



IDFPR

Illinois Department of
Financial and Professional Regulation

Division of Financial Institutions

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Governor

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November 27, 2023

Roland Garcia
Greenberg Traurig
1000 Louisiana Street, Suite 6700
Houston, TX 77002
Garciar@gtlaw.com

Re: NatPay Request for Non-Binding Statement

VIA ELECTRONIC MAIL

Non-Binding Statement 2023-2

Dear Mr. Garcia:

Thank you for your letter. You requested a non-binding statement pursuant Title 38, Section 200.310 of the Illinois Administrative Code addressing whether National Payment Corporation's ("NatPay") proposed disbursement of payroll funds via First Premier Bank ("FPB") requires licensure under the Illinois Transmitters of Money Act ("TOMA"). You did not request confidential treatment for purpose of the publication of this non-binding statement.¹

Please be advised that consistent with governing law, the Illinois Department of Financial and Professional Regulation - Division of Financial Institutions ("Department" or "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

NatPay is a Florida Corporation located in Tampa, Florida. NatPay is in the business of providing payroll services. NatPay offers payroll services in partnership with First PREMIER Bank ("FPB"), a nationally chartered bank located in South Dakota. NatPay intends to modify its existing contractual relationship

¹ NatPay requested confidential treatment of various supporting documents submitted in conjunction with its request for a non-binding statement.

with FPB so that it may provide payroll functions to Illinois consumers without ever taking custody of the employer's funds.²

NatPay represents its services operate as such: (1) employers initiate a payroll submission with NatPay; (2) funds are transmitted to an account with FPB, controlled and maintained by FPB for the benefit of NatPay's customers ; (3) FPB transfers the funds directly from FPB to parties as instructed by NatPay.

NatPay represents that they have no ownership in the FPB account, or the funds held in the FBO account.

APPLICABLE LAW

Pursuant to 205 ILCS 657/5 of the Transmitters of Money Act:

"Money transmitter" means 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.

Pursuant to 205 ILCS 657/5 of the Transmitters of Money Act:

"Transmitting money" means 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.

Pursuant to the licensing requirement of 205 ILCS 657/10 of the Transmitters of Money Act:

No person may engage in this State in the business of selling or issuing payment instruments, transmitting money, or exchanging, for compensation, payment instruments or money of the United States government or a foreign government to or from money of another government without first obtaining a license under this Act. Separate licenses shall not be required, however, for persons acting as authorized sellers of licensees under this Act.

Pursuant to 205 ILCS 657/15, the following are exempt from licensing under the Act:

- (1) The United States and any department or agency of the United States.
- (2) This State and any political subdivision of this State.
- (3) Banks, trust companies, building and loan associations, savings and loan associations, savings banks, or credit unions, licensed or organized under the laws of any state or of the

² This non-binding statement solely addresses NatPay proposed activities as modified by the Second Addendum to First PREMIER Bank ACH Agreement Third-Party Sender (Illinois FBO Account) ("Second Addendum"). At the time NatPay submitted its request for a non-binding statement, the Second Addendum was not in effect.

United States and any foreign bank maintaining a branch or agency licensed or organized under the laws of any state or of the United States.

...

CONCLUSION

If all of the facts provided by NatPay are true and correct and the Second Addendum is fully executed and fully implemented in practice, the Division would not recommend that an enforcement action be initiated against NatPay for any business activities that occur after the Second Addendum is fully executed and fully implemented in practice.³

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, Division of Financial Institutions

³ This non-binding statement does not address the initiation of an enforcement action to address NatPay's business activities and conduct prior to the execution of the Second Addendum and full implementation of the modified business practices as described above.