

**STATE OF ALABAMA
ALABAMA SECURITIES COMMISSION**

IN THE MATTER OF:)
GUSTO, INC. DBA GUSTO) **CONSENT ORDER**
)
) **NO. CO-2022-0009**
)
RESPONDENT)

CONSENT ORDER

The Alabama Securities Commission (the "Commission"), having the authority to administer and provide for the enforcement of all provisions of the Alabama Monetary Transmission Act, *Code of Alabama 1975*, §8-7A-1 *et seq.* (the "Act"), upon due consideration of the subject matter hereof, and having confirmed information of the unlicensed transmission of money in the State of Alabama, has determined as follows:

RESPONDENT

1. Gusto, Inc. dba Gusto ("Respondent") is a California corporation with a business address of 525 20th Street, San Francisco, CA 94107. Respondent is a money transmitter that offers payroll services on a per-payment subscription basis regardless of the number or value of transactions run in a given month. In addition to the payroll services subscription, Respondent collects commission fees as a broker of employer-health insurance plans and other benefits. The Commission records reflect that Respondent has never been licensed in the State of Alabama.

STATEMENT OF FACTS

2. On June 22, 2020, Respondent applied for licensure with the Commission pursuant to the Alabama Monetary Transmission Act on its own initiative.

3. On June 30, 2020, Commission staff received Respondent's application cover letter, statement of prior activity, and company references. It also included a statement that reflected Respondent's primary business is payroll processing for business clients. Respondent considered these activities to be distinct from money transmission activities. Additionally, Respondent did not charge fees per transmission.

4. On July 8, 2020, Respondent requested confirmation from the Commissioner that Respondent was exempt from licensure pursuant to § 8-7A-4.

5. On July 16, 2020, the Respondent requested the Commission to proceed with the review of their pending license application.

6. On July 20, 2020, the Commission staff issued a prior activity letter to Respondent advising that licensing would not be available until the prior business activity had been resolved. In addition, the Commission staff requested the Statement of Prior Activity Form be completed and to provide an explanation of why Respondent was not a licensed money transmitter in its home State of California.

7. On July 28, 2020, the Commission staff received the Statement of Prior Activity Form that reflected prior money transmission activity in the State of Alabama. A statement was included that reflected Respondent was not required to be licensed as a California Money Transmitter licensee under the California Money Transmitter Law, Fin. Code, §2000 et seq. and that Respondent offers small businesses an all-in-one solution to their payroll, HR, and employee benefits needs through its online platform. Cal. Fin. Code §2010(j) exempts payroll companies from the Money Transmission Law. A person that delivers wages or salaries on behalf of employers to employees or facilitates the payment of payroll taxes to state and federal agencies, makes payments relating to employee benefit plans, makes distribution of other authorized deductions from employees' wages or salaries, or transmits other funds on behalf of an employer in connection with transactions related to employees is exempt from the California Money Transmission Law (Cal. Fin. Code § 2010(j)).

8. On August 6, 2020, the Respondent advised the Commission of the total amount of fees that were paid to Respondent by Alabama small business customers to subscribe to Respondent's payroll services.

9. On September 11, 2020, the Commission staff requested from Respondent the actual total amount of fees earned by Respondent from Alabama customers prior to licensing.

10. On October 12, 2020, Respondent responded with its fees earned from Alabama clients including the small businesses that had filing addresses located in Alabama that paid fees to Respondent to subscribe to its payroll services. Some of Respondent's small business customers may have sent money outside of Alabama. Since Respondent's fees are structured as general subscription fees to Respondent service, Respondent was unable to provide an exact figure of the fees that represented transmissions from Alabama-based businesses to Alabama individuals.

11. On October 21, 2020, the Commission staff and Respondent discussed, via conference call, the relevance of the actual amount of fees earned by Respondent from Alabama clients being disclosed to the Commission prior to licensing.

12. On October 23, 2020, the Commission staff continued the review of Respondent's application and requested Respondent's total amount of money transmission (subscription fees, etc.) earned by Respondent from Alabama clients prior to licensing. Respondent responded with the total money transmission fees earned from Alabama clients from March 2014 – June 2020.

13. Between October 24, 2020 and August 10, 2021, the Commission and Respondent continued to discuss and exchange information regarding the Commission's investigation, as well as negotiate the terms of any consent order that would result from this investigation.

14. On August 11, 2021, Respondent provided the Commission an estimate of the fees charged to Alabama customers that were derived from activities that may fall under the statutory definition of monetary transmission.

15. Respondent has cooperated with the Commission in its investigation into this matter.

CONCLUSIONS OF LAW

1. Pursuant to Code of Alabama 1975, § 8-7A-5, it is unlawful for any person to engage in the business of money transmission without first obtaining a license from the Commission pursuant to the provisions of the Act. The Commission believes that Respondent engaged in a money transmission business without the benefit of licensure with the Commission in violation of the Act.

WHEREAS, Respondent voluntarily consents to the entry of this Consent Agreement as a compromise of any dispute regarding whether money transmission services were effected in the State of Alabama prior to licensure under the Act; and states that the information and assertions presented to the Commission during its investigation of this matter are true and correct; and that Respondent understands the Commission relied upon such information or assertions in its determination to accept this Agreement, and that should such information or assertions prove to be incorrect or misrepresented, the Commission may seek such other administrative, civil or criminal remedies that may be available to it under the provisions of the Act; and

WHEREAS the Commission finds this Agreement necessary and appropriate in the public interest for the protection of consumers, and consistent with the purposes fairly intended by the policy and provisions of the Act; and

WHEREAS the Commission and Respondent are desirous of settling this matter as hereafter set forth and agree to the entry of this Agreement; and

WHEREAS, Respondent has voluntarily waived all rights to a hearing upon entry of this Agreement, and has consented to the entry of this Agreement; and

ACCORDINGLY, IT IS HEREBY AGREED:

1. That Respondent's application for licensure shall continue with the prior activity issue hereby resolved.
2. That Respondent shall hereafter comply with all State and federal statutes and regulations governing money services business and money transmitter business.

3. That Respondent shall ensure that proper procedures are enacted to preclude any future non-compliance with the Act.

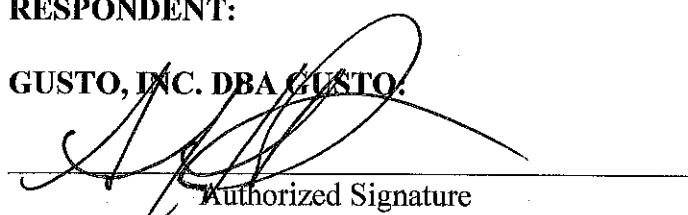
ACCEPTANCE AND CONSENT

1. Pursuant to §8-7A-19(a), Respondent shall pay to the State of Alabama an administrative assessment in the total sum of \$75,000.00, said funds to be tendered in certified funds contemporaneously with the entry of this Agreement.
2. Pursuant to §8-7A-19(b), Respondent shall pay to the Alabama Securities Commission, as partial reimbursement for the Commission's cost for investigating this matter, the sum of \$25,000.00, said funds to be tendered in certified funds contemporaneously with the entry of this Agreement.
3. Respondent shall donate the sum of \$25,000.00 to the Alabama Council on Economic Education, which is a local charitable organization approved by the Commission, with said funds to be tendered in certified funds contemporaneously with the entry of this Agreement.
4. That to the extent that Respondent's representations to the Commission as stated herein are true and correct, the terms set forth in this Agreement represent the complete agreement and settlement among the parties as to its subject matter, but in no way preclude legal proceedings by or on behalf of the Commission for acts and/or omissions not specifically addressed in this Agreement.

AGREED AND CONSENTED to on date indicated:

RESPONDENT:

GUSTO, INC. DBA GUSTO



Authorized Signature

Alyssa Harvey Dawson

Printed Name

Chief Legal Officer

Title

4/7/2022

Date

Entered at Montgomery, Alabama, this 18th day of April 2022.

ALABAMA SECURITIES COMMISSION
445 Dexter Avenue, Suite 12000
P.O. Box 304700
Montgomery, Alabama 36130-4700
(334) 242-2984



BY:

JOSEPH P. BORG
Director