

ORDER NO. 2022-006

IN THE MATTER OF:
BREX TREASURY LLC
DRAPER, UTAH

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

CONSENT ORDER

On this day, the matter of Brex Treasury 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 for-profit company formed under the laws of Delaware and based in Draper, Utah. Respondent provides various services, including offering cash management accounts to institutional clients. Respondent also provides traditional third-party money transmission services, including bill payment services, unrelated to securities transactions (Non-Securities-Related 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 are 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 the factual findings of the Commissioner stated herein or 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. In 2019, Respondent commenced providing Non-Securities-Related Transmission services to its customers, including Texas residents. For Non-Securities-Related Transmission services, Respondent receives money or monetary value from its

customers and remits that value to those customers' employees, vendors, or other creditors for transactions unrelated to securities.

- b. 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 Respondent has been conducting money transmission by engaging in Non-Securities-Related Transmission.
- c. 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.
- d. The Department has concluded that: (i) Respondent has been conducting money transmission in Texas; (ii) the Department has 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 is not subject to an exemption under Chapter 151 or applicable rules for its Non-Securities-Related Transmission.
- e. The Department has concluded that Respondent’s Non-Securities-Related Transmission is not exempt under 7 Texas Administrative Code § 33.54 because such transmission is not reasonable and necessary to provide dealer or dealer agent services for contractual customers as to securities.
- f. Consequently, the Commissioner finds that Respondent has been 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. Respondent’s affiliate Brex Payments LLC (Brex Payments) has applied to the Department for a license to conduct money transmission. On March 11, 2022, Brex Payments obtained a temporary money transmission license from the Department. Respondent has represented to the Department that since Brex Payments obtained a temporary money transmission license from the Department, Brex Treasury has acted as Brex Payments’ authorized delegate in relation to money transmission activity requiring a license.
- i. 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 Non-Securities

Related Transmission in Texas, the Commissioner finds that an administrative penalty of \$37,050 is appropriate.

j. This Order does not include or constitute a finding by the Commissioner that Respondent engaged in fraudulent, manipulative, deceptive, or willful conduct.

10. Respondent has agreed to pay the administrative penalty 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 violations by Respondent not arising under Chapter 151. This Order does not restrict the Department with respect to any enforcement action or other recourse regarding any other violations by Respondent arising under Chapter 151 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:

12. Respondent will pay \$37,050 to the Department as an administrative penalty under Finance Code § 151.707 on or before April 18, 2022.

13. Respondent will not provide any further Non-Securities-Related Transmission to Texas residents without: (1) first obtaining a license or a written determination from the Department finding that Respondent has qualified for an exemption or exclusion from money transmission licensing or (2) conducting such activity as an authorized delegate of a licensee.

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 1st day of April, 2022.

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

AGREED AS TO FORM AND SUBSTANCE:

Brex Treasury LLC
Nicholas Passarelli, Chief Compliance Officer
By: /s/ Nicholas Passarelli
Date: March 31, 2022

APPROVED AS TO FORM:

/s/ Jesse Moore
Jesse Moore
Assistant General Counsel
Texas Department of Banking
Date: April 1, 2022