

ORDER NO. 2018-017

IN THE MATTER OF:

**AVIDXCHANGE FINANCIAL
SERVICES, INC.**

CHARLOTTE, NC

§ BEFORE:

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**THE BANKING
COMMISSIONER OF TEXAS**

AUSTIN, TRAVIS COUNTY, TEXAS

CONSENT ORDER

On this day, in the matter of AvidXchange Financial Services, Inc. (“AFS” or “Respondent”) was submitted to me, Charles G. Cooper, Banking Commissioner (“Commissioner”) of the State of Texas, for consideration and action.

1. Respondent, a Delaware corporation based in Charlotte, North Carolina, is a wholly-owned subsidiary of AvidXchange, Inc. (“Avid”).
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. Respondent’s undersigned representative has full authority to enter into and bind Respondent to the terms and conditions of this 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. From approximately May 29, 2014 through March 25, 2016, Respondent provided third-party bill payment services to a Texas business customer and maintained the customer's deposits, pending payment to designated payees, in Respondent's deposit account. The customer paid a per transaction fee for this bill payment service.
 - b. On or about March 25, 2016, Respondent changed its processing structure for this Texas customer to conform with Avid's processing structure for its Texas customers, which does not constitute money transmission.

- c. On or about November 7, 2016, Avid applied for a money services business license and submitted audited financials to the Department as required. Avid's audited financials referred to the historic activity described above in Item 9(a).
- d. On or about March 2, 2017, the Department sent a letter to Avid seeking clarification of the historic activity described above in Item 9(a), to which neither Avid nor Respondent responded.
- e. On or about April 11, 2017, the Department sent a second letter to Avid seeking clarification of the historic activity described above in Item 9(a), to which neither Avid nor Respondent responded.
- f. Avid withdrew its application on or about April 25, 2017.
- g. On or about October 7, 2017, Avid submitted a new application for a money services business license and submitted audited financials to the Department as required. Avid's audited financials referred to the historic activity described above in Item 9(a). During the review of this application, the Department identified the activity described in Item 9(a) above.
- h. Under Finance Code § 151.301(b)(4)(iii), money transmission includes "providing third-party bill paying services." Finance Code § 151.302(b) defines engaging in the business of money transmission as receiving compensation or expecting to receive compensation, directly or indirectly, for conducting money transmission.
- i. From approximately May 29, 2014 through March 25, 2016, Respondent engaged in the business of money transmission when it provided third-party bill paying services, as described in Item 9(a) above.
- 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. The Department has not licensed Respondent or Avid to engage in the business of money transmission and Respondent was not licensed at the time it conducted the activity described in Item 9(a) above, nor was Respondent an authorized delegate of a license holder; Respondent was not excluded from licensure under Chapter 151; and Respondent had not been granted an exemption under Chapter 151. Consequently, the Commissioner finds that Respondent violated Finance Code § 151.302.
 - l. 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 conducted unlicensed money transmission business in Texas, the Commissioner finds that a penalty of \$82,589 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 or Avid 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 past, current, or future violations by Respondent or Avid that come to the attention of the Department. This Order shall not be construed to limit the right of Respondent or Avid to contest any future finding or determination of non-compliance.

ORDER

It is hereby ORDERED, ADJUDGED and DECREED that within 10 days of the Effective Date of this Order, Respondent will have delivered to the Department a check made payable to the Texas Department of Banking in the amount of \$82,589 as payment of the administrative penalty.

EFFECTIVE DATES

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 July, 2018.

/s/ Charles G. Cooper
Charles G. Cooper
Banking Commissioner of Texas

AGREED AS TO FORM AND SUBSTANCE:

AvidXchange Financial Services, Inc.

/s/ Ryan Stahl
By: Ryan Stahl, General Counsel
Date: 7/24/2018

APPROVED AS TO FORM:

/s/ Andrew Lorentz
Andrew Lorentz
Davis Wright Tremaine LLP
Counsel for AvidXchange Financial Services, Inc.

Date: 7/24/18

/s/ Chris W. Bell
Chris W. Bell
Assistant General Counsel
Texas Department of Banking

Date: 7/24/18