

ASA HUTCHINSON
GOVERNOR

B. EDMOND WATERS
COMMISSIONER



HERITAGE WEST BUILDING, SUITE 300
201 EAST MARKHAM STREET
LITTLE ROCK, ARKANSAS 72201-1692
TELEPHONE: (501) 324-9260
FACSIMILE: (501) 324-9268

ARKANSAS SECURITIES DEPARTMENT

VIA REGULAR U.S. MAIL

January 24, 2017

Morgan Clemons
Aldridge Pite LLP
3575 Piedmont Rd NE #500
Atlanta, GA 30305

Karyn H. Tierney
Arkansas Bar No. 2003120
ktierney@securities.arkansas.gov

RE: Grupo Regalii
No Action No. 17-NA-0003

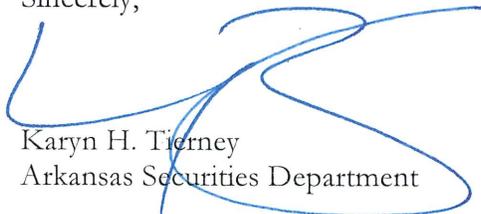
Dear Ms. Clemons:

The Arkansas Securities Department ("Department") is in receipt of your letter dated November 29, 2016, and subsequent information provided thereafter, requesting that the Department issue an no-action letter concerning the applicability of the Arkansas Uniform Money Services Act ("UMSA") as codified at Ark. Code Ann. § 23-55-101 through 1006, to the need for Grupo Regalii to be licensed as a money transmitter under the UMSA.

Based upon the specific facts contained in your request the Staff will not recommend that the Arkansas Securities Commissioner take an enforcement against Grupo Regalii if it engages in the activities detailed in your letter without first obtaining a license from the Arkansas Securities Department.

Please note that the position of the Staff of the Department is based solely upon the representations made in your request letter and information provided and applies only to the facts as set out therein. Different facts or circumstances might and often would require a different response or opinion from the Staff of the Department. The position of the Staff of the Department expressed in this letter only deals with anticipated enforcement action by the Department. Further, the position of the Staff of the Department does not purport to be and should not be interpreted to be a legal opinion.

Sincerely,



Karyn H. Tierney
Arkansas Securities Department

RECEIVED
17 JAN 24 AM 10:21
ARKANSAS SECURITIES DEPT.

November 29, 2016

Arkansas Securities Department
Heritage West Building, Suite 300
201 East Markham
Little Rock, AR 72201

Re: Arkansas Money Transmission License

We are writing on behalf of our client [REDACTED] to request a no action letter confirming that the Arkansas Securities Department will take no action under Arkansas Uniform Money Services Act in relation to [REDACTED] services as described herein. We make this request pursuant to the Securities Department's authority to indicate that it will not recommend enforcement action if our client undertakes the actions described herein. See Arkansas Securities Department Policy Statement Regarding Requests for Informal Advice (Apr. 9, 2008); Ark. Code Ann. § 23-42-206; See 214.00.11.-002 Ark. Code R. §901.3 (2011).

I. Background

As described by [REDACTED] Inc. senior management, [REDACTED] (" [REDACTED] ") is a software company headquartered in [REDACTED] that specializes in bill pay solutions. [REDACTED] offers an application program interface that connects service providers who provide periodic bills to consumers, such as utility and telecom businesses ("Billers"), to licensed money transmitters who accept payments from consumers. [REDACTED] software provides the path by which licensed money transmitters can offer real-time bill payment to consumers, even when the consumer's bills are with providers in another country. [REDACTED] has developed positive relationships with licensed money transmitters. [REDACTED] seeks to develop similar relationships with Arkansas-licensed money transmitters by obtaining confirmation from the Arkansas Securities Department ("Department") that [REDACTED] would be exempt from licensure as a money transmitter in the state. The Department is a state agency that regulates securities and financial markets within Arkansas, including money services, as discussed below.

On May 6, 2016, [REDACTED] contacted the Department via email, requesting clarification regarding the state's money transmission rules and their application to [REDACTED] business model. On May 11, 2016, Deputy Commissioner Karyn Tierney responded to [REDACTED] request via email by attaching the Department's Policy Statement Regarding Requests for Informal Advice. [REDACTED] wants to ensure that it will not be required to obtain its own license from the Department to transmit money as a result of the service it provides to Billers and to licensed money transmitters. As a result, [REDACTED] is submitting to the Department a request for Informal Advice. In addition, [REDACTED] is requesting confidential treatment of the Informal Advice Request, as indicated by the separate letter attached hereto.

II. [REDACTED] Business Model

[REDACTED] contracts with both licensed money transmitters ("LMTs") and Billers. This relationship includes three bank accounts, namely (1) the LMT's bank account in the LMT's name ("LMT Account"), (2) an account owned by [REDACTED] and (3) the Biller's account.

█████ contracts with financial institutions and licensed money service businesses through a written agreement to act as their agent. A consumer may visit his or her LMT's website or visit the LMT's physical location in person to purchase bill pay services/transmit funds on the consumer's behalf to a third party—the Biller. Once the consumer makes the request for money transmission/bill pay, the consumer pays the LMT in accordance with the payment instructions and/or any other amounts bearing on the arrangement between the LMT and the consumer, if applicable. Payments in excess of the amount owed to Biller for services provided are not permitted. The consumer's payment is accepted by the LMT, deposited into the LMT account, and stops there. The consumer's funds are in no way transferred from the LMT's account to █████. The consumer receives from the LMT a receipt that includes all information required by law. Thereafter, the LMT must pay █████ for the service █████ provides, namely connecting the LMT to participating providers (Billers) and allowing the LMT to use █████ technology (█████ platform). █████ charges the LMT a technology fee for █████ service, which technology fee is invoiced to the LMT periodically, in accordance with the agreement. █████ does not handle consumer funds, but rather █████ receives payment from the LMT for its service, which payment is equal to the dollar amount of the consumer transaction plus a fee per transaction, as determined by the agreement between █████ and the LMT. Once the LMT pays █████ the invoiced amount, █████ deposits these funds into the account owned by █████ and/or these funds are wired into █████ account, as described in the agreement between █████ and the LMT.

█████ additionally contracts with Billers through a written agreement to facilitate incoming bill payments from the Biller's customers. █████ sends payment instructions to the Biller notifying the Biller to credit a customer's account a certain amount. █████ pays the Biller for acting as a participating provider. The amount █████ pays Biller is equal to the dollar amount of the initial payment instructions sent by █████. Further, the Biller pays █████ a technology fee for connecting licensed money transmitters to the Biller's customers. Thereafter, the Biller invoices █████ for monies owed to the Biller for serving as a participating provider, less the technology fee owed to █████ for connecting the Biller's customers to licensed money transmitters. █████ pays this invoice from its own account with its own funds by wiring or otherwise depositing money into to the Biller account.

█████ does not market directly to consumers. Rather, █████ relies on the marketing of its partners, which offer the money transmission and/or bill pay service in their own name. Therefore, █████ neither advertises money transmission services nor holds itself out as providing money transmission services to consumers. Rather, █████ clients are banks, remittance companies, and mobile wallets—not individual consumers. █████ is strictly business to business; █████ receives information from licensed money transmitters and sends information and/or instructions to Billers, but is not receiving consumer funds for transmission.

█████ would like to provide services to Arkansas LMTs through an agency relationship with these LMTs.

III. Analysis

A. █████ is not engaged in money transmission.

The Department provides four sources of relevant guidance sources as it relates to money transmission licensing, namely the Uniform Money Services Act, the Code of Arkansas Rules, Department Legal Opinions, and Department Administrative Orders. Unless a person is exempt from licensing

requirements, the Uniform Money Services Act (“the Act”) requires any person engaged in the business of money transmission to obtain a license from the Department. See Ark. Code. Ann. §23-55-201. The Act defines money transmission as “selling or issuing payment instruments, stored value, or receiving money or monetary value for transmission.” See Ark. Code. Ann. §23-55-102(12). The Act specifically states that money transmission “**does not** include providing delivery services such as courier or package delivery services or acting as a mere conduit for the transmission of data.” See Ark. Code. Ann. §23-55-102(12) (Emphasis Added). The Department’s Money Services Rules (“the Rules”) provide additional clarification by using an Internet Service Provider as an example of a data transmission conduit that would not be considered to be engaged in money transmission. See 214.00.11.-002 Ark. Code R. §102 (2011). Similarly, ██████ is simply a conduit for the transmission of data. ██████ does not transmit consumer funds, but rather receives information from a licensed money transmitter and sends information to a Biller. The licensed money transmitter receives money for transmission, but ██████ receives no money from the licensed money transmitter for the purposes of transmission.

The Rules note that a person engages in money transmission when the person “receives compensation or expects to receive compensation, directly or indirectly, for conducting transmissions.” 214.00.11.-002 Ark. Code R. §201 (2011). ██████ does not charge any fees to consumers, and ██████ receives no compensation from consumers for conducting money transmissions. In addition, ██████ does not directly or indirectly receive compensation from LMTs nor from Billers for conducting money transmissions. While ██████ is paid by LMTs and by Billers, this payment is, essentially, for serving as the type of conduit that does not require a license in Arkansas because ██████ fees, charged to businesses and not to consumers, are for creating connections, use of its platform, and technology.

B. ██████ *is not engaged in bill pay services.*

The Rules indicate that money transmission does include the following:

(A) A bill payer service, except that the term does not include a service that transfers money or monetary value directly from a purchaser to a creditor of the purchaser or to an agent of the creditor; and (B) Any informal money transfer system engaged in as a business for, or network of persons who engage as a business in, facilitating the transfer between persons who engage as a business in, facilitating the transfer of money outside the conventional financial institutions system to a location within or outside the United States. 214.00.11.-002 Ark. Code R. §102 (2011).

Neither the Rules nor the Act define a “bill payer service.” However, bill pay is a service typically offered by financial institutions that allows customers to send electronic or check remittances to other customers, whether individuals or businesses. ██████ does not offer bill pay services. As previously mentioned, ██████ clients include banks and remittance companies. It is these banks and remittance companies that offer bill payment services to their customers. ██████ offers technological advantages to financial institutions that allow the institutions to offer the bill payment services to their consumers in a more efficient and cost effective way. Essentially, ██████ offers its platforms to businesses to modernize the services the businesses offer to their consumers. However, ██████ does not directly nor indirectly offer a “bill payer service” itself. In fact, with respect to bill pay, ██████ offers software that the financial

institutions use to imbed into the financial institutions' *already existing* mobile applications set up to handle bill pay and money transfer so that the institution's bill-paying function converts from a cost center to a profit center for the institution. See [REDACTED]

[REDACTED] Further, [REDACTED] services do not relate to any "informal money transfer system" that is involved in the "transfer of money outside the conventional financial institutions system." But see 214.00.11.-002 Ark. Code R. §102 (2011). First, [REDACTED] *formally* partners with banks and remittance companies through agreements. The agreements solidifying these formal partnerships relate to the use of [REDACTED] platform and are not informal, unauthorized, covert methods of circumventing money transmission laws. In addition, the proposed agreements are with "conventional financial institutions" that are engaged in money transmission, including with banks and licensed money transmitters.

In a May 7, 2010 legal opinion letter regarding Budget PrePay, Inc., ("the Budget Opinion") the Department determined that Budget Prepay, Inc. did need to obtain a money transmission license because the company was "clearly engaging in money transmission." See Arkansas Securities Department, Legal Opinion Letter 10-43335-CS, Budget PrePay, Inc. (May 7, 2010). While Budget PrePay was engaged in bill pay, several distinctions can be drawn between Budget PrePay's arrangement and [REDACTED] intended services. In the Budget Opinion, it is indicated that Fifth Third Bank, "contracts with third parties such as Budget to extend access to bank services like electronic bill payment services for under-banked or unbanked customers [and] Fifth Third has agreed to sponsor Budget onto the MasterCard RPPS network" that facilitates electronic bill payment services. See id. While [REDACTED] seeks relationships with banks and licensed money transmitters, these relationships are different from the relationship between Fifth Third and Budget because the LMT is not sponsoring [REDACTED] so that [REDACTED] may provide or expand upon the service the LMT already offers. Rather, [REDACTED] relationship to the LMT and/or bank is more akin to a third party vendor providing a service to the bank or LMT itself. The Budget Opinion also indicates that once funds are collected from the customer "the customer's bill is deemed paid-in-full and becomes an obligation of Fifth Third" and "for the bill payment services, the customers pay a nominal transaction fee." On the surface, this may seem similar to the arrangement between [REDACTED] and banks/LMTs. The customer is not paying a nominal transaction fee to [REDACTED] [REDACTED] does not set what fees the LMT and/or bank may charge its customers, and whatever fees the bank or LMT charges, [REDACTED] does not receive from customers. [REDACTED] partner institutions may determine, as is the case with any business decision, that the institution will pass on any increased costs of doing business to their customers. However, as mentioned previously, typically [REDACTED] serves to make costs more effective and to increase profits related to bill pay and money transmission for the bank or LMT, not increase costs and reduce profits. Even if [REDACTED] did increase costs of money transmission, and the LMT and/or bank passed on this cost to their customers in the form of transaction fees, any such decision would be that of the LMT or bank and any such monetary benefits stemming from the decision would go to the bank or LMT, not to [REDACTED]. The following excerpt from the Budget Opinion goes into further detail regarding the relationship between Budget, Budget's agents, and Fifth Third.

The Agent enters the payment data online using Budget's software program which immediately transmits the payment data to Budget. Once Budget receives the payment data, it inputs the data into the RPPS system in accordance with RPPS instructions using the MasterCard RPPS File Express interface. The payment data files are then uploaded onto a

Mastercard RPPS-owned server (which is accessed five times each day by RPPS). RPPS processes the payment data files aggregating the payment data received from all RPPS service providers, including Budget, verifying that account numbers for all billers are accurate, and reconciling all payment details within each payment data file. Once processed, RPPS transmits the payment data to the biller or the biller's designated financial institution. From the time Budget receives the payment data, this process takes approximately two (2) hours to complete.

At the end of the first day, RPPS initiates an automated clearing house ("ACH") debit instruction to Fifth Third for the amount of all customer payments made through the Budget network that day. On the next business day, Fifth Third wires the appropriate funds to RPPS' account. After validating the requisite account information, RPPS then instructs its bank to transfer funds to the biller.

According to RPPS rules, Fifth Third's third party sponsees in the RPPS system, such as Budget, are required to maintain two accounts at Fifth Third to facilitate payments through RPPS (via the Pledge Agreement). RPPS also requires the bank sponsors to guarantee the funds in these accounts. Budget funds these two mandatory accounts at Fifth Third through wire transfers from an account at Regions Bank ("Regions Account").

On a separate track, the customer's payment and the transaction fee are deposited by the Agent into the Agent's bank account by the end of the first day. On the second day, Budget initiates an ACH to debit the Agent's bank account and to credit Budget's Regions Account.

On the second day, Fifth Third initiates an ACH to debit Budget's Regions Account for the amount of the prior day's payments. Funds for the prior day's payments are then directly deposited into one of the two accounts maintained by Budget at Fifth Third. Arkansas Securities Department, Legal Opinion Letter 10-43335-CS, Budget PrePay, Inc. (May 7, 2010).

There are a number of tangible distinctions between Budget (and its agents) and [REDACTED] relationships with banks and LMTs. While both Budget and [REDACTED] are receiving and transmitting data, [REDACTED] is receiving and transmitting data, not for consumer payment instructions or money transmission but only as it relates to how much [REDACTED] will be compensated or will owe under its technology services agreements with Billers and LMTs. In the Budget Opinion, Fifth Third is debited the amount of customer payments, Fifth Third wires the amount to the RPPS System, and then RPPS transfers those same funds/amounts to billers. In contrast, the LMT or bank makes a payment to [REDACTED] that is equal to the dollar amount of the consumer transaction plus a fee per transaction, as determined by the agreement between [REDACTED] and the LMT. [REDACTED] then will pay Billers money owed to Billers by [REDACTED] under a separate, independent agreement. Unlike the transfer by RPPS to billers, the amount [REDACTED] pays to

Billers is not just a transfer of consumer funds that ██████ has received from a bank or licensed money transmitter. Further, the multiple bank accounts involved in the Budget opinion are an integral part of the framework of the movement of consumer funds, including between Fifth Third Bank, Budget's Regions Account, Budget's Fifth Third Accounts, Budget's Agents accounts, etc. However, the ██████ arrangement is much more simplified, and the ██████ bank account is not a fundamental part of the money transmission arrangement but rather serves the same function any business account would serve. The ██████ bank account is for ██████ own benefit, holds funds owned by ██████ and is used like any other business account—to receive and manage payments from debtors (LMTs owing ██████ for technology services) and to issue payments to creditors (Billers ██████ owes for being a part of the ██████ platform). Rather, the relevant accounts for consumer funds in the proposed arrangement are the LMT accounts or the bank accounts that receive consumer funds and hold them.

██████ receives payment for services from an LMT in accordance with an agreement between ██████ and the LMT. Biller takes its own funds and credits consumers' accounts in accordance with an agreement between ██████ and the Biller. The funds that ██████ owes and the funds owed to ██████ are established through periodic invoices and are deposited and/or withdrawn from the account of ██████ funds owned and controlled by ██████. The LMT receives funds from consumers and the Biller accepts payment from ██████, but ██████ never holds nor transmits consumer monies on behalf of the consumer and has no relationship or agreement with consumers. Rather, ██████ receives funds owed to the company for services it provides, and ██████ remits funds to companies that ██████ owes as a result of ██████ contractual obligations, not as a result of obligations ██████ has to a consumer. ██████ is not receiving a fee or other consideration for sending its own money owed to the Biller. The only fees ██████ collects are technology fees in association with the platform service it provides, and these fees are collected from companies, not from consumers.

Finally, although it is not explicitly stated in the Budget Opinion, it appears that Budget PrePay and/or its agents are dominant at the point of sale. In other words, the average customer would likely consider himself as doing business with Budget PrePay and/or its agent, rather than Fifth Third Bank. This is clear because Fifth Third's purpose in contracting with Budget and other third parties is to extend bill payment services to "under-banked or unbanked customers," or, in other words, individuals who are not customers of Fifth Third Bank. If the point of sale were Fifth Third Bank locations, Fifth Third would have no incentive to use Budget Prepay to access a wider audience. ██████ is the exact opposite in that its partners offer money transmission and/or bill pay service in their own name; the LMT's website or bank website is the point of sale, and the customer has no knowledge of ██████. In addition, ██████ arrangement is the exact opposite because banks use ██████ to streamline services provided to their existing bank customers not to expand their services to a new customer base.

C. ██████ primarily provides technology services, and money transmission is ancillary to its primary service.

FinCEN determined in previous Administrative Rulings that, where the transmission of funds is an integral part of the service the company provides, where the company engages in money transmission solely in connection with its primary service, and where the company does not transmit money as a separate and discrete service, the company is not engaged in money transmission. See Fin-2008-R011, "Whether a Company that Engages in Microfinance is a Money Service Business," Dec. 11, 2008; see also FIN-2014-R006, "Whether a Company that Provides Online Real-Time Deposit, Settlement, and Payment

Services for Banks, Businesses and Consumers is a Money Transmitter rather than a Provider of Prepaid Access,” Apr. 29, 2014. Similarly, ██████ primary service is connecting others through its platform. ██████ does not transmit money, but, to the extent the Department disagrees with this analysis, ██████ only transmits money incidentally to its primary service of providing a software platform. In addition, ██████ does not advertise, solicit, or hold itself out as providing money transmission services in the state of Arkansas. Rather ██████ licensee partner remains at the forefront of the relationship from the consumer’s perspective, putting its brand first, and for all other intents and purposes.

However, to the extent that the Department disagrees with this analysis concluding that ██████ is not engaged in money transmission services nor bill pay services, ██████ would likely be exempt from licensing as an authorized delegate of an LMT.

D. ██████ would be exempt from money transmission licensing requirements as an authorized delegate of a licensee.

The Act indicates that a license is required for persons engaged in the business of money transmission unless the person is an authorized delegate of a person licensed. See Ark. Code Ann. § 23-55-201. The Act defines an authorized delegate as a “person a licensee designates to provide money services on behalf of the licensee.” Ark. Code Ann. § 23-55-102(2). With respect to relationships between licensees and authorized delegates, the Act requires that the contract between licensee and the authorized delegate requires that the authorized delegate operate in full compliance with Arkansas’s money transmission laws. Ark. Code Ann. § 23-55-501. No specific reference is made to the designation or appointment procedure identifying a person as an authorized delegate of a licensee in Arkansas. To the extent that ██████ acts as an authorized delegate of a licensee, ██████ would not be required to obtain a license.

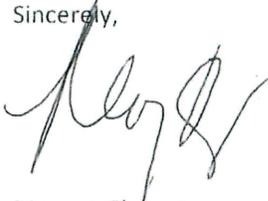
In the Budget Opinion, Budget indicated that agreement between Fifth Third and Budget permitted Fifth Third to perform due diligence, audits, credit checks, and overall risk assessment[s] on Budget. See Arkansas Securities Department, Legal Opinion Letter 10-43335-CS, Budget PrePay, Inc. (May 7, 2010). Similarly, the standard agent contract that ██████ will use with licensed money transmitters permits the licensed money transmitter to conduct due diligence, including, but not limited to OFAC screening of ██████ and others as well as requires that ██████ abide by all applicable law, rules, and regulations including but not limited to law relating to data protection, anti-terrorism, and the prevention of money-laundering. ██████ must also agree, under the binding agency contract with licensed money transmitters, to implement a compliant security program that includes measures designed to meet the objectives of the Interagency Guidelines Establishing Standards for Safeguarding Customer Information. Therefore, because ██████ would act as an authorized delegate of a licensee, ██████ should not be required to obtain a license.

Conclusion

Aldridge Pite concludes that ██████ may be exempt from licensure because it is not conducting money transmission activity as it is defined by the Uniform Money Services Act and the Code of Arkansas Rules. Rather ██████ receives payment from licensed money transmitters into ██████ account pursuant to an agreement for the services ██████ provides. The agreement between ██████ and the LMT is not specifically for the transmission of the licensed money transmitters’ customer’s funds but for the

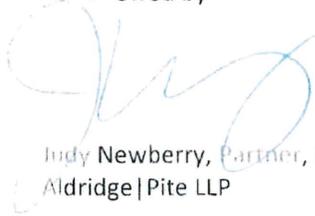
providing of the use and service of the platform. [REDACTED] pays Billers out of [REDACTED] account pursuant to an agreement for monies [REDACTED] owes to the Biller. The money that [REDACTED] pays to Billers out of [REDACTED] account is [REDACTED] money owed by [REDACTED] to Biller, not consumer funds owed to Biller. While each agreement may require the reconciliation of accounts based on the transference of consumer funds, this is simply an independent, conditional clause in the contracts that indicates how much more funds [REDACTED] may obtain from or pay to either the Biller or Licensed Money Transmitter. While said clauses relate to what happened with the consumer's funds (for example, if X then Y), the agreements do not require [REDACTED] to transmit the consumer's funds themselves. At most, [REDACTED] receives instructions as a software provider and transmits money incidentally to its primary service. Alternatively, [REDACTED] may be exempt from licensure if it acts as an authorized delegate of a licensee, and Aldridge Pite foresees no obstacle that would prevent [REDACTED] from receiving this designation.

Sincerely,



Morgan Clemons
Aldridge | Pite LLP

As reviewed by:



Judy Newberry, Partner, Regulatory Compliance
Aldridge | Pite LLP