

ORDER NO. 2021-006

IN THE MATTER OF:
STRATEX HOLDCO, LLC
CHICAGO, ILLINOIS

§ BEFORE:
§
§ THE BANKING
§ COMMISSIONER OF TEXAS
§
§ AUSTIN, TRAVIS COUNTY, TEXAS

CONSENT ORDER

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

1. Respondent is incorporated in Delaware and headquartered in Chicago, Illinois.
2. The Texas Department of Banking (Department) has jurisdiction over Respondent and 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 Texas Finance Commission 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 and its subsidiaries started providing human resource and payroll services to restaurant merchants in Texas around 2008. In carrying out payroll, Respondent and/or its subsidiaries receives funds from its restaurant merchants into bank accounts in the name of its wholly owned subsidiary, Strategy Execution Partners, LLC, and then causes those funds to be distributed to the restaurant's employees. Similarly, Respondent and/or its subsidiaries receives payroll tax funds from its resultant merchants and holds the funds in escrow until releasing to the appropriate taxing authorities. Respondent charges its restaurant merchants a fee for using the services based on the restaurant's employee headcount.

- b. In the third quarter of 2019, Toast, Inc. (Toast), an entity that provides restaurant businesses with point-of-sale systems and services, acquired Respondent. After the acquisition, Respondent's human resource and payroll services were rebranded under the Toast name but are still performed by Respondent.
- c. In October 2019, Toast formed a subsidiary, Toast Processing Services LLC (TPS), with the intention of TPS becoming a money services business (MSB) and eventually conducting the payroll services then conducted by Respondent. As of May 21, 2021, TPS is a licensed MSB in nine states and registered with the Financial Crimes Enforcement Network as a MSB.
- d. On September 17, 2020, TPS submitted an application to the Department for a money transmission license, which is pending as of the date of this Order. That application described licensable money transmission business that TPS proposed to conduct in Texas, including payroll services. Although the application mentioned that Respondent was a subsidiary of Toast, it failed to explain that Respondent was currently conducting payroll services in Texas and had been since at least 2008. When asked about this, Toast explained that Respondent's position during the acquisition by Toast was that Respondent did not require a license to offer payroll services in Texas.
- e. On November 2, 2020, Toast explained that if Respondent ceased providing payroll services in Texas until TPS could restart the service after its money transmission license was approved, there would be catastrophic interruption to the business operations of Respondent's restaurant merchants.
- f. To avoid causing harm to restaurants and their employees in Texas, on January 25, 2021, the Department agreed to allow Respondent to continue its payroll services if it provided the security required by the Finance Code for a licensed money transmitter in order to

protect its restaurant merchants from potential losses caused by Respondent's unlicensed money transmission services.

- g. On February 11, 2021, Respondent provided the Department with a \$1,750,000 bond covering its money transmission services. Respondent also agreed to wind down its Texas activity in the event TPS's license application is denied.
- h. Toast and Respondent cooperated with the Department regarding Respondent's historical and ongoing unlicensed payroll services in Texas.
- i. 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 a restaurant merchant's funds in exchange for a promise to distribute those funds to its employees at a later time or different location for a fee, Respondent is conducting money transmission.
- j. 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.
- k. As described above, the Department has concluded that: (i) Respondent is conducting money transmission in Texas; (ii) the Department has not issued Respondent a money transmission license; (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.

l. Finance Code § 151.707(a)(1) allows the Commissioner to assess an administrative penalty against a person that has violated Chapter 151. 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.

m. 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 \$201,600 is appropriate.

10. Respondent has agreed to comply with the terms that are set out in the Order below.

11. 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:

1. Within ten (10) days of the effective date of this Order, Respondent will pay \$201,600 to the Department as an administrative penalty under Finance Code § 151.707.
2. Respondent will transfer all its Texas money transmission business to TPS within 90 days of approval of TPS's application for a money transmission license. In the event that TPS's application is denied, Respondent will wind down and cease all money transmission business in Texas as quickly as reasonably possible without interfering with the operation of its

restaurant customers, but in no event more than 90 days from the date TPS's application is denied.

3. Respondent must maintain the security required by Finance Code § 151.308 until all its money transmission business in Texas is transferred to TPS or ceased.

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 18th day of June, 2021.

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

AGREED AS TO FORM AND SUBSTANCE:

StratEx HoldCo, LLC

/s/ Brian Elworthy
By: Brian Elworthy, General Counsel
Date: May 28, 2021

APPROVED AS TO FORM:

/s/ Anthony M. Alexis
Anthony M. Alexis
Counsel for StratEx
Date: June 7, 2021

/s/ Catherine Reyer
Catherine Reyer
General Counsel
Texas Department of Banking
Date: June 16, 2021