

December 19, 2003

[redacted]

Re: Money Transmitter Act- “Subagents”

Dear [redacted]:

This letter responds to your request for a determination by the Pennsylvania Department of Banking (the “Department”) of whether and the extent to which your client, [redacted] (the “Company”), a licensee under the Money Transmitter Act (“MTA”), 7 P.S. § 6101 *et seq.*, may conduct money transmission business through a “subagent,’ *i.e.*, an agent of an agent.”

Factual Background

You have indicated the following factual scenario, which is essentially quoted directly from your letter.

Company B, which is not affiliated with the Company, has established an agent network in Pennsylvania. Company B, however, does not own and is not otherwise affiliated with its agents (the “Subagents”). Instead, Company B has a separate contractual relationship with each of the Subagents. Typically, such contracts provide for the Subagent to be an independent contractor rather than establishing a formal agency relationship.

The Company desires to use the Subagents in the conduct of its money transmission business. The Company enters into a contract with Company B to facilitate such use and, pursuant to the contract, Company B retains all responsibilities with respect to the Subagents. The Company does not have any contractual relationship with the Subagents. All funds collected by Company B from the Subagents are transferred by Company B to the Company.

Company B is not licensed under the MTA. The Department assumes that Company B is not a depository institution.

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Legal Analysis

Section 2 of the MTA states that:

[n]o person shall engage in the business of transmitting money by means of a transmittal instrument for a fee or other consideration without first having obtained a license from the Department of Banking nor shall any person engage in such business as an agent *except as an agent of a person licensed or exempted under this act.*

7 P.S. § 6102 (emphasis added). Section 3 of the MTA specifically states that agents of licensees are exempt from licensure under the MTA. *See* 7 P.S. § 6103(2). In regard to agents of licensees, Section 12 of the MTA provides that:

A licensee may conduct his business at one or more locations within the Commonwealth *through such agents and subagents as he may from time to time appoint.* No license under this act or any license fee shall be required of any such agent or subagent.

7 P.S. § 6112 (emphasis added). Based upon the foregoing, it is the Department's position that a licensee under the MTA may conduct money transmission business through agents and subagents, provided that the agents and subagents are formally appointed as agents of the licensee by written agency agreement. Such written agency agreement must indicate that the licensee is liable for the money transmission activities of the agent and/or subagent, in accordance with Section 11 of the MTA, which states that:

(a) [e]very licensee shall be liable for the payment of all moneys covered by transmittal instruments which he issues in this Commonwealth whether directly *or through an agent* and whether as a maker or a drawer.

(b) Every transmittal instrument sold by a licensee directly or through an agent shall bear the name of the licensee clearly imprinted thereon.

7 P.S. § 6111 (emphasis added). In regard to the money transmission activities of agents and subagents on behalf of a licensee, please be advised that regulations promulgated pursuant to the MTA require agents and subagents to “. . . clearly indicate the name of the licensee in a sign publicly displayed in the place of business issuing and selling transmittal instruments.” 10 Pa.Code § 19.6(b).

Conclusion

The Company is authorized to conduct money transmission business through Company B and the Subagents pursuant to Section 12 of the MTA, provided that Company B and the Subagents are formally appointed as agents of the Company by written agency agreements. Such written

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agency agreements must indicate that the Company is liable for the money transmission activities of Company B and the Subagents, in accordance with Section 11 of the MTA.

The Department's analysis is based upon the facts as stated in this letter. Any change in the facts could result in an amendment or reversal of the Department's position. This letter has been authorized by the appropriate Department personnel and constitutes a duly authorized statement of the Department's position regarding the issues discussed herein. This letter may not be relied upon or construed as constituting legal advice.

Please do not hesitate to contact me if you have any further questions regarding this matter.

Sincerely,

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Staff Counsel

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