



Illinois Department of Financial and Professional Regulation

Division of Financial Institutions

JB PRITZKER
Governor

DEBORAH HAGAN
Secretary

FRANCISCO MENCHACA
Director
Division of Financial Institutions

July 9, 2020

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.").