



State of Washington

DEPARTMENT OF FINANCIAL INSTITUTIONS

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PDO – 2016 – DCS – 001

March 15, 2016

Mary C. Albert
Director of Regulatory Affairs
ELECTRONIC TRANSACTIONS ASSOCIATION
1101 16TH Street N.W., Suite 402
Washington, D.C. 20036
malbert@electran.org

RE: Petition for Declaratory Order dated March 2, 2016
Notice to Petitioner and Other Persons as Required by Law
Procedural Deficiencies in Petition

Dear Ms. Albert:

This Notice is being made on behalf of Director Scott Jarvis (“Director”) of the Washington State Department of Financial Institutions (“Department”) in my capacity as the Department’s Director of Regulatory & Legal Affairs.

This Notice is being furnished to the Electronic Transaction Association (“ETA”) pursuant to the Washington Administrative Procedures Act (“WAPA”), at RCW 34.05.240(3), to notify ETA and other persons as may be required by law that the Department is in receipt of ETA’s Petition for Declaratory Order (“Petition”) as of March 3, 2016, a copy of which is attached and made a part of this Notice.

On its face, the Petition appears to seek *clarification* from the Director of the Department that the statutory definition of “money transmitter” under the Washington Uniform Money Services Act (“WUMSA”), at RCW 19.230.010(18), which heretofore has been interpreted by the

Department's Division of Consumer Services ("Division"), does not include payment processors that (1) do not have "consumer-facing" relationships and (2) do not actually receive consumer payments for transmission to a third-party payee or other transferee ("Non-Consumer Processors"). The Petition further requests a declaratory order that the payment processor exclusion of WUMSA, at RCW 19.230.020(9), "applies to payment processors that act on behalf of behalf of merchants, rather than consumers, to facilitate the merchant's acceptance of credit and debit cards and that such payment processors are not subject to [WUMSA]." See *Petition, Footnote 1*.

From the Director's initial perusal of the Petition, it appears that there is a "justiciability" issue presented by the Petition in relation to RCW 34.05.240(7), which declares: "An agency may not enter a declaratory order that would substantially prejudice the rights of a person who would be a necessary party and who does not consent in writing to the determination of the matter by a declaratory order proceeding." Secondly, a proper petition for declaratory order, among other elements, must adequately state that an "uncertainty [as to the applicability of specific circumstances of a statute] adversely affects" *ETA* as the Petitioner. See RCW 34.05.240(1)(c). And thirdly, RCW 34.05.240(8) requires that "[e]ach declaratory order shall contain the names of all parties to the proceeding on which it is based."

While *ETA* claims in the Petition to be acting on behalf of its 500+ members, none of them is specifically identified by name or as doing business in or having sufficient minimum contacts with Washington State to a degree that would presumptively make them subject to the Division's authority under WUMSA ("Washington State Members"). Nor has *ETA* declared that it is an express agent for Washington State Members or that the Petition is subject to the written permission of such members. While one might argue that a trade association for unidentified Washington State Members could be adversely affected by the alleged statutory "uncertainty" that is the subject of the Petition, a proper construction of Subsection (1)(c), read in the light of Subsections (7) and (8), compels the conclusion at this early juncture that the Director is incapable of issuing a declaratory order in relation to the Petition in the absence of all "necessary parties" – i.e., all Washington State Members that are also Non-Consumer Processors – being identified by name and consenting in writing to the Petition on their behalf.

Accordingly, for the reasons set forth above, the Director declines at this time to enter a declaratory order [see RCW 34.05.240(5)(d)] or to set the matter for specified proceedings [see RCW 34.05.240(5)(b)].

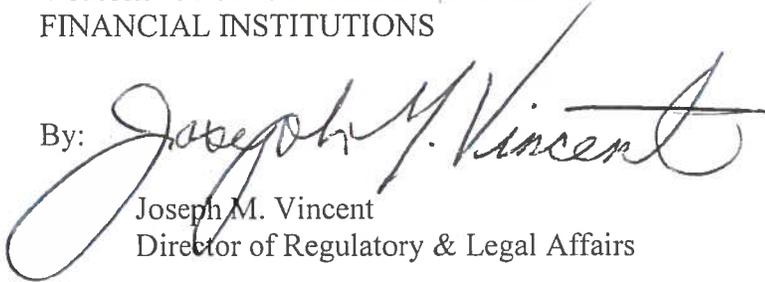
While the Director would likely entertain *ETA*'s Petition once the deficiencies set forth above have been corrected, the Director encourages *ETA*, as a preliminary step, to reach out to the Division's director, Charles Clark, charles.clark@dfi.wa.gov, or (360) 902-0511, and have discussions about how best to resolve the alleged "uncertainty" you have addressed.

If you have any questions whatsoever, please do not hesitate to call upon me, acting on behalf of the Director, at (360) 902-0516 or joseph.vincent@dfi.wa.gov.

Yours very truly,

Office of the Director
WASHINGTON STATE DEPARTMENT OF
FINANCIAL INSTITUTIONS

By:

A handwritten signature in black ink, reading "Joseph M. Vincent". The signature is written in a cursive style with a large, looping initial "J".

Joseph M. Vincent
Director of Regulatory & Legal Affairs

ACKNOWLEDGEMENT OF SERVICE

This is to certify that the Department's **NOTICE OF PETITIONER AND OTHER PERSONS AS REQUIRED BY LAW** ("Notice") was served by mail on **March 15, 2016**, by the undersigned depositing a copy of same in the United States mail, postage prepaid.

In accordance with the Washington Administrative Procedures Act, at RCW 34.05.240(3), the Washington State Department of Financial Institutions ("Department") must within fifteen (15) days of being served with **ELECTRONIC TRANSACTIONS ASSOCIATION'S PETITION FOR DECLARATORY ORDER** ("Petition"), which was **March 3, 2016**, serve the afore-mentioned Notice. Pursuant to the Washington Administrative Rules ("Rules"), at WAC 10-08-110(2)(c), service by mail of the Notice is complete upon deposit in the United States mail properly stamped and addressed. Pursuant to WAC 10-08-110(3)(a), proof of service of such notice is satisfied by this Acknowledgement of Service.

The Department does not sub-categorize its licensees under the Washington Uniform Money Services Act, chapter 19.230 RCW ("WUMSA Licensees"), by which WUMSA Licensees are payment processors. While the Petition did not identify by name or other means any other persons to whom such notice would have been required by law if the Petition had been procedurally sufficient, the Department will, on or before March 15, 2016, also post such notice on its Website, www.dfi.wa.gov ("DFI Website"), thereby furnishing notice to these unidentified persons. In addition, the Department will, on or before March 15, 2016, send on its Email Listserv to all of its WUMSA Licensees, notice of the location on the DFI Website of the Petition and the Notice.

WASHINGTON STATE DEPARTMENT
OF FINANCIAL INSTITUTIONS

By: 
Susan Putzier
Executive Assistant to the Director

Mailed to the following:

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