



IDAHO
DEPARTMENT OF FINANCE

DIRK KEMPTHORNE
Governor

GAVIN M. GEE
Director

November 7, 2005

Re: Interpretive Request

Dear

Your letter to Michael Larson dated October 19, 2005 has been referred to the Department of Finance Securities Bureau for further review. In connection with your inquiry, we provide the following.

Background - As noted in your letter, () anticipates offering Visa Gift Cards for sale. Such cards will allow the consumer to spend the value underlying the gift card anywhere that Visa is accepted. The gift cards will not be reloadable and cannot be used to obtain cash at a bank or through an ATM.

Applicability of Idaho Money Transmitters Act (IMTA) -- The IMTA 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...by any and all means including, but not limited to, payment instrument, wire, facsimile or electronic transfer (Idaho Code §26-2901).

The statute further defines payment instrument to include any check, draft, money order, traveler's check *or other instrument for the transmission or payment of money*, sold or issued to one or more persons, whether or not such instrument is negotiable (emphasis added).

For your information, the Department is of the opinion that stored value instruments that use an "open" architecture are payment instruments as defined in the IMTA. By open architecture, we mean that the stored value / cash card can be used at a wide variety of merchants that are unrelated to one another, but for their independent contractual relationship with the card provider (Visa and/or MetaBank). In such a context, it is not necessary that the card be reloadable or be redeemable for cash¹.

Based on the above, we believe that the IMTA applies to the retail distribution of the Visa Gift Cards in Idaho. Having reached this conclusion, one must consider whether licensure under the

¹ Indeed, since the cards are not reloadable, it appears possible that consumers intent on obtaining cash could make purchases only to return the purchased items for cash.

IMTA is appropriate.

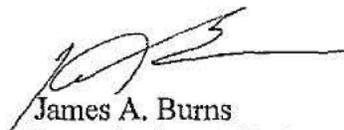
Issue of Licensure – Idaho Code §26-2904 provides various exemptions from the provisions of the IMTA. More specifically, §26-2904(d) states that the IMTA shall not apply to “Banks, credit unions, savings and loan associations, savings banks or mutual banks organized under the laws of any state or the United States, **provided that they do not issue or sell payments instruments through authorized delegates who are not banks, credit unions, savings and loan associations, savings banks or mutual banks**” (emphasis added)².

Based on the above criteria, we do not believe that _____ can market the payment instruments without the benefit of licensure under the IMTA. More specifically, we cannot at this time agree that _____, even where acting as an agent of _____ is entitled to the exclusion for financial institutions. As to _____, the bank will be offering payment instruments through an authorized delegate that is not a financial institution and thereby not within the ambit of the exclusionary language of §26-2904.

Conclusion - As noted in the preceding paragraph, we believe that the proposed business model will require that at least one entity become licensed under the IMTA. If you would like to discuss the various licensing models that might be applied given the described business model, please feel free to contact the undersigned directly at (208) 332-8080.

Should you have any questions or comments, or wish to discuss this matter in greater detail, please also contact me directly.

Sincerely,


James A. Burns
Investigations Chief

² While the statutory exclusion in §26-2904 directs itself to “payment instruments”, the definition of money transmission under the IMTA includes “the business of...transmitting money...by any and all means including, but not limited to, payment instrument, wire, facsimile or electronic transfer”. Based on this language, we believe that the exclusion found at §26-2904(d) would include any form of “money transmission” as defined under the IMTA.



IDAHO
DEPARTMENT OF FINANCE

DIRK KEMPTHORNE
Governor

GAVIN M. GEE
Director

October 27, 2005

SENT VIA FACSIMILE

AND U.S. MAIL

Re: Visa Gift Cards

Dear M.

I have been out of the office for the past week, and wanted to let you know that I am in receipt of your letter of October 19th regarding proposed Visa gift cards.

To avoid any misunderstanding, the Idaho Department of Finance has not issued a tentative approval of Visa Gift Card proposal. Inasmuch as regulation of the Idaho Money Transmitters Act comes under the Department's Securities Bureau, I have forwarded your letter to the Idaho Department of Finance Securities Bureau Chief, Marilyn Chastain. While the Department does its best to respond to such requests as quickly as possible, approval of any particular program should not be presumed in the absence of a definitive written statement by the Department to that effect.

Thank you for contacting the Idaho Department of Finance.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Larsen".

Michael Larsen
Consumer Finance Bureau Chief
Idaho Department of Finance

CONSUMER FINANCE BUREAU
700 West State Street, 2nd Floor, Boise, ID 83702
Mail To: P.O. Box 83720, Boise ID 83720-0031
Phone: (208) 332-8002 Fax: (208) 332-8099
<http://finance.idaho.gov>

October 19, 2005

Mr. Michael Larsen
Idaho Department of Finance
Consumer Finance Bureau
700 West State Street
Boise, ID 83720-0031

Via facsimile to (208) 332-8098

Re:

Approval for Sale of VISA® Gift Cards

Dear Mr. Larsen:

This letter is to confirm our earlier communication regarding our proposal to sell Visa Gift Cards in the centers of _____ a licensee of your Department. It was our understanding that this new product offering tentatively met with your approval, subject to the provision of additional information to you.

We plan to sell the Visa Gift Cards (the "Cards") to anyone interested in purchasing such Cards for gift-giving or other personal use, regardless of whether they do business with us in any other capacity. The Cards we propose offering can be for any amount up to \$500 and will be sold for a price of less than \$5.00 per Card.

The Visa Gift Card can be used at any retailer where Visa is accepted and has all the benefits of the Visa network (such as lost/stolen protection), making it an excellent option for gift giving. Once the recipient has spent the amount of the Card, the Card will no longer be operational and cannot be reloaded. Additionally, the Card cannot be used to redeem cash at a bank or other financial institution, and will not be operational at any automated teller machines. The Cards are issued by _____ South Dakota federally chartered savings bank regulated by the Office of Thrift Supervision (OTS). _____ receives and administers the funds on the Cards. We will be appointed by _____ as an agent to sell the Cards.

The sale of a Visa Gift Card will be a completely separate transaction from any payday advance transaction conducted at our center, with separate books and records. The two transactions will be completely independent of each other.

Thank you for the opportunity to explain the Cards to you. If the above does not meet with your approval, please let us know. Otherwise, we will plan to begin selling these Cards in our centers in about 30 days. Please let us know if you have any questions or need any additional information by calling _____.

Respectfully,

Compliance Specialist



IDAHO
DEPARTMENT OF FINANCE

DIRK KEMPTHORNE
Governor

GAVIN M. GEE
Director

November 1, 2005

Re: Interpretive Request

Dear M

In response to your licensing inquiry dated October 19, 2005, we provide the following.

Background - As noted in your letter, _____ anticipates offering prepaid debit cards on behalf of the First Bank of Delaware. These cards will be made available to consumers directly through _____ or through "contracted delegates" on behalf of the issuer.

Applicability of Idaho Money Transmitters Act (IMTA) - The IMTA 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...by any and all means including, but not limited to, payment instrument, wire, facsimile or electronic transfer (Idaho Code §26-2901).

The statute further defines payment instrument to include any check, draft, money order, traveler's check *or other instrument for the transmission or payment of money*, sold or issued to one or more persons, whether or not such instrument is negotiable (emphasis added).

For your information, the Department is of the opinion that stored value instruments that use an "open" architecture are payment instruments as defined in the IMTA. By open architecture, we mean that the stored value / cash card can be used at a wide variety of merchants that are unrelated to one another. In the present instance, the cards are also reloadable and can access ATMs for cash.

Based on the above, we believe that the IMTA applies to the retail distribution of the pre-paid debit cards in Idaho. Having reached this conclusion, one must consider whether licensure under the IMTA is appropriate.

Issue of Licensure - Idaho Code §26-2904 provides various exemptions from the provisions of the IMTA. More specifically, §26-2904(d) states that the IMTA shall not apply to "Banks, credit unions, savings and loan associations, savings banks or mutual banks organized under the laws of any state or the United States, **provided that they do not issue or sell payments instruments**

IDAHO DEPARTMENT OF FINANCE
700 West State Street, 2nd Floor, Boise, ID 83702
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Phone: (208) 332-8004 Fax: (208) 332-8099
<http://finance.idaho.gov>

PROTECTING THE INTEGRITY OF IDAHO FINANCIAL MARKETS

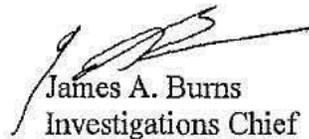
through authorized delegates who are not banks, credit unions, savings and loan associations, savings banks or mutual banks” (emphasis added)¹.

Based on the above criteria, we do not believe that non-bank “contract delegates” can market the payment instruments without the benefit of licensure under the IMTA. More specifically, we cannot at this time agree that _____ even where acting as an agent of _____ of _____ is entitled to the exclusion for financial institutions. As to _____ the bank will be offering payment instruments through agents that are not a financial institution and thereby not within the ambit of the exclusory language of §26-2904.

Conclusion - As noted in the preceding paragraph, we believe that the proposed business model will require that at least one entity become licensed under the IMTA. If you would like to discuss the various licensing models that might be applied given the described business model, please feel free to contact the undersigned directly.

Should you have any questions or comments, or wish to discuss this matter in greater detail, please also contact me directly.

Sincerely,


James A. Burns
Investigations Chief

¹ While the statutory exclusion in §26-2904 directs itself to “payment instruments”, the definition of money transmission under the IMTA includes “the business of...transmitting money...by any and all means including, but not limited to, payment instrument, wire, facsimile or electronic transfer”. Based on this language, we believe that the exclusion found at §26-2904(d) would include any form of “money transmission” as defined under the IMTA.

RECEIVED

OCT 25 2005
DEPT. OF FINANCE
STATE OF IDAHO

Wednesday, October 19, 2005

Mr. Jim Byrnes
State of Idaho
Department of Finance Securities Bureau
700 West State Street, 2nd Floor
Boise, ID 83702

Subject: Idaho Money Transmitters Law –
Request for Opinion and Guidance

Dear Mr. Byrnes

I am writing on behalf of _____, a Limited Liability Company based in Ohio since October 11, 2002. _____ is a Certified Third-Party Processor ('TPP') of Prepaid Debit MasterCard® Cards and Maestro® Cards ('Prepaid Debit Cards') for state chartered banks, nationally chartered banks, and federal thrift banks ('Issuing Bank(s)' or 'Issuer(s)'). The _____ is the only active Issuer of the Axxess America® MasterCard® Card and Axxess America® Maestro® Card Programs at this time.

_____ is responsible for processing the transactions of Prepaid Debit Cards on behalf of its Issuing Banks. _____ also processes additional co-branded cards on behalf of Issuers and registered Member Service Providers ('MSP'). _____ is a registered MSP, which allows it to perform duties such as marketing, customer service and value loading on behalf of Issuers.

_____ is interested in conducting business in the State of Idaho either directly or through contracted delegates on behalf of the Issuers. To this end, the question is whether _____ and/or its delegates, is/are subject to the licensing requirements of Money Transmitters Act, § 26-2901 through § 26-2928 of the Idaho Code (the 'Money Transmitters' Law). _____ interpretation is that neither its delegates, nor itself, are required to register as a Money Transmitters business.

The basis for this contention is that _____ an agent of the Issuing Banks, and its delegates as subagents, fall under the exemption enjoyed by the Issuing Banks. Specifically, Issuing Banks are not required to file a money transmitter license application. Seeing as that the Issuing Banks have contractually agreed to indemnify both _____ and its delegates for the sale, distribution, and value loading of the Issuing

Banks' prepaid debit Axxess America® MasterCard® Cards and Axxess America® Maestro® Cards, they are covered under the exemption umbrella.

is seeking guidance and a formal opinion from the State of Idaho regarding whether or not it is required to register as a 'Money Transmitters' licensee for the purpose of conducting business on behalf of its Issuing Banks.

As a certified TPP/MSP, is authorized to market and sell Prepaid MasterCard® Cards on behalf of Issuers via its delegated agents and/or through direct marketing channels.

When operating under the TPP/MSP processing model, responsible for processing transactions related to each cardholder account. Transactions include daily account settlement, fee reversals, ATM credits and debits, POS debits and credits, chargeback functions, lost/stolen card replacements, re-issuance requests, and value loading.

When operating under the TPP/MSP customer support model, provides customer support to programs processed by provides customer support on two levels: a) its delegated agents (clients); and b) cardholders possessing the Issuing Banks' Prepaid MasterCard® and/or Maestro® Cards.

Under the Bank Secrecy Act ('BSA'), the definition of a financial institution includes a money services business. In turn, the definition of a money services business includes a check casher. The question of whether must comply with regulations the BSA confers on a money services business or a financial institution, rests on whether may be fairly considered a check casher under the BSA.

does not constitute a check casher under the BSA, because does not cash checks. From time to time, does accept value-loads from cardholders, but these value-loads only include cash, cashier's checks, money orders, Automated Clearing House ('ACH') entries, and wire transfers. does not accept personal checks from cardholders for the purpose of loading value to a prepaid debit card. Indeed, the typical method for a cardholder to load value to a prepaid Axxess America® Card is to authorize a direct deposit of wages or other income to the card.

intends to contract with distributors that will distribute Prepaid Axxess America® MasterCard® Cards and Axxess America® Maestro® Cards throughout the United States. and its contracted representatives will accept non-check funds from cardholders on behalf of its Issuing Banks.

The Issuing Banks are required to take responsibility for funding the cards they issue. Axxess America® Cardholders are able to spend the value immediately upon loading of their card accounts. All funds collected by cardholders are aggregated into federally insured accounts held by Issuing Banks. A daily report is sent to the Issuers

informing them as to the precise amounts collected at delegated agent's locations in a given program.

A daily ACH debit/credit is created by _____ and forwarded to Jack Henry & Associates instructing them to debit the delegated agent's clearing account for the required amount to transfer to the Issuing Bank's funding account for the Access America® Card programs. Regardless of whether the funds arrive at the bank the next day or in a couple of days due to weekends or holidays, the Issuers are responsible for insuring that the cardholders have access to their card account's funds.

It is important to note that MasterCard International does not view the cards processed by _____ as "Stored Value Cards", as the cards themselves do not 'store' the value. As stated previously, all of the funds for the cards are held by the Issuing Banks in federally insured accounts. Also, aggregated accounts are insured for each active cardholder within the card program.

All cardholders are protected from losing any value from their cards, even if the card is lost or stolen, according to the Issuing Bank's Cardholder Agreement. It is also important to note that Cardholder Agreements are agreements between the Issuing Banks and the Cardholder. _____ is not a party to cardholder agreements; however, _____ does perform customer service on behalf of the Issuing Banks.

In researching Idaho law, we have not located entities similar to _____ that are licensed with the State of Idaho as a 'Money Transmitters' licensee. As such, it is our interpretation of the law, that _____ may immediately begin conducting its business in Idaho, either directly or through its delegates.

To this end, _____ would appreciate receiving a formal written opinion from your office by November 15th, 2005.

Thank you for your assistance and cooperation. If you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

Staff Counsel



IDAHO
DEPARTMENT OF FINANCE

DIRK KEMPTHORNE
Governor

GAVIN M. GEE
Director

September 26, 2005

Re: Interpretive Request

Dear M

We have reviewed and discussed your letter of August 2, 2005 wherein you seek guidance regarding the applicability of the Idaho Money Transmitters Act (IMTA) to the business model detailed in your letter. In connection with your inquiry, we provide the following.

Background - As noted in your letter, [redacted] has contracted with [redacted] to provide electronic bill payment and associated processing services to public customers. Additionally, [redacted] will seek to solicit and obtain collection points (agents who will accept customer funds for further payment to creditors) as well as "Billers" (utilities or other business entities that are willing to have their customer's billings paid through the [redacted] system).

Based on your letter, it appears that both [redacted] and this Department agree that money transmission, as defined in the IMTA (I.C. §26-2902(11)), will occur when this business model becomes available to Idaho bill paying customers.

Issue of Licensure - Since money transmission is anticipated under the [redacted] model, the only question remaining is whether the activity can be conducted without the benefit of licensure under the IMTA.

Idaho Code §26-2904 provides various exemptions from the provisions of the IMTA. More specifically, §26-2904(d) states that the IMTA shall not apply to "Banks, credit unions, savings and loan associations, savings banks or mutual banks organized under the Laws of any state or the United States, provided that they do not issue or sell payments instruments through authorized delegates who are not banks, credit unions, savings and loan associations, savings banks or mutual banks" (emphasis added).

While the statutory exclusion in §26-2904 directs itself to "payment instruments", the definition of money transmission under the IMTA includes "the business of...transmitting money...by any and all means including, but not limited to, payment instrument, wire, facsimile or electronic transfer". Based on this language, we believe that the exclusion found at §26-2904(d) would

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PROTECTING THE INTEGRITY OF IDAHO FINANCIAL MARKETS

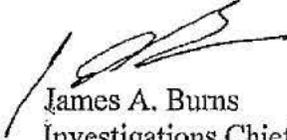
include any form of "money transmission" as defined under the IMTA.

Based on the above criteria, we do not believe that _____ and _____ can operate the business model without the benefit of licensure under the IMTA. More specifically, we cannot at this time agree that _____, acting as an agent of _____ is entitled to the exclusion for financial institutions. As to _____ the bank will be offering money transmission services through authorized delegates (whether _____ or the collection points) who are not financial institutions and thereby not within the ambit of the exclusory language of §26-2904.

Conclusion - As noted in the preceding paragraph, we believe that the proposed business model will require that at least one entity become licensed under the IMTA and that the collection points be contracted as authorized representatives under the IMTA. If you would like to discuss the various licensing models that might be applied given the described business model, please feel free to contact the undersigned directly.

Should you have any questions or comments, or wish to discuss this matter in greater detail, please also contact me directly.

Sincerely,



James A. Burns
Investigations Chief

August 2, 2005

Idaho

Dept. of Finance, Securities Bureau
P O Box 83720
Boise, ID 83720

Attn: Legal Department /Opinion Requested

RECEIVED

AUG 11 2005
DEPT. OF FINANCE
STATE OF IDAHO

Dear Sir/Madam:

I am writing to request your written opinion on whether as an FDIC insured, duly licensed, Pennsylvania state chartered savings bank, can legally perform services in your state as a Money Transmitter, or if you require any sort of additional licensing based on the following circumstances:

We have entered into an agreement with _____ Pennsylvania corpo. on, to provide electronic bill payment and information processing services, whereby the general public ("Payors") can arrange for the electronic payment of their obligations to certain utilities and other businesses ("Billers") that have made or will make arrangements with _____ and _____ Payors will make payments at locations ("Collectors") that have entered or will enter into contracts with _____ and _____

NOVA has contracted with _____ as its agent for the provision of data processing services, Collector acquisition and Biller acquisition services in connection with and for the purpose of Money Transmission in certain states. _____ will be liable for all payments by Payors to Collectors from the time such payment is received by the agent. The parties will disclose to all Customers that _____ is the money transmitter for the services. _____ will cause all current and future Collectors or "agents" to enter into written agreements, including but not limited to a Bill Payment Service & License Agreement with _____ (or amendments to an existing agreement with _____ naming _____ as the money transmitter of the payments collected by the agent. The Collectors will be agents or subagents of _____ if and to the extent required by applicable laws, rules and regulations, as set forth in the Collector Agreements.

_____ will market and promote the services to potential Collectors and, in conjunction with _____ will make sure that each Collector continues to be in compliance with all laws, rules and regulations including but not limited to Bank Secrecy Act, USA Patriot Act and Anti-Money Laundering regulations.

Request for Legal Opinion
August 1, 2005
page 2

will process the data received from the Collectors and transmit to each Business Day, electronic reports and ACH files containing accurate and complete data for the bill payment activity will then collect the funds received by the Collectors from the Collectors' designated accounts via Automated Clearing House ("ACH") transactions and distribute the funds to the appropriate Billers via ACH transactions or alternative means based on the biller remittance method, in each case, based on the Payment Reports. will distribute the funds to the appropriate Billers according to or as specified within the Payment Reports.

Based upon the foregoing information, we are also asking for your determination as to whether, based on the contracted arrangement between the parties, and the Collectors are required to be licensed in your state.

Please include in your response, the relevant statutes and/or regulations that support your determination, so that we may note same in our records.

Your prompt response to this request would be greatly appreciated, as it will guide us in our endeavors.

Should you have any questions, please do not hesitate to contact me at

Thank you for your time and attention to this request.

Very truly yours,

Chief Operating Officer/BSA Officer



IDAHO
DEPARTMENT OF FINANCE

DIRK KEMPTHORNE
Governor

GAVIN M. GEE
Director

September 2, 2005

RE:

Dear M

This letter is to confirm our phone conversation of August 18, 2005 regarding your inquiry on behalf of

Based on the information provided in your June 24, 2005 letter, the Department is of the view that it would be appropriate for _____ to license as a money transmitter in Idaho in order to utilize the described business model in or from Idaho. Such an approach could serve to preclude each retail location from being licensed as a money transmitter if they were to be retained as an authorized agent of a licensed money transmitter.

Should you have any questions or need to discuss this matter in more detail, please feel free to contact me directly.

Sincerely,

James A. Burns
Investigations Chief

SECURITIES BUREAU
Bureau Chief – Marilyn T. Chastain
700 West State Street, 2nd Floor, Boise, ID 83702
Mail To: P.O. Box 83720, Boise ID 83720-0031
Phone: (208) 332-8004 Fax: (208) 332-8099
<http://finance.idaho.gov>

RECEIVED

JUN 27 2005

DEPT. OF FINANCE
STATE OF IDAHO

June 24, 2005

Attn: Jim Burns, Investigations Chief
Idaho Department of Finance, Securities Bureau
PO Box 83720
Boise, ID 83720-0031

Re:
Opinion and guidance

Dear Mr. Burns:

I represent _____, a Michigan corporation that is authorized to do business in Tennessee under the name _____ (hereinafter _____). _____ has developed software that will permit independent retailers with the ability to provide utility bill payment services. _____ wants to offer its utility payment system to independent retail merchants in your state (each referred to as "Retailers"). The utility payment system allows Retailers to offer walk-in utility payment services to customers. **I request an opinion from your office as to whether your state will require _____ to have a Money Transmitters license.**

Retailers will accept funds from consumers along with a fee from the retail customer. The fees for the services will be set by the Retailer without any instruction from _____ The Retailer will deposit the funds, including the fees, into its own bank account. The Retailer will then direct _____ to pay the utility company through the _____ system. The Retailer will "ACH" the utility payment amount and _____ fee from the Retailer's account to _____ bank account in Michigan. _____ will "ACH" the remaining funds to the utility company to pay the entire amount of the utility bill, as promised.

Idaho
Page 2

Thank you for your assistance in this matter. Please contact me at should you have any questions or to respond to this letter.

Very truly yours,

cc:

Jim Burns

From: Jim Burns
Sent: Monday, August 01, 2005 10:34 AM
To:
Subject: RE: Application for Money Transmitters License (Idaho)

Dear M

In regards to you inquiry, please be advised that the period of time associated with an application review is 180 days. Beyond that, your descriptions appear to accurately reflect how the Department of Finance has historically viewed the confidentiality of money transmission application files.

Please be advised that the Department's policy approach may change in the future. Moreover, records production challenges by those seeking access to such records may ultimately require the Department to produce records that it had previously considered confidential. Finally, pre-application or other communications such as this may be considered a public document.

I hope that this communication answers your questions. Should you need anything else, please feel free to contact me directly.

Regards,

Jim Burns
Investigations Chief, MBA, CFE
Idaho Department of Finance, Securities Bureau
P.O. Box 83720
Boise, ID 83720-0031
(208) 332-8080
fax (208) 332-8099

-----Original Message-----

From:
Sent: Friday, July 22, 2005 2:38 PM
To: Jim Burns
Subject: Application for Money Transmitters License (Idaho)

Jim,

Thanks for taking the time to talk with me about confidentiality of new applications. As we discussed, my client plans to file an application for a money transmitters license in Idaho. In anticipation of the filing, we want to confirm with you the following:

- Applications are reviewed by you, the Investigations Chief of the Securities Bureau of the Idaho Department of Finance. Your recommendations that applications either be granted or denied are then made to your superiors. The Department must rule on a *completed* application within 120 days of receipt. The application does not require Banking Board approval or a public hearing.
- The fact that an application has been filed by the applicant is a matter of public information. Nonetheless, while the application is under review, the application itself, and all information contained therein, is considered confidential and will be shared only with other State or Federal agencies. Confidentiality covers the application itself, together with exhibits, and the name of any parent company.
- The application and all accompanying material remains non-public even after approval, with the same confidentiality protections afforded the pre-approval application (except that information can be shared with other State or Federal agencies). The

same confidentiality applies with respect to rejected applications. The applicant can request to be notified in the event that a third-party challenges the confidentiality of certain information or documents.

- License holders are posted on the Department's website (updated frequently). If an application is approved, the applicant's name (but not the name of the parent company), is posted. If contacted, the Department will disclose the license holder's authorized agents and locations of business.
- It may be possible to delay approval until a specific date in the future, so that the name, address and business locations of the license holder remain confidential until that future date. It is possible to delay actual approval if: i) the applicant waives the 120 day response requirement and ii) there are no material changes in the application.

Please confirm the information outlined above by email. Also, please correct any portion of this email that does not accurately characterize your confidentiality practices. Thank you again for your time and consideration.

U.S. Treasury Circular 230 Notice: Any U.S. federal tax advice included in this communication was not intended or written to be used, and cannot be used, for the purpose of avoiding U.S. federal tax penalties.

NOTICE

This e-mail message is intended only for the named recipient(s) above. It may contain confidential information that is privileged or that constitutes attorney work product. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this e-mail and any attachment(s) is strictly prohibited. If you have received this e-mail in error, please immediately notify the sender by replying to this e-mail and delete the message and any attachment(s) from your system. Thank you.

RECEIVED

APR 21 2005

DEPT. OF FINANCE
STATE OF IDAHO

VIA PRIORITY MAIL

April 18, 2005

James A. Burns
Investigations Chief
Idaho Department of Finance
P.O. Box 83720
Boise, Idaho 83702-0031

Re: Interpretive Request

Dear Mr. Burns:

Our counsel, _____, forwarded a copy of your letter to him dated April 5, 2005. The letter indicated that _____ activities require a license under the Idaho Money Transmitters Act. This writing confirms that we have ceased processing transactions from Idaho residents and are preparing to submit a license application to the Department.

Thank you for your prompt attention to our request for an advisory opinion. We look forward to working with the Department to ensure our full compliance with Idaho laws.

Sincerely,



IDAHO
DEPARTMENT OF FINANCE

DIRK KEMPTHORNE
Governor

GAVIN M. GEE
Director

April 5, 2005

RE: Interpretive Request

Dear M

Your March 24, 2005 correspondence regarding the applicability of the Idaho Money Transmitters Act to the activities of the _____ has been referred to the undersigned for review and response.

Your letter describes two distinct activities that _____ is engaged in; the transmittal of funds to third parties and the marketing of stored value card products. In connection with each area of activity we provide the following.

Web-Based Money Transmission Activities

Background - As described, _____ provides an internet-based fascia for the "payment and remittance" of funds. More specifically, the fascia provides a conduit "for individuals with internet access who wish to use the internet to send money to friends and family abroad or to pay for goods and services sold by international merchants".

In connection with the above, you have described three mechanisms by which funds are transmitted. First, _____ may use direct web-based linkage to redirect the remitter to PayPal where the PayPal transit system is utilized to effect the funds transfer. Secondly, the remitting customer may choose to use a debit or credit card to effect the transaction. In this instance, a third-party authorization service is used and the customer's funds are credited to an omnibus account owned and controlled by _____ at a federally chartered bank for further credit to the foreign disbursement agent. Finally, a customer may use an ACH electronic check for funds origination and the customer's funds are again credited to the _____ omnibus account for further credit to the disbursing agent.

Transmission Implications - 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 or to locations outside the United States by any and all means..."

DEPARTMENT OF FINANCE
700 West State Street, 2nd Floor, Boise, ID 83702
Mail To: P.O. Box 83720, Boise ID 83720-0031
Phone: (208) 332-8004 Fax: (208) 332-8099
<http://finance.idaho.gov>

PROTECTING THE INTEGRITY OF IDAHO FINANCIAL MARKETS

Your description of services presents a fascia to consumers that funds can be remitted through the organizational efforts of _____ Indeed, the _____ website states, “_____ offers fast, reliable money transfers at a great price! Send money from the convenience of your computer to friends and family all over the world”. In this regard, one might only conclude that _____ is in the money transmission business.

Physical Presence in Idaho - Idaho Code §26-2903(1) states “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 one (1) or more authorized representatives...”

It is our view that Idaho Code §26-2903(2) merely acknowledges that a licensee “may” conduct business in Idaho while physically 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 and safeguards associated therein.

Bank Exemption – Idaho Code §26-2904(1)(d) generally states that banks and other classes of financial institutions are exempt from the Idaho Money Transmitters Act. However, we believe that the statute is clear that it must be the bank that is directly engaged in the money transmission business and not non-bank entities that then use the bank as a transmission conduit. In this regard, we believe that _____ cannot avail itself of the bank exemption.

Department Opinion As to _____ Money Transmission Business - It has been the Department’s continuing view that web-based money remitter services constitute “money transmission” as defined in the Idaho Money Transmitters Act. While you have made several policy arguments regarding the back-office designs used by _____ to accommodate money transmissions in, into or from Idaho, we are not convinced that the business model falls outside the scope of the Idaho Money Transmitters Act. We therefore believe that licensure in Idaho is appropriate should _____ want to accept or deliver funds in or from Idaho. This view is consistent with your observation that PayPal is a licensed money transmitter in Idaho.

Stored Value Card Product

Background – As described, _____ has entered into a networking arrangement with a federal savings bank to market stored value cards (card) issued by the bank. The card is branded with both a _____ logo and MasterCard Maestro logo. Again, the card is purchased directly through the _____ website, with the card being shipped to the user. The card is associated with an agreement between the bank and the card purchaser/holder.

Payment Instrument Issues - Idaho Code §26-2902(11) defines money transmission as the “sale or issuance of payment instruments...within the United States or to locations outside 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...sold or issued to one or more persons.

For your information, the Department has long taken the view that stored value cards fall 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 or an exemption from such licensing.

Money Transmission Issues – Your letter appears to imply that card purchasers might have the card delivered to a third party of their choice and that the purchaser can also reload the card for further benefit to the card possessor. In this regard, the system also appears to take on the flavor of “money transmission” with the card and the website being the conduit between the remitter and the card carrier.

Bank Exemption – Idaho Code §26-2904(1)(d) states that the Idaho Money Transmitters Act shall not apply to banks and other enumerated financial institutions, “provided that they do not issue or sell payment instruments through authorized delegates who are not banks...”

As described is the marketer and seller of the stored value card. Hence, while the bank may be construed to be the ultimate issuer of the stored value product, the payment instrument is being sold through an entity that is not the bank.

Department Opinion As to Stored Value Card Business - It has been the Department’s continuing view that stored value products are “payment instruments” within the context of the Idaho Money Transmitters Act. While you have made several policy arguments regarding the business model used by to sell or issue payment instruments in or into Idaho, we are not convinced that the business model falls outside the scope of the Idaho Money Transmitters Act and we therefore believe that licensure in Idaho is appropriate should want to accept or deliver funds in or from Idaho.

Other Issues Of Note

PayPal Agent Considerations – It is unclear whether has any formal contractual arrangement with PayPal for that portion of money transmission business that may access the services of PayPal. Hence, it is not clear whether could be construed to be acting as an authorized or unauthorized agent of PayPal.

ACH Advance Credits – In describing web-based money transmission model, you describe the use of ACH debit as a means to conduct a money transmission transaction. As it relates to ACH based transactions you state, “Although it sometimes takes several days for a customer’s payment to clear from his or her account, the Client frequently authorizes disbursement of funds before the funds clear from the customer’s account.”

In the above-described transactions, has your client considered whether they might be construed to be extending credit or otherwise engaging in lending transactions?

Summary

As noted above, we are of the view that business model falls within the ambit of the Idaho Money Transmitters Act and that licensure is appropriate if intends to offer its services in or into Idaho.

We note that _____ apparently already complies with federal anti-money laundering regulations, including OFAC and BSA regulations. As such, _____ may already be well positioned to obtain a money transmitters license in Idaho. I have included copies of our money transmitters application and supporting documentation for your convenience.

We thank you for your inquiry. Should you have any questions or comments or wish to discuss this matter in greater detail, please feel free to contact the undersigned directly.

Sincerely,

James A. Burns
Investigations Chief

RECEIVED

MAR 28 2005
DEPT. OF FINANCE
STATE OF IDAHO

March 24, 2005

Gavin M. Gee, Director of Finance
Idaho Department of Finance
700 West State Street, 2nd Floor
P.O. Box 83720
Boise, ID 83720-0031

Dear Mr. Gee:

This firm represents an online funds transmitter, (“Client”), a privately held company, incorporated and headquartered in California. The Client operates exclusively online and maintains its sole office in California. The Client maintains no operations or personnel in the State of Idaho. This letter serves as a request for confirmation from the State of Idaho that the Client is not required to obtain a money transmitter license under § 2903 of Idaho’s Money Transmission Act (the “Transmitter Law”) in order to offer the internet services described below.

Background

The Client facilitates “online-to-offline” payments and remittances. Its customers are typically well-educated, banked individuals with internet access who wish to use the internet to send money to family and friends abroad or to pay for goods and services sold by international merchants. The Client’s service allows customers to send money or make payments online to recipients in India, Philippines, Dominican Republic, Jamaica, Hong Kong, Nepal, Sri Lanka, Bangladesh, Argentina, Brazil, Bolivia, Chile, Paraguay, Uruguay, Pakistan, the United Kingdom, and Poland. It expects to offer services to additional destinations soon, including countries in Latin America, Asia, and Africa.

Detail of Operations

A typical transaction commences when a customer accesses the Client’s secure websites to initiate a funds transfer. Through the secure site, the customer provides relevant information about a proposed transaction, including the amount to be transmitted, the method of payment, and contact information about themselves and the intended recipient. Customers pay for the money transfer using (1) PayPal, a California-based subsidiary of eBay, Inc. that is widely known as the leading online payments system, (2) a credit or debit card, or (3) an electronic check.

A customer electing to pay through PayPal is redirected through links on the Client’s website to the PayPal secure website to access his or her account or to open a new one. Upon authorization by the customer, PayPal transmits funds from the customer’s PayPal account to a PayPal account in the name of the foreign disbursement agent. Funds are then disbursed by the disbursement agent to the designated recipient in the manner specified by the customer (typically, pick-up, home delivery, or direct deposit to the recipient’s bank account).

A customer choosing to pay with a credit or debit card enters the type of card, the card number, and the billing address on the Client's secure website. The information is verified by a third-party authorization service. If approved, a federally chartered bank with which the Client has entered into a merchant card agreement transmits the funds from the customers' credit or debit account into a non-interest bearing account in the Client's name, with the designation "As Agent for the Benefit of its Customers." The account is domiciled in the State of Montana and is maintained in a manner eligible for FDIC pass-through insurance. Funds are then transferred to the appropriate disbursement agent for disbursement to the intended recipient, as described above.

A customer electing to pay using an electronic check enters his or her bank account and ABA routing numbers. The information is verified and funds are debited from the customer's bank account via ACH transfer and settled into the non-interest bearing bank account as described above. Electronic check payments typically post to the non-interest bearing account after four or more days. Funds are then wired from the non-interest bearing account to the disbursement agent for disbursement to the intended recipient as described above. However, in instances where the customer transacts regularly and has previously passed the Client's fraud screening controls, funds may be disbursed to the recipient before the debit from the customer's account actually posts to the non-interest bearing account.

Regardless of which payment method is selected, customers are directed to a website location containing a receipt which can be printed and retained for their records. In addition, customers receive electronic mail confirmations of their transactions.

The Client tracks the status of each transaction through a web-based interface with the disbursement agents. Customers are notified of the status by email. Customers may also contact the Client or the disbursement agent by phone, fax, electronic mail, or in-person to check on a transaction's status.

Customers who access and use the money transfer services through the Client's website agree to the posted terms and conditions of the Terms of Service ("TOS") posted on the sites. Under the TOS, customers appoint the Client as their agent for the purpose of facilitating the transaction in the manner described herein.

All of the described transactions are subject to the Client's proprietary anti-fraud system to minimize the risk of fraudulent transactions and to comply with federal anti-money laundering regulations, including OFAC and BSA regulations. The automated fraud screens are supplemented with manual reviews by trained fraud analysts. Transactions that fail the Client's fraud screening procedures are rejected and recorded to prevent similar transactions in the future. The Client's staff includes a former Chief Investigating Officer with the Securities and Fraud Cell of the Central Bureau of Investigations in India who maintains a network of officials and fraud investigators in foreign countries who actively participate and cooperate in tracking fraudulent transactions and funds recovery,

State Transmitter Law

We have reviewed the Transmitter Law and have formed an initial belief that it is inapplicable to the described operations of our Client. Our view is based on the following observations.

The role of the Client is primarily to provide online informational and administrative services rather than money transmission services, offering (1) a "front-end" web-based interface for customers to remit funds overseas through PayPal or the Transmitting Bank, and (2) a "back-end" interface with PayPal or the Transmitting Bank and disbursement agent to track deliveries in real time. Funds are actually transmitted either by PayPal or a federally chartered bank (the "Transmitting Bank"), rather than directly from the Client. It is our understanding that PayPal is a licensed money transmitter in Idaho. Similarly, it is our understanding that the Transmitting Bank is a federally chartered bank and is therefore exempt from regulation as a money transmitter under § 2904 of the Transmitter Law.

In evaluating the public policy needs for protection of the customer and the recipient of the funds, the primary concern is assuring that the process offers sufficient safeguards to ensure that, if funds are not delivered to the recipient, the customer has recourse to the transmitter. In the case of the operations described herein, multiple layers of protection exist. Unlike traditional "brick-and-mortar" remitters like Western Union, the Client does not accept cash from the customer. Customers must pay for the Client online using a credit card, a debit card, or an electronic check. Therefore, the customers are protected by the Federal Fair Credit Billing Act, NACHA rules, and Regulation E. Any risk of loss to the customer is mitigated by the customer's ability to impose chargebacks against the Client. Indeed, the Transmitting Bank requires the Client to maintain a separate deposit of \$100,000 to offset any customer chargebacks. We therefore submit that the rationale for customer protection found in the Transmitter Law is neither needed nor applicable to the operations described above.

An additional factor in determining the inapplicability of the state Transmitter Law to the Client arises because the Client has no physical presence in the State of Idaho and no active marketing program targeted at residents of the State. As a result, few if any transactions implicate residents of the State. A far greater percentage of transaction volume originates from residents of states like California, where the Client has a physical presence and has a license application pending, and New York, where the Client has received formal permission to operate without a license based on a submission similar to this.

Also, any risk of loss to customers is mitigated by customers' ability to claim FDIC pass-through insurance on funds held for their benefit. Customers' funds are held in a non-interest bearing account, in the name of the Client, "As Agent for the Benefit of its Customers." FDIC regulations provide that funds deposited into an account in the name of an agent for the benefit of the principal will be insured to the same extent as if

Gavin M. Gee, Director of Finance
March 24, 2005
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deposited in the name of the principal. 2002 FDIC Interp. Ltr. LEXIS 40, *7 (February 15, 2002).

A further protection arises because recipients often receive funds before the customer's bank, credit, debit, or PayPal account is actually debited. Although it sometimes takes several days for a customer's payment to clear from his or her account, the Client frequently authorizes disbursement of funds before the funds clear from the customer's account. Therefore, the risk of loss in these particular circumstances is borne by the Client and PayPal or the Transmitting Bank rather than the customer.

Finally, the risk that the Client's services could be used to facilitate the conduct of illegal activities is mitigated because customers cannot pay with cash. All transactions are funded by credit/debit card or ACH transfer; therefore, all customers have formal relationships with third party financial institutions that are obligated to know their customers. Furthermore, all transactions are subject to the Client's rigorous anti-fraud scrutiny.

Accordingly, we believe that the Transmitters Law does not apply to the operations of the Client and we seek your concurrence in this conclusion.

Stored Value Card Product

In addition to the services discussed above, the Client has also entered into a networking arrangement with a federal savings bank (the "Issuing Bank") to market stored value cards issued by the Bank. Stored value cards have become increasingly popular in recent years. Banks have played a significant role in the cards' popularity by issuing them in coordination with retailers from most every industry. Consumers can now purchase stored value cards marketed and branded by bookstores, airlines, and amusement parks, to name just a few. More than twenty million cards have reportedly been issued in connection with over two thousand different card programs. The Client hopes to begin marketing this particular card program on behalf of the Issuing Bank later this month.

Purchasers submit their card orders through the Client's website. In purchasing the card, the customer opens a stored value account with the Issuing Bank and affirmatively acknowledges and enters into a cardholder agreement with the Issuing Bank. A copy of the cardholder agreement is also provided to the purchaser as part of an e-mailed receipt. The cardholder agreement acknowledges the Issuing Bank as the card issuer and details the terms and conditions of the card's use. The Client is not a party to the cardholder agreement.

The card is then shipped by express delivery to the intended recipient. The typical recipient is likely to be a close relative of the customer living abroad. The card identifies the Issuing Bank as the issuer and is branded with the Client's and MasterCard Maestro's logos. The recipient also receives a copy of the cardholder agreement, together with a disclosure that specifically describes the Issuing Bank as the card issuer. The recipient

Gavin M. Gee, Director of Finance
March 24, 2005
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can then use the card at any Maestro-branded automatic teller machine (ATM) or point-of-sale (POS) around the world to withdraw funds or make purchases.

Purchaser funds are held in a non-interest bearing, master pooled account titled in the name of the Issuing Bank, as agent for the benefit of customers, in a manner that will entitle the purchaser to pass-through FDIC insurance. When the card is used at an ATM or POS, the master account is debited in the amount of the corresponding withdrawal or payment, plus applicable fees. The purchaser can reload the card by accessing the Client's website.

For most consumers, stored value cards are an inexpensive and convenient alternative to a traditional Western Union-style money transfer. The worldwide ATM network is exponentially larger than the agent network of any traditional remitter. Most importantly, the cost of sending a card is expected to be significantly cheaper than sending a traditional remittance through a Western Union-style service.

We believe that the stored value product described herein does not implicate the licensing requirement under the Transmitters Law as it relates to the Client. The regulated entity for the purposes of a stored value card such as the one described herein is the card issuer. Here, the card is issued by the Issuing Bank. The cardholder agreement, together with the card itself, clearly and unambiguously details the Issuing Bank as the issuing entity. Therefore, the Issuing Bank is the regulated entity. Because the regulated entity is a federal savings bank, the product falls within the scope of the exemption afforded under § 2904 of the Transmitters Law.

The Client serves as a third party marketer for the Issuing Bank, hosting and maintaining a website at which prospective customers can place their orders for cards issued by the Issuing Bank. The legal relationship is between the Issuing Bank and the customer, pursuant to a cardholder agreement that governs the terms and conditions of the card's use. As such, there is privity between the Issuing Bank and the customer, and the regulatory focus would therefore lie with the Issuing Bank rather than its marketing representative.

Moreover, the Issuing Bank itself is responsible customer funds. The Issuing Bank's obligations include those imposed under federal and state law, as well as MasterCard's own rules and regulations governing customer funds. For example, the Issuing Bank is responsible to the customer for compliance with Regulation E, state escheatment laws, and MasterCard rules requiring funds in the master pooled account to cover card balances at all times. The Issuing Bank is therefore responsible to the customer not only by virtue of the legal relationship between them, but also by virtue of state and federal law.

Accordingly, we believe that the Issuing Bank is the regulated entity for the purpose of the proposed card product; that the Issuing Bank is exempt from the State's licensing requirement, and; that the Client can properly make the card product available through its website as third party marketer for the Issuing Bank without obtaining a money transmitter license from the State of Idaho.

Gavin M. Gee, Director of Finance
March 24, 2005
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Conclusion

For the foregoing reasons, it is our view that the Transmitter Law does not require the Client to obtain a money transmitter license in order to provide the internet services described herein.

Please call me at _____ if you require additional information or if you have any questions with respect to any of the information provided in this letter. I appreciate your attention and cooperation in connection with this request and request your written concurrence that the Client need not apply for a money transmission license from the State of Idaho. I look forward to hearing from you and assure you that the Client is dedicated to satisfactory compliance with Idaho laws.

Sincerely yours

January 31, 2005

Re:

Opinion Request

Dear M

By way of letter dated May 29, 2003, you have submitted a request for an interpretive opinion under the Idaho Money Transmitters Act. More specifically, you have asked "whether a license is required by a bank that issues stored value cards sold through a non-bank entity that is a licensee" pursuant to the Idaho Money Transmitters Act (Chapter 29, Title 26, Idaho Code).

As noted in your letter, Idaho Code §26-2904(1) provides that:

"This chapter shall not apply to...Banks, credit unions, savings and loan associations or mutual banks organized under the laws of any state or the United States, provided that they do not issue or sell payment instruments through authorized delegates who are not banks..."

As you know, 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...". In the context of your letter, it does appear that the bank will be acting as an "issuer" of a money transmission instrument through a non-bank entity that is currently licensed under Idaho Code §26-2902(9).

As written, the Idaho Money Transmitters Act does require that a bank become licensed under the Act if the bank's intent is to then offer or issue payment instruments in Idaho through authorized delegates who are not themselves exempt under the Act.

In the present situation, you have noted that _____ is licensed in Idaho pursuant to the Idaho Money Transmitters Act. Moreover, you have also represented that the banks participating in _____ program will be subject to extensive regulation by state and federal regulators. Finally, you have noted that banks participating in _____ program will have a limited role in the " _____ " program as the issuer of the card.

Based solely upon the factual information presented in your letter, this Department will take a no action position regarding the licensing requirements of the Act for banks organized under the laws of any state or the United States as it relates to their participation in the _____ program as described in your letter of May 29, 2003. The preceding no-action position is also based on a presumption that _____ remains licensed with this Department during the life of the program's use in Idaho.

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

January 31, 2005

Re: Online Payments and Consumer Protection Inquiry

Dear M

In response to your inquiry of January 15, 2002, we provide the following:

1. Does your state currently license or regulate nonbank stored-value issuers, Internet bill-payment services or Internet Fund transfer companies?

This Department has issued one interpretive letter stating its view that pre-paid debit cards constitute a form of "payment instrument" that would be subject to Idaho's money transmission statute. Further, to the extent that Internet providers offer to transmit money on behalf of Idaho residents, we believe that they are also subject to the Idaho Money Transmitters Act.

Depending on specific facts and circumstances, some Internet bill-payment service providers may need to be licensed pursuant to the Idaho Collection Agency Act.

2. Have you amended your existing money transmission laws to encompass these types of services, or have you interpreted existing laws to include these services.

Idaho has not amended its law in response to pre-paid debit instruments or Internet-based money transmission.

3. Have you licensed any of these services in your state? If so, approximately how many are currently licensed?

At this time, we have one money transmitter application pending for an Internet-based money transmission provider.

4. If you have licensed such services, has this been (a) because they have come to you seeking licensing, or (b) they have been asked to become licensed.

We do not have sufficient data in this area to provide a meaningful response.

5. In terms of licensing, supervising or examining Internet-based payment services, has your Department experienced anything new or different?

Obviously, new business models require adaptation of existing examination modules and procedures. At this time, we have insufficient data to make any meaningful observations.

We hope that this communication is helpful and we wish you the best in conclusion of your research project. We would certainly be interested in any work product you might create in connection with this important research. Should you have any questions or wish to discuss this matter in greater detail, please feel free to contact the undersigned directly at (208) 332-8080.

Sincerely,

JAMES A. BURNS
Idaho Dept. of Finance