

DEPARTMENT OF BUSINESS OVERSIGHT*Ensuring a Fair and Secure Financial Services Marketplace for all Californians*

Jan Lynn Owen
Commissioner of Business Oversight

August 24, 2015

Re: _____ – Opinion Request

Dear _____:

Thank you for your letter dated July 13, 2015. In your letter, and in our telephone conversations of August 10 and 13, you requested that the Department of Business Oversight (Department) confirm that _____ foreign check clearing services are not considered money transmission subject to the Money Transmission Act.

Background

Your letter, as clarified by our telephone conversations, describes the services _____ offers to American banks (the service is not offered to any California bank) as:

An American bank receives for deposit a check (denominated in Canadian dollars) that was written against a Canadian bank; the American bank uses _____ to establish an exchange rate to translate the Canadian dollars to U.S. dollars; the American bank sends the check, via courier, to Bankers Bank; Bankers Bank, after processing the check, sends the check via courier, to Bank of Montreal in Canada. The checks are then deposited into _____ account. After processing, Bank of Montreal wires to Bankers Bank funds in an amount consistent with the previously established _____ exchange rate. Bankers Bank then applies the appropriate credit to the accounts of its member banks.

Money Transmission Act

In part, Financial Code section 2003(q) defines “money transmission” as receiving money for transmission, and Financial Code section 2003(u) defines “receiving money for transmission” as receiving money or monetary value in the United States.

_____ does not receive money or monetary value in the United States, rather it receives money or monetary value in Canada; therefore, the check clearing activity described above does not fall within the Financial Code’s definition of money transmission.

1515 K Street, Suite 200
Sacramento, CA 95814-4052
(916) 445-7205

One Sansome Street, Suite 600
San Francisco, CA 94104-4428
(415) 972-8565

320 West 4th Street, Suite 750
Los Angeles, CA 90013-2344
(213) 576-7500

1350 Front Street, Room 2034
San Diego, CA 92101-3697
(619) 525-4233

45 Fremont Street, Suite 1700
San Francisco, CA 94105
(415) 263-8500

300 S. Spring Street, Suite 15513
Los Angeles, CA 90013
(213) 897-2085

7575 Metropolitan Drive, Suite 108
San Diego, CA 92108
(619) 682-7227

August 24, 2015

Page 2

Conclusion

The check clearing service provided by _____, as described in your letter and as further clarified during our subsequent telephone conversations, is not considered money transmission, pursuant to Financial Code section 2003(q).

This opinion is based solely on the facts as represented in your correspondence and by you in follow-up telephone conversations, and may change if any of the conditions or circumstances under which _____ provides check clearing services is altered in the future. If you have any questions, please feel free to contact me at (415) 263-8541.

Sincerely,

Jan Lynn Owen
Commissioner
Department of Business Oversight

By

Paul. T. Crayton
Senior Counsel

PTC:is

cc: Robert Venchiarutti, Department of Business Oversight, San Francisco