

ASA HUTCHINSON
GOVERNOR

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COMMISSIONER



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ARKANSAS SECURITIES DEPARTMENT

VIA REGULAR U.S. MAIL

February 28, 2017

Kara Kuchar
Schulte Roth & Zabel, LLP
919 Third Avenue
New York, NY 10022

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

RE: Integrated Payment Systems, Inc.
No Action No. 17-NA-0004

Dear Ms. Kuchar:

The Arkansas Securities Department ("Department") is in receipt of your letter dated January 10, 2017, 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 a payment processing service supported by Integrated Payment Systems to be reported as money transmission activity.

Based upon the specific facts contained in your request the Staff will not recommend that the Arkansas Securities Commissioner take an enforcement against Integrated Payment Systems if it does not report the payment processing activities detailed in your letter as money transmission activity to 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

[REDACTED]

[REDACTED]

January 10, 2017

VIA E-MAIL

CONFIDENTIAL

Re: [REDACTED]

To Whom it May Concern:

On behalf of [REDACTED], a licensed money transmitter, we are writing to provide you with information regarding new payment processing activities that [REDACTED] will be providing in support of affiliated and unaffiliated providers ("Providers") of payments and commerce platforms ("Platforms") to merchants ("Merchants") and payment access devices to the customers of Merchants. In general, a Provider contracts with Merchants to integrate its Platform into Merchants' existing point-of-sale terminals, mobile applications, or websites to offer such Merchants' customers a new payment option. Merchants' customers enroll with the Provider to use the Provider's mobile phone application as a payment device at participating Merchants ("Users"). [REDACTED] intends to contract with Merchants to provide them with settlement and processing services in connection with payments made to Merchants by Users.¹

[REDACTED] payment processing services in support of the Platforms will be limited to the receipt of funds and processing of User payments on behalf of Merchants pursuant to a written agreement expressly establishing an agency relationship between [REDACTED] and Merchants. [REDACTED] views this activity as payment processing activity and not as reportable money transmission for the following reasons:

- Users directly engage with Merchant to make payment for the goods or services being purchased, and authorize Merchant and its processor, [REDACTED] to debit the User's bank account for the purchase price;

¹ An affiliate of [REDACTED], will also provide its authorization and warranty services ("Services") to Merchants by either entering into a direct contract with the Merchant or pursuant to a contract with the Provider to resell the Services to Merchants. Generally, [REDACTED] analyzes payment instructions against its risk models and provides Merchants with information on whether to accept or reject payments and warranties any returned payments that [REDACTED] authorized or approved subject to certain requirements.

- [REDACTED] processes the payment on behalf of Merchants and not Users, such that receipt of funds by [REDACTED] is the equivalent of receipt of funds by the Merchant;
- At the time [REDACTED] receives funds in its clearing account from User's bank account, User's obligation with respect to the payment is extinguished, regardless of whether [REDACTED] ultimately settles the funds to the Merchant;
- [REDACTED] settles funds received from Users to Merchants through the [REDACTED] payment system, which admits only Bank Secrecy Act regulated financial institutions;
- There is no risk of loss to Users if [REDACTED] fails to remit payments to Merchants; and
- Acting as a payment processor to facilitate the purchase of a good or service through the [REDACTED] payment system by agreement with the seller of goods or services is exempt from federal money services business (MSB) regulation. 31 C.F.R. § 1010.100(ff)(5)(ii)(B).

Please let us know if you disagree with this view. To the extent your jurisdiction requires [REDACTED] to obtain an exemption verification, confirmation, waiver, or other formal regulatory documentation in connection with unreportable agent-of-payee activity, we will submit such a request under separate cover shortly.

We respectfully request confidential treatment of this letter in accordance with your policies and procedures for supervisory matters. In the event that you receive a request to share this letter or any information contained herein, or otherwise preliminarily determine that you must disclose this letter or such information, please notify us in advance of such disclosure.

* * * * *

Thank you for your attention and consideration of this matter. Please do not hesitate to contact me at [REDACTED] or my colleague, [REDACTED] if you have any questions or require additional information regarding the foregoing.

Sincerely,

[REDACTED]

[REDACTED]

[REDACTED]