Non-Binding Statement 2020-6

Dear _____:

Thank you for your letter emailed on June 1, 2020 and your supplemental email dated July 7, 2020. 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 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

_______ represents that it seeks to provide a digital platform to facilitate customer-to-merchant payments in Illinois. A merchant would be able to receive payments from its customers in exchange for goods and services through the Automated Clearing House (“ACH”) network by using _____’s digital platform.

Both customers and merchants would be required to provide ACH payment details to a Financial Data Aggregator (“FDA”), ______. The ACH details would then be integrated into ______’s digital platform.

_______ represents that transactions between merchants and customers will work as follows:

- The customer places an order online through ______’s digital platform.
- The merchant initiates a payment request through ______’s digital platform.
- The customer authorizes a payment to the Merchant from the customer’s verified bank account.
• ______, through the FDA, verifies that the customer’s account has sufficient funds to complete the transaction. If there are sufficient funds, the funds are sent to ______’s bank account through an ACH processor.

• ______ remits the funds received less fees owed by the merchant and any amount held in reserve to the merchant through an ACH processor.¹

________ represents that it will always enter into a formal contract with each merchant authorized to use ______’s digital platform. ______ also represents that the contract with each merchant expressly authorizes ______ to act as the merchant’s agent for purposes of receiving, holding, and disbursing funds on the merchant’s behalf. ______ further represents that upon its receipt of the customer funds, the customer’s obligation to make a payment to the merchant is fully satisfied.

Finally, ______ represents that it provides a receipt to customers at the time of payment showing the payment date, payment amount, payee's name (i.e. the merchant's name), and the payee's location. The receipt also indicates that ______ is the processor for the payment, and that the customer can directly contact ______ customer support for transaction-related information.

¹ ______’s “Merchant Terms of Service” provides that the merchant “agrees that [it] will not pass the transaction fees, increased [sic] fees, impose a surcharge, or any other premiums to the customer for accepting ______ as a payment method.”
CONCLUSION

If all of the facts provided in ______’s June 1, 2020, letter and supplemental email dated July 7, 2020, are true and correct, the Division does not recommend that enforcement action be initiated against ______ if it commenced the described activities without a TOMA license.² 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,

_____________

David Berland
Deputy General Counsel

² _______ must ensure that ACH processor it uses is either a licensed money transmitter or is exempt from licensure. For example, ACH processor 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.”).