 2021 and supplemental information. You requested a non-binding statement pursuant Title 38, Section 200.310 of the Illinois Administrative Code addressing whether _____ 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 Illinois Department of Professional and Financial Regulation, Division of Financial Institutions (“Division”), 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

_____ offers wholesale currency exchange and money transmission¹ services to corporate customers wishing to conduct purely business-to-business transactions. _____ has business relationships with wholesale business customers located in Mexico (“Sellers”) who sell goods to US businesses (“Buyers”). Pursuant to a payee agent agreement, Buyer is instructed to make payment to _____ as Seller’s limited agent. Sellers who conduct a transaction with a Buyer may need to do a currency exchange operation since the Buyer will be paying in US dollars (“USD”). The Seller engages _____ to convert the USD into Mexican pesos (“MXN”) separate and apart from the transaction between the Seller and Buyer in the following manner:

- Buyer makes purchase of goods from Seller for an amount in USD.

¹ _____ is a licensed money transmitter in Texas.

- Seller provides instructions to Buyer to make payment for goods to _____.
- Seller informs _____ the amount of USD to be received for the sales transaction.
- Seller and _____ negotiate an exchange rate and calculate the amount of MXN to be received after conversion.
- Buyer wires funds in USD to _____'s bank account.
- _____ verifies receipt of USD.
- _____ disburses MXN into the Seller's bank account in Mexico.

_____ represents that it only operates pursuant to a "Payee Agent Agreement" with a Seller. The agreement expressly appoints _____ as "a limited agent for the sole purpose of receiving, collecting, or otherwise facilitating the acceptance of payments." The agreement further states that payments received by _____ on Seller's behalf are deemed as received by the Seller and satisfies the Buyer's obligation to the Seller.

_____ emphasizes that the Buyer only has a business relationship with the Seller and that once the Buyer makes payment to Seller, the Buyer's involvement is over, and the obligation owed to the Seller is complete. _____ further emphasizes that it only has a business relationship with its customer (*i.e.* Seller) and it never derives any revenue, compensation, or other benefit from the processing of receiving funds from a Buyer. _____'s only source of compensation is derived from the exchange rates for the currency exchange transaction between _____ and Seller without any involvement from the Buyer.

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,

² 205 ILCS 657/5

³ *Id.*

⁴ 205 ILCS 657/15(3).

credit card transactions, debit card transactions, stored value transactions, automated clearing house transfers, or similar funds transfers.⁵

CONCLUSION

If all the facts provided in counsel's April 28, 2021 letter and supplemental correspondence are true and correct, _____ would not be required to obtain a TOMA license to operate its business in Illinois. The Division would not recommend that enforcement action be initiated against _____ if it commenced the described activities without a TOMA license.

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

⁵ 205 ILCS 657/15(6).