



# **TEXAS DEPARTMENT OF BANKING**

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## **SUPERVISORY MEMORANDUM – 1038**

**July 17, 2024**

**TO:** Money Services Business (MSB) License Holders

**FROM:** Charles G. Cooper, Banking Commissioner

**SUBJECT:** Appointment of an Authorized Delegate to Conduct Money Transmission on Behalf of a License Holder<sup>1</sup>

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### **BACKGROUND AND PURPOSE**

Section 152.252(b) of the Texas Finance Code (Finance Code) provides that a money transmission license holder may conduct business through an authorized delegate (AD).<sup>2</sup> Finance Code Section 152.252(b) sets out requirements that the license holder must satisfy before it conducts business through an AD and Section 152.252(d) lays out nine specific requirements for the written contract between the license holder and the AD, including setting forth the nature and scope of the relationship between the license holder and the AD. Overall, the license holder is responsible for the acts of the AD that are conducted pursuant to the authority granted by the license holder and that relate to the license holder's money transmission business.

This authorized delegate provision was intended to be a statutory codification of the common law of agency. The purpose of an AD is to allow license holders to conduct business in locations where they have no presence and access customers they otherwise could not.

With the rise of money transmission conducted via the internet, the Texas Department of Banking (Department) became aware of some unlicensed money transmitters attempting to use the AD provision in an effort to circumvent the required licensing process. These unlicensed money transmitters become appointed as an AD by entering into a contract with an MSB that is currently licensed as a money transmitter in Texas. However, a review of the parties' relationship reveals the unlicensed entity is actually conducting its own business and not the business of the license holder and is therefore not a legitimate AD.

This supervisory memorandum sets out the Department's interpretation as to how one may conduct business through an AD under Finance Code Section Chapter 152, Subchapter F. This

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<sup>1</sup> This policy has been updated to reference Texas Finance Code Chapter 152, the Money Services Modernization Act, which replaces the rescinded Chapter 151.

<sup>2</sup> Finance Code Section 152.003(2) defines "authorized delegate" as "a person designated by a money transmission licensee to engage in money transmission services on behalf of the licensee."

memorandum also establishes key criteria the Department will use when determining if a license holder is conducting business through an AD.

#### **“CONDUCTING BUSINESS THROUGH” ANALYSIS**

A money transmission license holder may conduct business through an AD appointed by the license holder. By its plain terms, the statute allows a money transmission license holder to appoint an AD only for the purpose of the license holder conducting its business through the AD. This is inherent in the term delegate, which can generally be defined as a person appointed to represent another. The statute does not allow for license holders to appoint ADs for any other reason. As such, ADs may only offer money transmission services or products that are the services or products of the license holder.

A person may not be appointed as an AD by a license holder in order to conduct its own money services business. If the purported AD is conducting its own business, then it logically cannot be representing the license holder. In such a scenario, the purported AD is more accurately described as merely a contracted business partner (CBP), as each party is operating its own distinct and separate business. One sign that an AD is really a CBP is the likelihood that no relationship would exist between the license holder and the CBP if the license holder did not have a money transmission license or there were no licensing requirements.

#### **KEY CRITERIA**

To provide further guidance, the Department has developed a list of key criteria that it considers when determining if a money transmission license holder is conducting its business through an AD. Factors the Department considers include, but are not limited to:

- How the license holder “controls” the conduct of business through the AD.
  - Is the scope of the relationship between the license holder and the AD vague or limited under the terms of the appointment agreement?
    - Generally speaking, the more vague or limited the terms of the agreement, the more likely the license holder and AD are really only CBPs and the AD appointment is illegitimate.
  - Does the license holder have little or no control over the customer’s funds?
    - For example, the customer’s funds may be kept in the AD’s bank accounts and only funneled through the license holder’s accounts temporarily or may never enter the license holder’s accounts at all. These would be signs of insufficient control and that the AD is actually a CBP.
- Whether the license holder and the AD appear to be operating their own distinct and separate businesses.
  - Does the AD offer its own product or service instead of the license holder’s product or service?

- The Department expects the AD to offer the license holder's product or service.
- Is there co-branding between the license holder and the AD?
  - If the license holder's name or logo does not appear on the product or service that the AD is providing, customers will not be aware that they are conducting business with the license holder through the AD.
- Does the AD process transactions through the license holder's platform or does it have its own separate system?
  - Transactions on behalf of the license holder should be conducted through the license holder's platform or system. If the AD uses its own platform or system that is separate and distinct from the license holder, it is an indicator the AD is actually a CBP.
- How the fees flow between the license holder and the AD.
  - Does the AD pay fees to the license holder?
    - The Department expects the license holder to compensate the AD on a per transaction or commission basis. When the roles are reversed and the AD pays fees to the license holder, this is an indicator that the AD is actually a CBP.
  - Does the license holder primarily derive its revenue from the transactions performed by the AD or from the fees paid by the AD?
    - The Department expects the license holder to primarily derive its revenue from the transactions performed by the AD on its behalf.
- Whether the customers have a contractual and/or business relationship with the license holder or the AD.
  - The customers should have a relationship with the license holder, and be made aware of the license holder's role in their transactions. In addition, liability for the customer funds rests with the license holder. If only the AD is obligated to the consumer to perform services or the license holder does not have a contractual relationship with the customer, those would be indicators that the AD is actually a CBP.

## CONCLUSION

The above list of key criteria is intended to guide MSBs as to how the Department will evaluate the relationship between the parties. They are not intended to be a list of determinative requirements. Accordingly, the Department will evaluate the totality of facts and circumstances, including the key criteria listed above, to determine whether a license holder is conducting business through an AD as authorized by Finance Code § 152.252(b) or the license holder and purported AD are in actuality only CBPs that are each operating their own separate and distinct businesses.

In the latter case, the Department will find the CBP to be engaging in the business of money transmission in Texas without a license. The money transmission license holder will also be required to terminate the appointment of the CBP as an AD as authorized by Finance Code Sections 152.252(d)(8) and 152.404. If the license holder continues to engage in illegitimate AD activities, it may be subject to further action by the Department, including license revocation or suspension under Finance Code Section 152.403(b).