

DIRK KEMPTHORNE  
GOVERNOR



GAVIN M. GEE  
DIRECTOR

DEPARTMENT OF FINANCE  
700 W. STATE STREET, 2ND FLOOR  
P. O. BOX 83720  
BOISE ID 83720-0031  
Website: <http://finance.state.id.us>

February 4, 2004

Re: Money Transmitter Licensing Inquiry

Dear M

Thank you for your letter of January 22, 2004. While the factual information provided in your letter is not exhaustive, we do believe that fund transmitters who accept fund transfer orders from Idaho residents via the Internet are engaging in a money transmission business within the meaning of the Idaho Money Transmitter Act. In this regard, we are of the view that such firms would need to be licensed in Idaho as a money transmitter in order to accept such orders for the transmittal or delivery of funds.

Should you have any questions or need additional information, please feel free to contact the undersigned directly at (208) 332-8080. We have included an Idaho money transmitter licensure package for your convenience and review.

Sincerely,

James A. Burns

Banks and Savings Banks  
Credit Unions  
Securities  
Money Transmitters

(208) 332-8005  
(208) 332-8003  
(208) 332-8004  
(208) 332-8003

PHONE:  
Fax:  
Director's Fax:  
Securities Fax:

(208) 332-8000  
(208) 332-8098  
(208) 332-8097  
(208) 332-8099

Supporting Services  
Mortgage Companies  
Finance Companies  
Collection Agencies

(208) 332-8001  
(208) 332-8002  
(208) 332-8002  
(208) 332-8002

January 22, 2004

RECEIVED  
JAN 30 2004

DEPARTMENT OF FINANCE

Att. : Mr. Gavin M. Gee  
Idaho Department of Finance  
PO Box 83720  
Boise, ID 83720

RE: Internet Transactions

Dear Director:

I would like to know if \_\_\_\_\_ a licensed Money Service Business in the States of NY, NJ, FL, MA, DC and RI and where we have physical locations, needs to be licensed in your State to perform transfers for persons located in Idaho, who would make money transfers through \_\_\_\_\_ (web site), and would make such transfers over the internet by using their own computer and would not be going to a physical location in Idaho.

In addition, \_\_\_\_\_ does not have physical locations, no employees and no agents in ID.

Sincerely yours,



**DIRK KEMPTHORNE**  
GOVERNOR



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October 1, 2002

Re: Money Service Licensing Requirements

Dear M

Your letter of September 20, 2002 seeks to confirm the need for a money transmission license where your client would be engaged in a consumer money transfer service. Further, you seek to confirm that a money transmission license would be the only license required in Idaho for a money services business.

Based on the information presented in your letter, it would appear appropriate that you client become licensed as a money transmitter in Idaho. However, based on the limited facts presented in your letter, we are unable to confirm that this would be the only license required (e.g., does the operator intend to engage in a payday lending business as a distribution mechanism?). Moreover, we are unable to comment on vendor or other operational permits that might be required at the local level.

Generally speaking, Idaho requires the licensure of payment instrument issuers and wire transmitters. We do not currently require the statewide licensure of check cashers unless they are engaged in consumer lending activities. Should you have any questions or need additional information, please feel free to contact the undersigned at (208) 332-8080.

Sincerely,

James A. Burns  
Idaho Dept. of Finance

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**EQUAL OPPORTUNITY EMPLOYER**

September 20, 2002

Via Facsimile 208-332-8099

Mr. Jim Burns  
Department of Finance  
P.O. Box 83720-0031  
Boise, Idaho 83720-0031

Re: Money Service Licensing Requirements

Dear Mr. Burns:

Our firm represents businesses planning to become involved in the sale of card-based stored value products in your state to be issued through a financial institution. Our clients, however, are not financial institutions. The stored value products may be reloadable general purpose purchasing cards or they may be used as part of a consumer money transfer service.

Please confirm that the Money Transmitter License is the only licensing requirement in Idaho for money service businesses.

Please contact the undersigned or \_\_\_\_\_ if you have questions or require further information.

Very truly yours,

For the Firm



August 12, 2002

RECEIVED  
AUG 19 2002  
DEPARTMENT OF FINANCE

James A. Burns  
Idaho Department of Finance  
700 W. State Street, 2<sup>nd</sup> Floor  
P.O. Box 63720  
Boise, Idaho 63720-0031

**Re: Idaho Activities of**

Dear Mr. Burns:

Thank you for your correspondence of May 16 and your clarification of July 12.

You asked us to describe in detail our Idaho business activities, in connection with the Idaho Department of Finance's concerns that our business model may require us to obtain a license in Idaho as a money transmitter. A description of our business activities in Idaho is set forth below.

is a privately held Delaware corporation with its principal place of business in . The company is a developer of payment and loyalty applications for financial institutions and retail merchants.

Presently, activities in Idaho are extremely limited. We are testing a new transaction processing system at a number of Boise-area restaurants. Separately, we are testing the same system in vending machines at a single Boise-area location. The transaction processing system being tested enables retail merchants to accept small payments from their consumers electronically. Once a consumer establishes a relationship, the consumer is provided with a radio frequency device (usually a small wand like that used by the Mobil SpeedPass system and similar to a pre-paid gift card offered by many merchants).

Based on the clarification of terms that you kindly provided, we do not believe that our activities in Idaho constitute a "non-proprietary" product, as each of the Idaho installations of the new transaction processing system is for the purchase of goods and services at "one corporate retailer".

We place the utmost importance on complying with federal and state regulations applicable to our business. Please contact us if you need further information about the company or its activities in the State of Idaho.

Sincerely,

**DIRK KEMPTHORNE**  
GOVERNOR



**GAVIN M. GEE**  
DIRECTOR

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July 12, 2002

Re: Idaho Activities

Dear Mr. \_\_\_\_\_

Thank you for your letter of June 11, 2002.

In regards to your request for a clarification of terms, we provide the following:

In the context of your business model (at least as we understand it at this time), a proprietary, pre-paid instrument might include pre-paid cash-cards/gift cards (including "wands" and other payment devices) that are good for the purchase of goods or services at only one corporate retailer (e.g., a Home Depot Gift Card). Conversely, if an electronic \_\_\_\_\_ instrument can be used for purchases at a variety of businesses, then we would presume that the product is non-proprietary to the establishment that honors the payment instrument.

It is our view that the electronic medium used by \_\_\_\_\_ whereby cash can be "loaded" to the electronic medium for later use to purchase goods or services, would be one example of a pre-paid purchase instrument.

Your prompt attention is greatly appreciated and we again request production of the information identified in our correspondence of May 16, 2002.

Sincerely,

James A. Burns  
Idaho Dept. of Finance

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June 11, 2002

James A. Burns  
Idaho Department of Finance  
700 W. State Street, 2nd Floor  
P.O. Box 63720  
Boise, Idaho 63720-0031

RECEIVED  
JUN 12 2002  
DEPARTMENT OF FINANCE

RE: Idaho Activities of

Dear Mr. Burns:

We have received your letter to us dated May 16, 2002 in which you requested that we describe our Idaho business activities in detail. Please understand that \_\_\_\_\_ fully intends to cooperate with your request for information, and as such, we respectfully ask for clarification of terms used in your letter.

In your letter, you state that the Idaho Department of Finance is of the formative view that "non-proprietary, pre-paid purchase instruments" fall within the context of a payment instrument as defined under the Idaho Money Transmitters Act.

We have not been able to find the definition of the terms "non-proprietary" or "pre-paid purchase instruments" in the Idaho Money Transmitters Act, and we have not been able to determine the intended meanings of these terms as they are used in your letter.

We respectfully request that you advise us as to the meanings of these terms, so that we can appropriately respond to your letter.

Sincerely,

**DIRK KEMPTHORNE**  
GOVERNOR



**GAVIN M. GEE**  
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May 16, 2002

Re: Idaho Activities

Dear Sir or Madam:

Based on our review of your website and other materials, we are concerned that \_\_\_\_\_ business model may require licensure in Idaho as a money transmitter. As it pertains to the statutes that this Department administers, we provide the following:

Idaho Code §26-2902(11) defines money transmission as the "sale or issuance of payment instruments or engaging in the business of receiving money for transmission or the business of transmitting money within the United States by any and all means..." Further, Idaho Code §26-2902(13) defines payment instrument to include any check, draft, money order, or other instrument or written order for the transmission or payment of money, sold or issued to one or more persons.

We are of the formative view that non-proprietary, pre-paid purchase instruments falls within the context of a payment instrument as defined under the Idaho Money Transmitters Act. As such, the offer, sale and use of such instruments in or into Idaho would require licensure as a money transmitter.

We hereby request that you respond in writing and describe your Idaho business activities in detail. You are invited to present any information that you are relying upon for not obtaining a money transmission license under the Idaho Money Transmitters Act.

Your prompt attention is greatly appreciated and your response is requested not later than June 14, 2002. Should you have any questions or need additional information, please feel free to contact the undersigned directly at (208) 332-8080.

Sincerely,

James A. Burns  
Idaho Dept. of Finance

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June 27, 2002

Re: Prepaid Debit Card Product

Dear Mr. \_\_\_\_\_:

On April 17, 2002, you provided this Department with an update of the business model being pursued by \_\_\_\_\_. In conjunction with our review of that correspondence, you later provided a third-party agency agreement to be used with debit card distribution entities. You also provided a draft copy of the agreement between \_\_\_\_\_ and \_\_\_\_\_ National Bank.

As noted in our communication of January 3, 2002, we are of the view that pre-paid debit cards / cash cards constitute a form of "payment instrument" pursuant to the Idaho Money Transmitters Act. In that letter, we also communicated our view that the offer and sale of such instruments in or into Idaho would invoke the licensure requirements of the Idaho Money Transmitters Act.

*New Business Model* – The new business model presented by \_\_\_\_\_ does not alter our view that pre-paid debit cards/cash cards remain a form of payment instrument as defined under the Idaho Money Transmitters Act. However, your recent communications provided additional clarity regarding the mechanics of how these payment instruments would be distributed in Idaho. Additionally, details were provided regarding the relationships that will exist between INB, \_\_\_\_\_, and the point-of-distribution retailers.

It has been represented that the cash/debit cards would be issued by \_\_\_\_\_, and a liability of \_\_\_\_\_ National Bank. You have also represented that local distributors of the cards would become an agent of \_\_\_\_\_ and an agent of INB. It is presumed that local distributors would not be financial institutions.

Idaho Code §26-2904 provides a limited number of exemptions from the provisions of the Idaho Money Transmitters Act. Idaho Code §26-2904(1)(d) extends an exemption from the statute for banks and other identified financial institutions, *"provided that they do not issue or sell payment instruments through authorized delegates who are not banks..."*

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Based solely on the facts presented in your letter and related materials, we believe that the debit/cash card distributors will be conducting a non-exempt money transmission business within the context of the Idaho Money Transmitters Act. As such, licensure would be required.

As you and I discussed, the local distributors could become individually licensed as money transmitters, or they might act as an authorized agent of a licensed money transmitter. Here, the local distributors would be exempt pursuant to Idaho Code §26-2904(2) as they would likely be “authorized representatives of a licensee, acting within the scope of authority conferred by a written contract conforming to...section §26-2918, Idaho Code...”

Should you have any questions or need additional information, please feel free to contact the undersigned directly at (208) 332-8080.

Sincerely,

James A. Burns  
Idaho Dept. of Finance

DIRK KEMPTHORNE  
GOVERNOR



GAVIN M. GEE  
DIRECTOR

STATE OF IDAHO  
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BOISE, IDAHO 83720-0031  
Website: [finance.state.id.us](http://finance.state.id.us)

January 3, 2002

Re: Prepaid Debit Card Product

Dear M

Your inquiry of December 18, 2001 seeks to determine what license, if any, might be required to offer a non-bank prepaid debit card to Idaho residents. As it pertains to the statutes that this Department administers, we provide the following:

***Money Transmission Issues***

Idaho Code §26-2902(11) defines money transmission as the "sale or issuance of payment instruments or engaging in the business of receiving money for transmission or the business of transmitting money within the United States by any and all means...".

Idaho Code §26-2902(13) defines payment instrument to include any check, draft, money order, or other instrument or written order for the transmission or payment of money, sold or issued to one or more persons.

Based solely on the facts presented in you letter, we are of the view that the debit card product falls within the context of a payment instrument as defined under the Idaho Money Transmitters Act. As such, the offer and sale of such instruments in or into Idaho would require licensure as a money transmitter.

***Other Issues In Need Of Consideration***

The Idaho Bank Act states that "it shall be unlawful for any person to engage in or transact any banking business" with out the proper authority (Idaho Code §26-202). Further, the Idaho Bank Act defines "banking business" to include "soliciting, receiving or accepting money or its equivalent on deposit as a regular business..." (Idaho Code §26-106).

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Based on your description, \_\_\_\_\_ should consider whether the Idaho Bank Act would apply to its activities. We have forwarded your correspondence to our banking division for their review and comment.

***Conclusion***

As noted herein, we are of the view that \_\_\_\_\_ will need to obtain an Idaho Money Transmitters license if they intend to offer the prepaid debit card in or into Idaho. Our money transmission application, surety bond and related materials can be found on our website at <http://finance.state.id.us/industry/forms.asp>.

Should you have any questions or need additional information, please feel free to contact the undersigned directly at (208) 332-8080.

Sincerely,

James A. Burns  
Idaho Dept. of Finance



DIRK KEMPTHORNE  
GOVERNOR



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February 13, 2002

Re:

Dear M

As a follow-up to our phone conversation and your letter of February 12, 2002, I wanted to clarify a few issues.

Based on our previous communications, \_\_\_\_\_ has agreed to become licensed as a Money Transmitter pursuant to the Idaho Money Transmitters Act. In this regard, we look forward to receiving this application in the near future.

I also wanted to make the record clear regarding our position on the outstanding banking issue. Idaho continues to assess state and federal developments in this area of law and will withhold any final determination of this issue at this time. In this regard, we look forward to the FDIC's response to \_\_\_\_\_ request for an advisory opinion.

Should you have any questions or need additional information, please feel free to contact the undersigned directly at (208) 332-8080.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Burns", with a long horizontal flourish extending to the right.

JAMES A. BURNS  
Idaho Dept. of Finance

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December 3, 2001

Re:

Dear M

Over the past months, we have conducted additional research into the issues identified in your letter of March 16, 2001. We are now prepared to continue our dialogue and provide the following information in connection with your communication.

After an extensive review of our records, I have been unable to locate your letter of July 11, 2000 or any response from this Department. However, I do note that we previously provided an opinion letter to your firm on November 9, 2000 for a set of facts that are virtually identical to the ones found in your request of July 11<sup>th</sup>. I have included a copy of the Firm's letter and our opinion in that matter for your review.

After careful consideration, we continue to believe that the previously issued opinion letter is the correct interpretation of our statute and that your client would need to be licensed as a money transmitter to conduct business with Idaho residents or entities.

### *Conclusion*

As noted herein, we are of the view that \_\_\_\_\_ will need to obtain an Idaho Money Transmitters license if they intend to act on the requests of Idaho residents or entities for money transmission

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services. Additionally, we believe that \_\_\_\_\_ will also be engaged in money transmission in Idaho to the extent that they wire transfer funds or maintain accounts for the Idaho "recipients" of money transmission transactions.

As to the securities issue, public offers of securities must be conducted by a registered broker-dealer and, in some remote circumstances, agents of the publicly registered issuer.

We request that you advise us regarding your client's intentions as to the conduct of their money transmission business in Idaho (if any).

Your prompt attention to this matter is greatly appreciated. If you believe that there is other information or evidence that should be considered in connection with our review of this inquiry, please forward your additional commentary or information prior to January 18, 2001. Should you have any questions or need additional information, please feel free to contact the undersigned directly at (208) 332-8080.

Sincerely,

JAMES A. BURNS  
Idaho Dept. of Finance

March 16, 2001

Department of Finance  
State of Idaho  
700 West State Street, 2nd Floor  
Boise, Idaho 83720-0031

Attention: Mr. James A. Burns

**Re:**

Dear Mr. Burns:

forwarded your letter dated February 14, 2001 to us for review and assistance in considering the various issues raised. As a preliminary note, has done its best to contact each state, including Idaho, whose laws and regulations potentially apply to activities. On behalf of which at the time operated the service, we sent a letter to the Idaho Department of Finance, dated July 11, 2000 (by facsimile and U.S. mail), to inquire about the applicability of Idaho's Money Transmitters Act (the "Act") and our interpretation of the applicability of the Act. Although we concluded that, at that time, the Act did not apply to activities, we offered to submit an application if the Department of Finance ultimately disagreed with our analysis. We received no reply to our letter, which was not unusual because several states were in the process of considering new regulations or laws related to electronic financial services and deferred consideration of our inquiry.

This letter is intended to address the issues raised in your February 14th letter and is organized in the same fashion as your letter.

Money Transmission Issues

As noted above, on July 11, 2000, we wrote to the Department of Finance with regard to whether the Money Transmitter Act would apply to the service. We explained, in that

Department of Finance  
 State of Idaho  
 March 16, 2001  
 Page 2

letter, why we believed it would not. A copy of that letter is attached. We believe the same analysis continues to apply, as has not changed is basic service.

Since that time has instituted a new program, called for individuals who wish to use to receive payments funded by credit cards in an aggregate amount of \$100 or more per month, or who desire to use certain premium features. As with any user, a user is not charged a fee of any kind for using to send money. A user is, however, charged a fee for receiving funds via. The fee is an attempt to recover costs, and varies depending on whether the payment transaction is funded by a credit card or by an electronic funds transfer from the payor's bank account. users are generally individuals who are not using principally for consumer purposes, but are instead using to receive payments for goods sold over the internet. users, in addition to not being subject to the \$100 credit card limit, are also eligible to use various premium features of the service that facilitate the integration of into the user's online auctions or website sales. Consumers who do not regularly receive funds through can continue to establish personal accounts, which are free for both sending and receiving payments.

Based upon our review of the Money Transmitter Act, we have determined that it does not apply to the program. Our conclusion is based upon the fact that, as before, does not charge a consumer a fee for sending (i.e., transmitting) money. Nor does have any offices or agents located in Idaho. Thus, as Idaho's statute does not address the program, it does not apply, and we do not believe that is required to be licensed under the Money Transmitter Act. As noted in the July 2000 letter, however, will promptly submit an application under that Act to the Department of Finance if you conclude after reviewing this additional information that a license is required.

Department of Finance  
 State of Idaho  
 March 16, 2001  
 Page 3

### Prospective Banking Issues

Under the definition of "banking business" cited in your letter (Idaho Code §26-106), in order for the service to constitute banking, money within the service would have to qualify as a "deposit." The Idaho Code appears to track federal law with respect to banking definitions. The definitions set forth in the Federal Deposit Insurance Act (the "FDIA"), including the definition of "deposit" set forth in Section 3(1) of the FDIA, are consistent with many states and appear to be consistent with Idaho law as well. According to the Federal Deposit Insurance Corporation (the "FDIC"), stored value products such as the service do not constitute "deposits" for purposes of the FDIA. Thus, as transactions under the service do not constitute "deposits," the service does not constitute banking.

As is expressly set forth on the website, the service does not hold itself out as a bank or as providing any banking services (see the "Terms of Use" on the home page). Customers are not required to carry any balance to use the service, and many do not, choosing instead to fund payment transactions as they go, from a credit card or bank account unaffiliated with the service. For those customers who choose to carry balances in the system, the service has established a sweep arrangement under which funds are invested daily in shares of the service, an SEC-registered non-bank investment product that is offered through a prospectus and distributed by the service. For those customers who choose not to participate in the money market sweep, any balances they carry with the service (average balance is approximately \$15) function as a stored value product, where customers choose to pre-fund a small balance so it is available at any time for spending, without the delay of bank-funded transfers or the debt incurred with a credit card transfer.

As a stored value computer network payment product, the service does not share the common indicia of bank products. It does not constitute an escrow service or a trust account. Moreover, and most significantly, it does not constitute a "deposit" for purposes of federal banking law.

In its analysis of stored value payment products, the Federal Deposit Insurance Corporation ("FDIC") has identified as the "primary legal issue" the question of whether or not the funds underlying the stored value system constitute "deposits" within the meaning of Section 3(1) of the Federal Deposit Insurance Act, 12 U.S.C. §1813(1) ("FDIA"). Opinion No. 8, at 6.<sup>2</sup>

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<sup>1</sup> "In such systems funds may be accessed using a personal computer, and transferred to individuals, merchants, or companies." See 61 Fed. Reg. 40489 (Aug. 2, 1996), available for viewing or download at <http://www.fdic.gov/deposit/deposits/stored/cgo-08.html>. ("Opinion No. 8"), at 2.

Department of Finance  
 State of Idaho  
 March 16, 2001  
 Page 4

In the opinion of the FDIC, in order to constitute a deposit under Section 3(1), the funds in question must represent: (1) An unpaid balance of money or its equivalent received or held by an institution; (2) in the usual course of business; and (3) either (a) the institution must have given or be obligated to give credit to a commercial, checking, savings, time, or thrift account; or (b) the funds must be held for a special or specific purpose. *Id.* at 12.

Under these guidelines, the FDIC has determined that stored value payment systems do not constitute "deposits" under the FDIA. *See generally*, Opinion No. 8. The FDIC's determination was based upon the nature of the stored value payment product as a non-deposit product. When a user loads value onto a stored value payment product, he or she "may have no idea as to what transactions he will use the card to engage in" – thus not meeting the requirement that a payment be received "for a special or specific purpose." *Id.* at 6, 23. Moreover, the funds directed to do not create an "obligat[ion] to give credit to a commercial, checking, savings, time, or thrift account." *Id.* at 6, 16-17. While Opinion No. 8 focused on stored value card products, the FDIC noted that "in general the principles discussed herein would apply equally to stored value computer network payment products." *Id.* at 6.

As the above demonstrates, stored value payment transactions do not constitute "deposits" under federal law because they do not create an "obligat[ion] to give credit to a commercial, checking, savings, time, or thrift account." As a result, the service does not constitute "banking business" under Idaho law.

\* \* \* \* \*

We trust that this additional information is useful to you in your further review of activities and that it relieves your preliminary concerns expressed in your letter. We would be pleased to discuss any aspect of these issues further at your convenience.

Very truly yours.

cc:

(...continued)

<sup>2</sup> The FDIC cited Opinion No. 8 in Op. Gen Counsel 97-4 (May 12, 1997), holding that the payments made via internet payment systems "provid[ing] a method of payment from one personal computer to another over the Internet" do not constitute "deposits" under the FDIA.

July 11, 2000

BY FAX AND U.S. MAIL (208) 332-8098

State of Idaho  
Department of Finance  
Financial Institution Bureau  
P.O. Box 83720  
Boise, ID 83720-0031

Re: Idaho Money Transmitters Act

Dear Sir or Madam:

As part of our representation of \_\_\_\_\_, a Delaware corporation whose headquarters are in \_\_\_\_\_, we are in the process of determining whether the money transmission and check sale laws of the several states apply to the \_\_\_\_\_ service offered by \_\_\_\_\_

The \_\_\_\_\_ service is a unique consumer-to-consumer payment service offered free of charge to United States residents who have a working e-mail address. Using the \_\_\_\_\_ website \_\_\_\_\_ a consumer ("Sender") can send a payment to another consumer ("Recipient") by using his or her Visa or MasterCard, or from an ACH debit of his or her bank account, with the requirement that the payment be directed to the Recipient's e-mail address.<sup>3</sup> The Sender is given immediate notification as to whether the transaction is approved or declined by Visa or MasterCard. Contemporaneous with transaction approval, the Recipient is notified by e-mail that the Sender has sent a payment. The Recipient is then asked whether he or she would prefer that \_\_\_\_\_ (a) deposit the payment directly into the Recipient's United States bank \_\_\_\_\_

<sup>3</sup> When the Sender uses Visa or MasterCard to generate the \_\_\_\_\_ transaction, the funds transferred are protected by all Visa or MasterCard fraud policies, and \_\_\_\_\_ is required to abide by all Visa and MasterCard rules. When the sender authorizes the ACH debit of his or her account, the transaction is protected by federal law, as well as by NACH Rules.

July 11, 2000  
Page 2

account; (b) send the Recipient a check in the amount of the payment; or (c) keep the money on account so that the Recipient may use the balance to send a payment to another consumer.

is widely recognized as a cost-effective, secure and expeditious method for sending consumer-to-consumer payments. Since its introduction in late 1999, has gained the support of the on-line auction house which recommends as a payment method for its auction participants.

conducts the entirety of its operations via the internet from its headquarters in It does so without any "delegates," "agents" or "licensees" - i.e., there are no physical offices in Idaho or any state where a consumer can go to initiate a transaction.

We have reviewed the Money Transmitter Act, and believe that, as it is currently written, it does not apply to activities. This is because, although Idaho residents may use services as either the Sender or the Recipient, none of the activities are performed in Idaho, and no fee is charged to the consumer. However, we would appreciate your confirmation as to whether or not the Money Transmission subtitle applies, so that may submit a Money Transmission application if you deem that the subtitle applies to activities.

If you have any questions regarding the above, please do not hesitate to contact me at I look forward to receiving a response from your office regarding this matter.

Thanking you in advance for your prompt attention to this matter, I am,

Very truly yours,

DIRK KEMPTHORNE  
GOVERNOR



GAVIN M. GEE  
DIRECTOR

STATE OF IDAHO  
DEPARTMENT OF FINANCE  
700 W. STATE STREET, 2ND FLOOR  
P. O. BOX 83720  
BOISE ID 83720-0031  
[www.state.id.us/finance/dof.htm](http://www.state.id.us/finance/dof.htm)

February 14, 2001

Re: Idaho Activities

Dear Sir or Madam:

The Idaho Department of Finance is charged with the administration and enforcement of the Idaho Money Transmitters Act, the Idaho Securities Act and Idaho banking statutes. In this regard we have regulatory oversight responsibilities for many financial services activities.

In a recent review of an on-line Idaho money transmission operation, a banner for \_\_\_\_\_ was displayed. In researching this linkage, the \_\_\_\_\_ com site was also reviewed.

*Money Transmission Issues* - Idaho Code §26-2902(11) defines money transmission as the "sale or issuance of payment instruments or engaging in the business of receiving money for transmission or the business of transmitting money within the United States by any and all means..."

Based on your website, it does appear that your activities fall within the definition of "money transmission".

Idaho Code §26-2903(1) states that "no person...shall engage in the business of money transmission without a license as provided in accordance with the provisions of this chapter." To the extent that you have conducted monetary transmission business with or to Idaho residents or entities, you may have operated in violation of the Idaho Money Transmitters Act.

Banks & Savings Banks (208) 332-8005  
Credit Unions (208) 332-8003  
Securities (208) 332-8004  
Money Transmitters (208) 332-8004

PHONE: (208) 332-8000  
FAX: (208) 332-8098  
Director's Fax: (208) 332-8097  
Securities Fax: (208) 332-8099

Supporting Services (208) 332-8001  
Mortgage Companies (208) 332-8002  
Finance Companies (208) 332-8002  
Collection Agencies (208) 332-8002

EQUAL OPPORTUNITY EMPLOYER

**Prospective Banking Issues** - The Idaho Bank Act states that “it shall be unlawful for any person to engage in or transact any banking business” without the proper authority (Idaho Code §26-202). Further, the Idaho Bank Act defines “banking business” to include “soliciting, receiving or accepting money or its equivalent on deposit as a regular business...” (Idaho Code §26-106).

Coincident with the offer of the \_\_\_\_\_ Fund, it appears that you are carrying funds held on account with \_\_\_\_\_ “the money in your \_\_\_\_\_ account”). In this regard, it may be possible that \_\_\_\_\_ is conducting “banking business” as defined under the Idaho Bank Act.

**Summary and Request For Information** – As noted herein, we are concerned that \_\_\_\_\_ may be operating in violation of various Idaho statutes. As to the Idaho Securities Act, we believe that broker-dealer registration is required due to the public nature of the securities offering.

We request that you write us and provide detailed information regarding any financial services business conducted by your firm with Idaho residents or entities. We also invite you to provide any legal arguments that you are relying upon in not registering as a broker-dealer in Idaho. To the extent that you have transmitted funds into or out of Idaho, please provide any legal arguments that you are relying upon for not registering under the Idaho Money Transmitters Act.

Your prompt attention is appreciated and your written response is requested not later than March 16, 2001. If you have any questions or need additional information, please contact the undersigned directly at (208) 332-8080.

Sincerely,

James A. Burns  
Idaho Dept. of Finance



**DIRK KEMPTHORNE**  
GOVERNOR



**GAVIN M. GEE**  
DIRECTOR

**STATE OF IDAHO**  
**DEPARTMENT OF FINANCE**  
700 W. STATE STREET, 2ND FLOOR  
P. O. BOX 83720  
BOISE ID 83720-0031  
[www.state.id.us/finance/dof.htm](http://www.state.id.us/finance/dof.htm)

March 15, 2001

Re: Idaho Money Transmission Activities

Dear M

Thank you for your letter of February 19, 2001 and your stated intention to seek licensure under the Idaho Money Transmitters Act.

As you may now know, the Idaho Money Transmitter Act provides for various potential penalties where the operator acts, or acted, in violation of the statute. In this regard, the Department attempts to gain a full understanding of the conduct in question and to assess whether the violations were conducted with knowledge or intent as to the state statute. Obviously, the more information we have, the better prepared we are to make a judgment as to whether enforcement action is appropriate. For example, we would consider it important to know whether [redacted] has outstanding obligations to Idaho users of its services (or whether any such obligations present significant risks to the public).

You have voiced some concern for the privacy promised by [redacted] to customers that use this service. We are cognizant of your client's sensitivity to the confidentiality of their dealings with your firm, but are also committed to understanding the nature and extent of the business that has been conducted thus far.

Based on the representations made and the concerns voiced in your letter, we are willing to accept general written representations by you in lieu of specific information on your clients. In this regard, we would like for you to address the following:

- a) The number of transactions that have occurred since the service-began being offered,
- b) the number of clients that [redacted] has provided services to,
- c) the amount of any customer related liabilities (e.g., un-cashed payment instruments) currently carried by [redacted] and
- d) the anticipated timeframe for the filing of an application for licensure as a money

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Finance Companies (208) 332-8002  
Collection Agencies (208) 332-8002

EQUAL OPPORTUNITY EMPLOYER

transmitter in Idaho.

We hope that the above explanation provides you with some insight regarding our request for information and that the amended request for information provides an acceptable resolution of your concerns. Your prompt attention is greatly appreciated and your written response is requested not later than March 28, 2001. Should you have questions or need additional information before providing your response, please feel free to contact the undersigned directly at (208) 332-8080.

Sincerely,

JAMES A. BURNS  
Idaho Dept. of Finance

February, 19<sup>th</sup> 2001

Jim Burns  
State of Idaho  
Dept. of Finance  
PO Box 83720  
Boise ID 83720

RECEIVED

FEB 21 2001

DEPARTMENT OF FINANCE

Mr. Burns, I am in receipt of your letter dated February 14, 2001.

We, at \_\_\_\_\_ were completely unaware of the laws governing "money transmissions", and are quite dismayed to find this out after the fact of starting our web-site. I do not currently know what regulations would apply to our service business, and will meet with an attorney sometime this week to discuss the applicable law. We met with our former attorney Lee Dillion of Dillion, Bosch Daw & Bock on more than one occasion. At this stage we were conducting research and I with my partner present had a list of questions regarding our business, and the very first question that we asked was concerning the legality of what our business does? I specifically asked him before the web-site was up, before I had invested thousands of dollars of my own personal money in the corporation if what we were doing was legal, and if there were any regulations that would apply either from the State or Federal level of government. He answered all of the questions with a "no", which in turn led us to believe that what we were doing was OK. There are many similar web-sites on the Internet that do the same function more or less as we do, for example, Bidpay.com, Paypal.com and Sendmoneyorder.com. We are a service web-site, we simply provide a service, we are not a bank, we are catering to a unique niche of society.

I did not receive any of this information from any of the numerous brochures that the State of Idaho provided when we filed our business name and incorporated as well.

We intend to apply for the appropriate license, as I have already called and requested the "information packet" to be sent to me. I have yet to speak to another attorney about where we stand, as Mr. Dillion is no longer with his firm. I can assure you that you will have our complete cooperation in any matters if you are willing to work with us. If you wish for us to **cease** doing business, until such matters can be resolved, we will **voluntarily** do so, as our business is not yet profitable.

In your letter you state "It is hereby requested that you provide in writing, a detailed accounting of your Idaho money transmission activities within or from this state. To the extent that \_\_\_\_\_ has facilitated money transmission or the issuance of payment instruments, please provide detailed information regarding the dates, amounts and dollar value of such transactions. Also please provide information regarding your claim that "Every money transfer that is processed by \_\_\_\_\_ is 100% insured up to the deposited amount... This is a bonded service that protects every valuable customer"."

To this I would say that the customer is protected 3 ways 1. They can issue a charge back from their credit card company. 2. The money order is traceable, and if not cashed refundable. 3. The customer's money is insured by the FDIC, the money goes straight into our business account. 4. We are purchasing an employee dishonesty bond that insures the money if any one is convicted of theft from the company. Currently our business is operating at a loss. We are not even averaging one transaction per day. Until I can give you specific numbers on our business, could you please give me a reason for requesting such information, as we have pledged to our customers to keep all customer information in strict confidence. (See web-site).

Upon speaking to you, as I have been unable to reach you since the receipt of the above referenced letter, maybe you will be better able to explain what we as a corporation need to do to come into full compliance with the law. I have many questions for you, and intend to meet with an attorney sometime this week so he can let me know what else I need to do and answer any further questions.

I know that it is in the State's best interest to work with legitimate businesses -to have them come into compliance with the law rather than to try approach them with hostility, and put them out of business.

Thank you,

**DIRK KEMPTHORNE**  
GOVERNOR



**GAVIN M. GEE**  
DIRECTOR

**STATE OF IDAHO**  
**DEPARTMENT OF FINANCE**  
700 W. STATE STREET, 2ND FLOOR  
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BOISE ID 83720-0031  
[www.state.id.us/finance/dof.htm](http://www.state.id.us/finance/dof.htm)

February 14, 2001

Re: Idaho Money Transmission Activities

Dear M

The Idaho Department of Finance is charged with the administration and enforcement of the Idaho Money Transmitters Act. In this regard, we license and regulate any persons or entities engaged in money transmission activities.

Idaho Code §26-2901(11) defines money transmission as the "sale or issuance of payment instruments or engaging in the business of receiving money for transmission or the business of transmitting money with the United States by any and all means..."

Based on the above definition, a recent article in the Idaho Business Review, and a review of the \_\_\_\_\_ website, it appears that your activities fall within the definition of "money transmission".

Idaho Code §26-2903(1) states that "no person...shall engage in the business of money transmission without a license as provided in accordance with the provisions of this chapter." In this regard, it appears that you may be operating in violation of the Idaho Money Transmitters Act. For you information, violations of the act can result in civil and/or criminal penalties.

It is hereby requested that you provide, in writing, a detailed accounting of your Idaho money transmission activities within or from this state. To the extent that \_\_\_\_\_ has facilitated money transmission or the issuance of payment instruments, please provide detailed information regarding the dates, amounts and dollar value of such transactions. Also please provide information regarding your claim that "Every money transfer that is processed by \_\_\_\_\_ is 100% insured up to the deposited amount... This is a bonded service that protects every valuable customer".

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Mortgage Companies (208) 332-8002  
Finance Companies (208) 332-8002  
Collection Agencies (208) 332-8002

**EQUAL OPPORTUNITY EMPLOYER**

Your prompt attention is greatly appreciated and your written response is requested not later than March 5, 2001. Should you have questions or need additional information before providing your response, please feel free to contact the undersigned directly at (208) 332-8080.

Sincerely,

JAMES A. BURNS  
Idaho Dept. of Finance



DIRK KEMPTHORNE  
GOVERNOR



GAVIN M. GEE  
DIRECTOR

STATE OF IDAHO  
DEPARTMENT OF FINANCE  
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BOISE ID 83720-0031  
[www.state.id.us/finance/dof.htm](http://www.state.id.us/finance/dof.htm)

November 9, 2000

### Request For Opinion

Dear M

Your communication of August 21, 2000 regarding \_\_\_\_\_ has been referred to me for response. In connection with your letter, we provide the following:

#### *Money Transmitter Issues*

Your letter seeks to confirm that the Idaho Money Transmitters Act does not apply to a \_\_\_\_\_ operation. In this regard, your formative view is that "although Idaho resident may use \_\_\_\_\_ service, none of \_\_\_\_\_ activities are performed in Idaho, and no fee is charged to the consumer".

Idaho Code §26-2902(11) defines money transmission as the "sale or issuance of payment instruments or engaging in the business of receiving money for transmission or the business of transmitting money within the United States by any and all means...".

Your description of the \_\_\_\_\_ business operations (and our corresponding review of their website) clearly falls within the definition of "money transmission". Moreover, your communication does not appear to argue this point. In this regard, we presume that you agree that money transmission, as defined under Idaho statute, is occurring.

Having concluded that money transmission is occurring, the only issue remaining is whether an Idaho money transmitters license is needed to conduct the \_\_\_\_\_ business.

Idaho Code §26-2903(1) states that "no person... shall engage in the business of money transmission without a license as provided in accordance with the provisions of this chapter." §26-2903(2) further clarifies that a "licensee may conduct its business in the state at one (1) or more locations, directly or indirectly owned, or through (1) or more authorized representatives...".

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It is our view that Idaho Code §26-2903(2) merely acknowledges that a licensee “may” conduct business in Idaho when located in Idaho or through authorized representatives located in this state. We do not view this language as limiting licensure solely to those businesses that have a physical presence in this state. To do so would create an “un-level playing field” where certain classes of money transmitters might circumvent the provisions of the statute and the costs associated therein.

You state that although an “Idaho resident may use \_\_\_\_\_ service, none of \_\_\_\_\_ activities are performed in Idaho, and no fee is charged to the consumer”. We note that the Idaho Money Transmitter Act does not require that a fee or compensation element be present in order for the licensure provisions to be applicable. As such, it appears that the only way that \_\_\_\_\_ might be excluded from Idaho’s licensure provisions is to claim that \_\_\_\_\_ money transmission business is not being conducted or otherwise transmitted into or from Idaho. In summary, you appear to argue that this Department may not be able to assert jurisdiction over the activities of the business model.

The \_\_\_\_\_ website indicates that \_\_\_\_\_ services are currently not available to persons living outside of the United States and that money cannot be sent internationally through the website. Indeed, \_\_\_\_\_ is currently available only to U.S. residents”. The implication of this representation is that Idaho residents or entities are free to transmit funds through \_\_\_\_\_ and its web-driven business model.

To the extent that \_\_\_\_\_ does not transmit money into Idaho, or deliver funds emanating from an Idaho resident, an argument may be made that the Idaho Money Transmitter Act should not be applied. However, it is our view that once Idaho residents or entities engage in the transmission or receipt of funds through \_\_\_\_\_ money transmission is occurring that would be subject to the licensure requirement of the Idaho Money Transmitters Act. In this regard, the Act does not appear to focus on the means of transmission, or the origin of the money trail. The statute merely requires licensure of anyone “engaged” in the business of transmitting money. Obviously, more contacts and transactions conducted with Idaho residents or entities would further support our claim of jurisdiction.

As described herein, we do not concur that \_\_\_\_\_ can facilitate the transmission of funds that are associated with Idaho residents or entities without the benefit of licensure under the Idaho Money Transmitters Act.

### ***Other Issues In Need Of Consideration***

Idaho Bank Act - Your letter notes that beneficiaries (recipients) of funds through the \_\_\_\_\_ system are asked “whether he or she would prefer that \_\_\_\_\_ (a) deposit the payment directly into the Recipient’s United States bank account; (b) send the Recipient a check in the amount of the payment; or (c) keep the money on account so that the Recipient may use the balance to send a payment to another customer.”

The Idaho Bank Act states that “it shall be unlawful for any person to engage in or transact any banking business” with out the proper authority (Idaho Code §26-202). Further, the Idaho Bank Act

defines "banking business" to include "soliciting, receiving or accepting money or its equivalent on deposit as a regular business..." (Idaho Code §26-106).

Based on your description, [redacted] should consider whether the Idaho Bank Act would apply to [redacted] activities as they relate to the retention of funds a) during the pendency of check issuances to recipients (apparently up to 7 days after the recipient requests a check), or b) your description that [redacted] will offer to "keep the money on account" for future payment to others.

Idaho Collection Agency Act—Our review of the [redacted] website reveals that users of the [redacted] system might be used to "ask your friends for money they owe you". These transactions use [redacted] as a gateway to send apparent collection notices (personalized messages can be sent along with the "request" for money) to debtors of the [redacted] client.

In this regard, we are concerned that [redacted] may be offering services to Idaho residents or businesses that falls within the ambit of the Idaho Collection Agency Act. More specifically, Idaho Code §26-2223 states that "No person shall without complying with the terms of this act and obtaining a permit from the director: Engage, either directly or indirectly in this state in the business of collecting or receiving payment for others of any account, bill, claim or indebtedness."

### **Conclusion**

As noted herein, we are of the view that [redacted] will need to obtain an Idaho Money Transmitters license if they intend to act on the requests of Idaho residents or entities for money transmission services. Additionally, we believe that [redacted] will also be engaged in money transmission in Idaho to the extent that they wire transfer funds or maintain accounts for the Idaho "recipients" of money transmission transactions.

As it relates to the Idaho Bank Act and the Idaho Collection Agency Act, we ask that you review these issues and provide us with your views regarding these matters.

For your convenience, we have included a money transmitter license application and related materials.

Your prompt attention is greatly appreciated, and your response is requested not later than December 8, 2000. Should you have any questions or need additional information, please feel free to contact the undersigned directly at (208) 332-8080.

Sincerely,

JAMES A. BURNS  
Idaho Dept. of Finance

August 21, 2000

VIA FACSIMILE AND U.S. MAIL – 208-332-8098

State of Idaho  
Department of Finance  
Financial Institution Bureau  
P.O. box 83720  
Boise, ID 83720-0031

RECEIVED  
AUG 25 2000  
DEPARTMENT OF FINANCE

Re: Idaho Money Transmitters Statute

Dear Sir or Madam:

As part of our representation of \_\_\_\_\_ a  
Delaware corporation whose headquarters are in \_\_\_\_\_ we are in the process of determining  
whether the money transmission and check sale laws of the several states apply to the  
service it has offered since March of 2000.

The \_\_\_\_\_ service is a consumer-to-consumer payment  
service offered free of charge to United States residents who have a working e-mail address.  
Using the \_\_\_\_\_ website \_\_\_\_\_, a consumer (“Sender”) can send a payment to  
another consumer (“Recipient”) by using his or her Visa, MasterCard, or American Express card  
number with the requirement that the payment be directed to the Recipient’s e-mail address.<sup>1</sup>  
The Sender is given immediate notification as to whether the transaction is approved or declined  
by Visa, MasterCard or American Express. Contemporaneous with transaction approval, the  
Recipient is notified by e-mail that the Sender has sent a payment. The Recipient is then asked  
whether he or she would prefer that \_\_\_\_\_ (a) deposit the payment directly into the  
Recipient’s United States bank account; (b) send the Recipient a check in the amount of the

<sup>1</sup> Because the Sender uses Visa, MasterCard or American Express to generate the \_\_\_\_\_ transaction,  
the funds transferred are protected by all Visa, MasterCard or American Express fraud policies.

State of Idaho  
Department of Finance  
August 21, 2000  
Page 2

payment; or (c) keep the money on account so that the Recipient may use the balance to send a payment to another consumer. \_\_\_\_\_ is widely recognized as a cost-effective, secure and expeditious method for sending consumer-to-consumer payments.

\_\_\_\_\_ conducts the entirety of its \_\_\_\_\_ perations via the internet from its headquarters in \_\_\_\_\_. It does so without any "delegates," "agents" or "licensees" – i.e., there are no physical offices in Idaho or any state where a consumer can go to initiate a \_\_\_\_\_ ransaction.

We have reviewed the Money Transmitters Act and believe that, as it is currently written, it does not apply to \_\_\_\_\_ activities. Our conclusion is based upon the fact that, although Idaho resident may use \_\_\_\_\_ service, none of \_\_\_\_\_ activities are performed in Idaho, and no fee is charged to the consumer.

In order to complete our inquiry into licensing requirements for Idaho, we would appreciate your written confirmation as to whether or not the Money Transmitters Act, as currently written, applies to \_\_\_\_\_ service. If you have any questions regarding the above, please do not hesitate to contact me at \_\_\_\_\_. I look forward to receiving a response from your office regarding this matter.

Thanking you in advance for your prompt attention to this matter, I am,

Very truly yours,