

ORDER NO. 2021-002

IN THE MATTER OF:	§	BEFORE:
	§	
INSPERITY PAYROLL SERVICES, LLC	§	THE BANKING
	§	COMMISSIONER OF TEXAS
	§	
AUSTIN, TEXAS	§	AUSTIN, TRAVIS COUNTY, TEXAS

CONSENT ORDER

On this day, the matter of Insperity Payroll Services, LLC (Respondent) was submitted to me, Charles G. Cooper, Banking Commissioner (Commissioner) of the State of Texas, for consideration and action.

1. Respondent is a limited liability company formed under the laws of Delaware and based in Houston, Texas. Respondent provides traditional employment solution services, including payroll transmission.

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 provides payroll transmission and other employment solution services to its customers, including employers in operating in Texas.
 - b. Various other entities affiliated with Respondent by common ownership offer employment services as professional employer organizations licensed under Chapter 91 of the Texas Labor Code (PEOs). Respondent is not a licensed PEO.
 - c. The Department's investigation and review of potential unauthorized money transmission addressed both Respondent and the affiliated PEO entities within Respondent's corporate family.
 - d. On April 22, 2019, the Department informed Respondent that it would need to apply for a money transmission license, qualify for an exemption or exclusion from licensing, or cease engaging in the business of money transmission activity in Texas. The Department also stated it was abating its determination regarding whether

Respondent's licensed PEO affiliates conduct money transmission subject to regulation under Chapter 151 of the Texas Finance Code.

- e. On July 18, 2019, the Department informed Respondent that it had initiated a review of money transmission licensing requirements under the Texas Money Services Act for payroll service providers and that it would take no further regulatory or enforcement action regarding Respondent's activities while this review continued.
 - f. This review culminated with the October 20, 2020 issuance, at the request of the Department, of a legal opinion by the Texas Attorney General concluding that a licensed PEO's "performance of its statutory duties under chapter 91 of the Labor Code pursuant to a professional employer services agreement does not constitute money transmission for which a separate license is required under chapter 151 of the Finance Code." Tex. Att'y Gen. Op. No. KP-0336 (2020). Respondent is not affected by this opinion because it is not a licensed PEO.
 - g. 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.
 - h. 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.
 - i. 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.
 - j. 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.
 - k. 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 \$66,400 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 \$66,400 to the Department as an administrative penalty under Texas Finance Code § 151.707 on or before March 1, 2021.

14. Respondent will do at least one of the following:

- a. on or before March 1, 2021, Respondent will cease and desist from performing money transmission services for Texas residents, and confirm such cessation in writing to the Department; or
- b. on or before March 1, 2021, Respondent will apply for a temporary money transmission license pursuant to *Texas Finance Code* § 151.306; or
- c. on or before February 15, 2021, Respondent will submit to the Department a reasonable written proposal describing how Respondent will qualify for an exemption or exclusion from money transmission licensing on or before March 1, 2021, and by March 1, 2021 Respondent must both in fact qualify for an exemption or exclusion from licensing and provide to the Department all applicable agreements, policies, and other documents and information reasonably necessary to establish that Respondent has qualified for an exemption or exclusion.

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 25th day of January, 2021.

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

AGREED AS TO FORM AND SUBSTANCE:

Insperty Payroll Services, LLC

/s/ Thomas P. Gearty
By: Thomas P. Gearty

Date: January 25, 2021

APPROVED AS TO FORM:

/s/ Jesse Moore
Jesse Moore
Assistant General Counsel
Texas Department of Banking

Date: January 26, 2021