

ORDER NO. 2020-045

IN THE MATTER OF:	§	BEFORE:
	§	
SOUTH DAKOTA TRUST COMPANY	§	THE BANKING
	§	COMMISSIONER OF TEXAS
	§	
SIOUX FALLS, SOUTH DAKOTA	§	AUSTIN, TRAVIS COUNTY, TEXAS

CONSENT ORDER

On this day, the matter of South Dakota Trust Company (Respondent) was submitted to me, Charles G. Cooper, Banking Commissioner (Commissioner) of the State of Texas, for consideration and action.

1. Respondent is a trust company incorporated under the laws of South Dakota and based in Sioux Falls, South Dakota. Respondent provides trust and fiduciary services.

2. The Texas Department of Banking (Department) has jurisdiction over the subject matter of this proceeding pursuant to *Texas Finance Code* (Finance Code) Chapter 151 (Chapter 151). The Commissioner has the authority to issue this Consent Order (Order) and to assess administrative penalties pursuant to Finance Code §§ 151.706 and 151.707.

3. Respondent has been properly notified of its right to an administrative hearing under Chapter 151.

4. The undersigned representative of Respondent has full authority to enter into and bind Respondent to the terms and conditions of this Consent Order.

5. The statutory provisions at issue in this matter include, but are not limited to, Finance Code §§ 151.301, 151.302, 151.702, 151.706, and 151.707.

6. Any violation of this Order could subject Respondent to additional regulatory or enforcement actions authorized by Chapter 151 and other provisions of Texas law. Nothing in this

Order diminishes the regulatory or enforcement powers of the Department, the Commissioner, or the Finance Commission of Texas under Chapter 151 or other applicable law.

7. For purposes of this proceeding, Respondent knowingly and voluntarily waives:
 - a. service upon Respondent of this Order;
 - b. the right to present defenses to the allegations in this proceeding;
 - c. notice and hearing prior to imposition of this Order;
 - d. the filing of proposed findings of fact and conclusions of law;
 - e. the issuance of a proposal for decision by an administrative law judge;
 - f. the filing of exceptions and briefs with respect to such proposal for decision;
 - g. any review of this Order by the Texas Finance Commission; and
 - h. judicial review of this Order as provided by *Texas Government Code* § 2001.171 *et seq.*, and any other challenge to the validity of this Order.

8. Respondent and the Commissioner agree to this Order solely for the purpose of this proceeding, and without Respondent admitting or denying any violations of law or regulations. This Order does not constitute an admission by Respondent that Chapter 151 or a rule adopted or order issued under Chapter 151 has been violated.

9. The Commissioner has considered this matter and finds as follows:
 - a. Respondent is a trust company and provides trustee and fiduciary services to its customers, and some of those customers in turn provide payroll payment services and other human resources-related services to third-party employers in Texas.
 - b. On February 28, 2020, the Department informed Respondent that the entity would need to apply for a money transmission license or cease money transmission activity in Texas.
 - c. On April 14, 2020, Respondent applied to the Department for an exemption from money transmission licensing under Chapter 151. The Department denied this exemption application on August 24, 2020.
 - d. Under Finance Code § 151.301(b)(4), money transmission means “the receipt of money or monetary value by any means in exchange for a promise to make the money or monetary value available at a later time or different

location.” The Finance Code defines engaging in the business of money transmission as receiving compensation or expecting to receive compensation, directly or indirectly, for conducting money transmission. Finance Code § 151.302(b). The Department has concluded that by receiving funds in exchange for a promise to distribute those funds at a later time or different location, Respondent is conducting money transmission.

- e. Finance Code § 151.302(a) provides that “a person may not engage in the business of money transmission or advertise, solicit, or hold itself out as a person that engages in the business of money transmission” without a license unless it is an authorized delegate of a license holder, is excluded from licensure under Chapter 151, or has been granted an exemption under Chapter 151.
 - f. As described above, the Department has concluded that: (i) Respondent has been conducting money transmission in Texas; (ii) the Department had not licensed Respondent; (iii) Respondent is not an authorized delegate of a license holder; (iv) Respondent is not excluded from licensure under Chapter 151; and (v) Respondent has not been granted an exemption under Chapter 151. Consequently, the Commissioner finds that Respondent is in violation of Finance Code § 151.302.
 - g. As required by Finance Code § 151.707(d), the Commissioner has considered the seriousness of the violations, Respondent’s compliance history, and Respondent’s good faith in attempting to comply with Chapter 151.
 - h. Based on these findings and based on the representations made by Respondent as to the volume of transactions and length of time it has been conducting an unlicensed money transmission business in Texas, the Commissioner finds that a penalty of \$95,625 is appropriate.
10. Respondent has agreed to comply with the terms that are set out in the Order below.
11. Nothing in this Order shall prohibit Respondent from obtaining a money transmission license from the Department in the future.
12. This Order does not restrict the Department with respect to any enforcement action or other recourse regarding any other violations by Respondent not now known to the Department that come to the attention of the Department. Nothing herein shall be construed to limit Respondent’s right to contest any future finding or determination of non-compliance.

Order

It is hereby ORDERED, ADJUDGED, and DECREED that:

13. Respondent will pay \$95,625 to the Department as an administrative penalty under Texas Finance Code § 151.707 on or before January 1, 2021.
14. Respondent will do the following:
 - a. On or before November 6, 2020, Respondent will cease and desist from engaging in the unauthorized business of money transmission in Texas.
 - b. On or before November 6, 2020, Respondent will remit, forward, or otherwise refund Texas customer funds held by Respondent pursuant to written agreements with such customers for such actions.
 - c. Within seven calendar days of achieving full compliance with the other requirements of this paragraph, Respondent must confirm such compliance to the Department in writing.

Effective Date

This Order against Respondent is effective on the date signed by the Commissioner and is final and non-appealable as of that date.

Signed on this 27th day of October, 2020

/s/ Charles G. Cooper
Charles G. Cooper
Commissioner, Department of Banking

AGREED AS TO FORM AND SUBSTANCE:

South Dakota Trust Company

/s/ Matt Tobin

By: Matthew Tobin, COO

Date: October 27, 2020

APPROVED AS TO FORM:

/s/ Catherine Reyer for

Jesse Moore

Assistant General Counsel

Texas Department of Banking

Date: October 27, 2020