



IDAHO
DEPARTMENT OF FINANCE

C. L. "BUTCH" OTTER
Governor

GAVIN M. GEE
Director

November 10, 2008

Re:

Dear

We have reviewed and discussed your letters of August 20, 2008 regarding the applicability of the Idaho Money Transmitters Act to the above referenced entities.

We are of the view that, on a stand-alone basis, both entities would likely fall within the ambit of the Idaho Money Transmitters Act and licensure would be required. In a separate context, it may be possible for one firm to become licensed and designate the other as an authorized delegate.

Beyond the applicability of the Idaho Money Transmitters Act, it appears likely that the Idaho Commodity Code may also apply and complicate the ability of either entity to operate on behalf of Idaho residents. I have attached a copy of the Idaho Commodity Code for your information.

Should you have further questions, please feel free to contact me directly.

Sincerely,

James A. Burns
Investigations Chief

SECURITIES BUREAU
800 Park Blvd., Suite 200, Boise, ID 83712
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

RECEIVED

2008 AUG 22 AM 11:04

Attorneys and Counselors at Law
STATE OF IDAHO
FINANCE

August 20, 2008

Sent via United States Mail

Ms. Gennie Sorensen
Securities Bureau
Idaho Department of Finance
800 Park Blvd., Suite 200
Boise, Idaho 83712

Re: **Request for Advisory Opinion**

Dear Ms. Sorensen:

This letter is submitted on behalf of _____ Our
purpose is to request a decision as to whether _____ is required to
be licensed under the Idaho Money Transmitters Act.

_____ a privately held company incorporated in Delaware with operations in
Florida. _____ makes an exchange market (via its _____ service, located at
www: _____ m) for the digital currencies issued by _____ (namely
_____ that circulate in an account based transaction
system accessible via the Internet. Each _____ digital currency functions much like a
national currency, such as United States Dollars. However, _____ digital currency is not
issued by the United States or by any nation and Federal law does not recognize it as a
"currency."²

¹ The digital currencies issued by _____
are collectively referred to as "e-metal".

² The term "currency" is defined in the bank Secrecy Act regulations as follows: "The coin and paper money of the United States or of any other country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes U.S. silver certificates, U.S. notes and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country."
31 CFR § 103.11(h)

Service

Through its service offers the following services:

- **InExchange** (National Currency to e-metal)
A Customer may wire United States Dollars (or other forms of national currency) from the customer's own bank account to bank account in return for a specified quantity (denominated in troy ounces) of e-metal.
- **OutExchange** (e-metal to National Currency)
Customer may "Spend" e-metal from the customer's account to account in return for an amount of national currency specified by the customer to be delivered to a Customer specified payee via either a check or wire transfer fulfills OutExchange orders via payments from its bank account.
- **M2M** (e-metal to e-metal)
Customer may "Spend" a specific type of e-metal (example: e-silver) from the customer's own account to account in exchange for another specific type of e-metal (example: e-palladium). fulfills M2M orders via e-metal "Spends" from its account to the account of the Customer who placed the order.

service does not offer exchange from one type of National Currency to another type of National Currency (such as exchange from US Dollars to British Pounds).

All orders are placed via the Internet (at) and are fulfilled via either the system (in the case of InExchange and M2M as described above) or the banking system (in the case of OutExchange as described above). does not conduct any in-person transactions.

The offices of are located in Florida. does not operate through any physical location in Idaho, has no bank account in Idaho and has no other physical presence in Idaho. The only connection that exists between and Idaho is the ability of persons located in the state to place exchange orders via service on the Internet at

Procedural Posture

was incorporated in 1996. Until July 2008 the company operated without a license under a good faith belief that it was not required to be licensed under state law. In April of 2007, and its three directors were indicted in the United States District

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Ms. Gennie Sorensen
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Court for the District of Columbia for, inter alia, money laundering in violation of 18 U.S.C. § 1956 and operating as an unlicensed money transmitting business in violation of 18 U.S.C. § 1960.

On July 21, 2008, entered into a plea agreement ("Plea Agreement"), in which agreed that it is a "financial institution" as defined in 31 U.S.C. § 5312(a)(2), a money services business under 31 C.F.R. § 103.11(uu)(5) and that and e-gold Ltd. (a Nevis corporation) are a money transmitting business within the meaning of 18 U.S.C. § 1960. (Copy of Plea attached). Pursuant to the Plea Agreement, will remain in business, enhance its anti-money laundering program and, within thirty days following July 21, 2008, either "submit applications to obtain State licenses in States that require licensing of businesses engaged in money transmitting or submit a request for an advisory opinion from such a state that the Company is not required to be licensed." Plea, at p.7.

Request for Advisory Opinion

A "Money Transmission" means the sale or issuance of payment instruments or engaging in the business of receiving money for the transmission or the business of transmitting money within the United States or to locations outside the United States by any and all means including, but not limited to, payment instrument, wire, facsimile or electronic transfer." Idaho Code Ann. § 26-2901(11) (2008).

created the service on a currency exchange model rather than a money transmission model. Nonetheless, we fully recognize that the company's operations may fall within the parameters of certain statutory text, including the Idaho Money Transmitters Act provision from the Idaho Code referenced above. For example, in order to complete an InExchange order, a customer may wire national currency to bank account and receive a specified amount of e-metal in return. Similarly, in order to complete an OutExchange order, such Idaho customer "Spends" e-metal to account and sends a check or wire in return.

Thus, there may be a basis in fact for the Idaho Department of Finance to find, pursuant to Idaho Code Ann. § 26-2902(11) (2008), that certain exchange services constitute the "sale or issuance of payment instruments" or "engaging in the business of receiving money for the transmission or the business of transmitting money within the United States." Nonetheless, it is not clear that the Idaho Department of Finance would arrive at such a conclusion and find that is required to be licensed under the Idaho Money Transmitters Act.

is an Internet company that has no physical presence in the state of Idaho. The company does not and never has maintained a bank account in the state and it does not advertise in the state. The only connection that exists between

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Ms. Gennie Sorensen
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and Idaho is the ability of persons located in the state to place exchange orders via the Internet through the _____ service.

Therefore, _____ respectfully requests that the Idaho Department of Finance issue an opinion stating that _____ either is or is not required to be licensed pursuant to the Idaho Money Transmitters Act.

_____ has not operated its _____ service since May of 2007 and will not do so unless and until it receives an advisory opinion from your office advising that it is not required to be licensed or it applies for and receives a license to transmit money in the state of Idaho.

Thank you for your attention to this matter. If you have any questions or if you would like to discuss this matter in greater detail, please do not hesitate to contact me. I look forward to hearing from you soon.

Very truly yours,

_____, Esq.

ASI/



United States Attorney

District of Columbia

Judiciary Center
555 Fourth St. N.W.
Washington, D.C. 20530

07-109-2 (RMC)

July 18, 2008

Aron Raskas, Esq.
Kramon & Graham, P.A.
One South Street, Suite 2600
Baltimore, MD 21202-3201
araskas@kg-law.com

FILED

JUL 21 2008

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

Re:

Dear Mr. Raskas:

This letter sets forth the full and complete plea offer to your client, Inc. (referred to herein as "Company" or defendant). This offer is by the Criminal Division (including the Fraud and Public Corruption Section and the Asset Forfeiture Unit) of the United States Attorney's Office for the District of Columbia (the "Office") and the Criminal Division (including the Computer Crime and Intellectual Property Section and the Asset Forfeiture and Money Laundering Section) of the U.S. Department of Justice ("Department") and is binding upon both. This plea offer will expire on July 18, 2008. Upon receipt, the executed letter will itself become the plea agreement. The terms of the offer are as follows:

1. **Charges and Statutory Penalties**

The Company agrees to plead guilty to Count One and Count Two of the Superseding Indictment charging violations of Title 18, United States Code, Section 1956(h) (Conspiracy to Engage in Money Laundering) and Title 18, United States Code, Section 371 (Conspiracy to Operate an Unlicensed Money Transmitting Business). Your client understands that, pursuant to 18 U.S.C. § 1956, the maximum sentence that can be imposed is a fine of \$500,000, or a fine of twice the value of the property involved in the money laundering transactions, a \$400 special assessment, a five-year term of probation, an order of restitution, and an obligation to pay any applicable interest or penalties on fines or restitution not timely made. Your client understands that, pursuant to 18 U.S.C. § 371, the maximum sentence that can be imposed is a fine of \$500,000, a \$400 special assessment, a five-year term of probation, an order of restitution, and an obligation to pay any applicable interest or penalties on fines or restitution not timely made.

In consideration of your client's plea to the above offenses, your client will not be further prosecuted criminally by this Office or the Department for the conduct set forth in the attached Statement of Offense or for conduct of which the Government is aware as of the entry of this Plea Agreement. At the conclusion of the sentencing hearing, the Government will move to dismiss the

remaining counts in the Superseding Indictment. Your client agrees that with respect to any and all dismissed charges your client is not a “prevailing party” within the meaning of the “Hyde Amendment,” Section 617, P.L. 105-119 (Nov. 26, 1997), and will not file any claim under that law.

2. **Factual Stipulations**

The Company agrees that the attached “Statement of the Offense” fairly and accurately describes its actions and involvement in the money laundering and unlicensed money transmitting conspiracies. An authorized representative of the Company will admit that the Company is in fact guilty. By virtue of corporate resolution dated July 17, 2008, defendant has authorized this plea and has empowered its outside counsel, Aron Raskas, to act on its behalf for purposes of this plea. It is anticipated that prior to or during the Rule 11 plea hearing, the company, through counsel, will adopt and sign the Statement of the Offense as a written proffer of evidence.

3. **Sentencing Guidelines Stipulations**

The Company understands that the sentence in this case will be determined by the Court, pursuant to the factors set forth in 18 U.S.C. § 3553(a), including a consideration of the guidelines and policies promulgated by the United States Sentencing Commission, Guidelines Manual 2005 (hereinafter “Sentencing Guidelines” or “U.S.S.G”). Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B), and to assist the Court in determining the appropriate sentence, the parties stipulate to the following:

Offense Level Under the Guidelines

Money Laundering

§ 2.S1.1

(a) Base Offense Level	8
Value of laundered funds of more than \$1,000,000	16
(b) Specific Offense Characteristics	
2S1.1 (b)(1) – knowledge or belief that funds were involved in child exploitation	6
2S1.1(b)(2) – conviction under 18 USC 1956	2
TOTAL:	32

Conspiracy (Operation of Unlicensed Money Transmitting Business)

§ 2S1.1

(a) Base Offense Level	8
Value of laundered funds of more than \$1,000,000	16
(b) Specific Offense Characteristics	
2S1.1 (b)(1) – knowledge or belief that funds were involved in child exploitation	6
TOTAL:	30

In accordance with the above, and in accordance with Chapter Eight of the Sentencing Guidelines, the applicable Guidelines Offense Level for the money laundering violation is 32 and the conspiracy (operation of unlicensed money transmitting business) violation is 30. The parties agree that the offenses of money laundering and conspiracy (operation of an unlicensed money transmitting business) group under USSG § 3D1.1, resulting in a total offense level of 32. The appropriate Guideline Fine is the greater of the amount calculated pursuant to USSG § 8C2.4 or twice the value of the funds laundered. The Company agrees that a Stipulated Fine in the amount of \$3,738,387.30 would be an appropriate part of its sentence. The parties agree that under the Sentencing Guidelines neither a downward nor an upward departure from the Stipulated Fine set forth above is warranted, except as set forth herein. Accordingly, neither party will seek such a departure or seek any adjustment not set forth herein. Nor will either party suggest that the Court consider such a departure or adjustment except as set forth herein.

4. Agreement as to Sentencing Allocation

The parties further agree that a sentence of the Stipulated Fine would constitute a reasonable sentence in light of all of the factors set forth in Title 18, United States Code, Section 3553(a). The Company reserves its right to argue for a reduction of the Stipulated Fine based on the Company's inability to pay pursuant to USSG § 8C3.3. The Government will not object to the Company's argument regarding its inability to pay the Stipulated Fine if, after reasonable inspection of the Company's financial records, the Government agrees that the Company is truly unable to pay the Stipulated Fine.

Nothing in this Plea Agreement limits the right of the Government to seek imposition of an adjustment for obstruction of justice, *see* U.S.S.G. §3C1.1, regardless of any stipulation set forth above, should the Company move to withdraw its guilty plea after it is entered, or should it be determined that the Company has either (i) engaged in conduct, unknown to the Government at the time of the signing of this Plea Agreement, that constitutes obstruction of justice or (ii) engaged in additional criminal conduct after signing this Plea Agreement.

5. **Court Not Bound by the Plea Agreement**

It is understood that pursuant to Federal Rules of Criminal Procedure 11(c)(1)(B) and 11(c)(3)(B) the Court is not bound by the above stipulations, either as to questions of fact or as to the parties' determination of the applicable Guidelines fine, or other sentencing issues. In the event that the Court considers any Guidelines adjustments, departures, or calculations different from any stipulations contained in this Plea Agreement, or contemplates a sentence outside the Guidelines range based upon the general sentencing factors listed in Title 18, United States Code, Section 3553(a), the parties reserve the right to answer any related inquiries from the Court.

6. **Court Not Bound by the Non-Mandatory Sentencing Guidelines**

It is understood that the sentence to be imposed upon the Company is determined solely by the Court. It is understood that the Sentencing Guidelines are not binding on the Court. The Company, through counsel, acknowledges that its entry of a guilty plea to the charged offense authorizes the sentencing court to impose any sentence, up to and including the statutory maximum sentence, which may be greater than the applicable Guidelines fine. The Government cannot, and does not, make any promise or representation as to what sentence the Company will receive. Moreover, it is understood that the Company will have no right to withdraw its plea of guilty should the Court impose a sentence outside the Guidelines fine.

7. **Restitution**

In addition to the other penalties provided by law, the Court may also order that the Company make restitution. The Government believes that no restitution is applicable under the relevant restitution statutes, and is not seeking restitution in this case. However, the Government's position is not binding on the Court and the Court may order restitution. Restitution is payable immediately unless ordered otherwise by the Court.

8. **Wiring of Plea Agreement**

The Company understands and acknowledges that this Agreement and any plea of guilty which it may enter pursuant to this Plea Agreement are contingent upon the entry of guilty pleas by co-defendants, Douglas L. Jackson, Barry K. Downey, Reid A. Jackson, and e-gold, Ltd., in this case. If these co-defendants fail to enter a guilty plea, this Plea Agreement and any proceedings pursuant to this Plea Agreement may be withdrawn or voided at the discretion of the Government.

9. **Forfeiture**

Criminal Forfeiture. The Company agrees to criminal forfeiture in the form of a money judgment of \$1,750,000.00, which it agrees constitutes an amount of funds involved in the offenses to which it will plead guilty. The Company agrees that it and defendant e-gold, Ltd. will be jointly and severally liable for satisfaction of the money judgment. In order to effectuate this criminal

forfeiture, the Company agrees to the entry of a Consent Order of Forfeiture, a copy of which is attached hereto. The defendant agrees to waive the requirements of Federal Rules of Criminal Procedure 32.2 regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. The defendant understands that the forfeiture of assets is part of this Plea Agreement and waives any failure by the Court to advise it of this, pursuant to Rule 11(b)(1)(J), at the time its guilty plea is accepted.

Civil Action 07-1337 (RMC). The Company agrees to withdraw its claim to the entire defendant res (personal property) that the Government has sued in the civil forfeiture case pending in the United States District Court for the District of Columbia identified as *United States v. All Property In/Underlying E-Gold Account Numbers 544179 & 109243*, Civil Action 07-1337 (RMC), and to consent to entry of a Final Order of Forfeiture of the defendant res, in favor of the United States. Upon entry of a final order of forfeiture in Civil Action 07-1337 (RMC), and unless final judgment in favor of the United States in Civil Action 07-1337 is ever set aside, the United States will credit the value of the property forfeited in 07-1337 (including accrued interest) to the amount owed to the United States as a result of the criminal forfeiture (\$1.75 million money judgment) to which the defendant consents in this pending criminal case.

The Company agrees that 29,040.41 ounces of e-silver (worth approximately \$526,212.23) and various amounts of other e-metal currently exist in e-gold accounts 544179 and 109243, and that the property in these accounts was never liquidated and provided to the Government as was required pursuant to the seizure warrant and Court Order dated March 10, 2008 (which Order required the Company to liquidate \$275,000 of e-silver to repay the Government for funds it released to counsel for defendant/claimant e-gold, Ltd.). The Government agrees not to seek remuneration for the \$275,000 from any other source. As set forth below, the Company agrees to withdraw, in part, the claim it filed to the defendant res in Civil Action 05-2497 (RMC) to effectuate a forfeiture in 05-2497 that the parties agree will constitute satisfaction of defendant's (or codefendants') current payment and repayment obligations. In return, the Government agrees to relinquish all rights and interests to the e-silver and other e-metal currently in e-gold accounts 544179 and 109243, and agrees to consent to a request by the Company that the Court rescind its order seizing or freezing the property interest that remains in e-gold accounts 544179 and 109243.

Civil Action 05-2497 (RMC). The company agrees to withdraw its claim to \$526,212.23 of the defendant res that the Government has sued in the civil forfeiture case pending in the United States District Court for the District of Columbia and identified as *United States v. All Funds Seized From or On Deposit in SunTrust Account Number 1000028078359, in the Name of Gold and Silver Reserve, Inc., and All Funds on Deposit in Regions Bank Account Number 67-0919-4851, in the Name of Gold and Silver Reserve, Inc.*, Civil Action 05-2497 (RMC), and to consent to entry of a Final Order of Forfeiture of \$526,212.23 of the defendant res (and all accrued interest, if any), in favor of the United States. The parties agree to disposition of the remainder of the defendant res (\$315,685.23) as discussed below. Upon entry of a final order of forfeiture in Civil Action 05-2497 (RMC), and unless final judgment in favor of the United States in Civil Action 05-2497 is ever set aside, the United States will credit the value of the property forfeited in 05-2497 (including accrued

interest) to the amount owed to the United States as a result of the criminal forfeiture (\$1.75 million money judgment) to which the defendant consents in this pending criminal case.

In addition, if all claimants in Civil Action 05-2497 (RMC) consent, the Government agrees to make the remaining \$315,685.23 of seized funds available to the Company, or other persons who filed claims to the funds sued in Civil Action 05-2497 (RMC), if all claimants file with the Court a certification under oath that the funds seized are necessary and will be used for costs relating to complying with the terms of this plea agreement. In the event that the Company certifies that less than \$315,685.23 is necessary and will be used for such costs, the remaining funds will be forfeited and the Company agrees to entry of a Consent Order of Forfeiture in that case. The Government agrees to dismiss Civil Action 05-2497 (RMC) once the seized funds are either forfeited or returned to the Company or other claimants.

The Government agrees that \$1.75 million will constitute the total amount forfeitable to the Government as a result of the crimes to which the defendant will plead guilty.

The defendant warrants that it, and/or e-gold, Ltd., is/are the sole owner(s) of the property sued as the defendant in rem in Civil Actions 07-1337 (RMC) and 05-2497 (RMC) and agrees to hold the United States, its agents and employees harmless from any claims whatsoever in connection with the seizures and forfeitures, or attempted forfeitures, of all such money and property, including but not limited to court costs, legal expenses and attorney's fees.

The defendant further agrees to waive all constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment. The defendant agrees to take all steps as requested by the Government to pass clear title to forfeitable assets to the United States, and to testify truthfully in any judicial forfeiture proceeding. The defendant acknowledges that all property covered by this Plea Agreement is subject to forfeiture as proceeds of or property involved in its illegal conduct (or substitute assets for property otherwise subject to forfeiture).

Further, the Company agrees not to contest or file any claim of interest in "e-gold" accounts that it maintains for unrelated customers and that may be subject to a civil or criminal forfeiture, including civil forfeiture cases now pending and in which it has not previously filed a claim.

10. **Registration as a Money Services Business**

The Company agrees that it and e-gold, Ltd. are "financial institutions" as defined in 31 U.S.C. § 5312(a)(2) and are money services businesses under 31 C.F.R. § 103.11(uu)(5). Further, the Company agrees that the e-gold operation (including both e-gold, Ltd. and Gold & Silver Reserve, Inc. doing business as OmniPay) is a money transmitting business within the meaning of 18 U.S.C. § 1960, and, as such, may not operate without a money transmitting license in States that require licensing of businesses engaged in money transmitting and without registration with the

Department of Treasury (FinCEN) pursuant to 31 U.S.C. § 5330 and 31 C.F.R. § 103.41. Accordingly, the Company will not engage in operation of the e-gold digital currency system, or any other digital currency system, until it has registered with FinCEN. In addition, within thirty (30) days of entering this Plea Agreement, the Company will submit applications to obtain State licenses in States that require licensing of businesses engaged in money transmitting or submit a request for an advisory opinion from such a State that the Company is not required to be licensed. The Company shall obtain any State license to engage in money transmitting (or advisory opinion stating that a license is not required) within six (6) months of entry of this Plea Agreement or stop conducting business in any State where such money transmitting license (or advisory opinion) has not been obtained.

11. Service of Process

The Company agrees that it and e-gold, Ltd. will accept service of process at the business location in Melbourne, Florida or any other United States location from which they operate, including the location of any owner, or principal, regardless of whether that is the location of the principal place of business, incorporation, or registration.

12. Anti-Money Laundering Program

The Company agrees that it and e-gold, Ltd. are “financial institutions” as defined in 31 U.S.C. § 5312(a)(2) and are subject to the requirements to establish an anti-money laundering program in 31 U.S.C. § 5318(h) (applicable to financial institutions) and 31 C.F.R. § 103.125 (applicable to money services businesses). The Company agrees that it and e-gold, Ltd. will establish and maintain a Bank Secrecy Act compliance program, including an anti-money laundering program with internal controls, independent testing and other measures to detect and report potential money laundering, terrorist financing and other suspicious activity. Pursuant to 31 U.S.C. § 5318(h), this shall include, at a minimum, (A) the development of internal policies, procedures, and controls; (B) the designation of a compliance officer; (C) an ongoing employee training program; and (D) an independent audit function to test programs. Further, the Company acknowledges that it and e-gold, Ltd. , as currently operating, are a “high risk” operation with respect to money laundering and agrees that the anti-money laundering program to be established will be commensurate with those risks pursuant to 31 C.F.R. § 103.125. Additionally, the Company agrees to the following:

- (a) **Consultant**: The Company will retain an independent service to assist in establishing an appropriate anti-money laundering program and ensure compliance with money laundering laws. The consultant selected to provide this service shall be compensated for its services by the Company or e-gold, Ltd. at prevailing market rates and will issue a report within ninety (90) days of the entry of this Plea Agreement to both the Company and e-gold, Ltd. and this Office and the Department (through the supervising unit described in paragraph 13) which describes e-gold, Ltd.’s and Gold & Silver Reserve, Inc.’s current anti-money laundering programs and

provides a plan to bring the companies into compliance with anti-money laundering laws.

- (b) **User Agreement and Website Disclaimer:** The Company agrees to establish policies and procedures for prohibiting use of the e-gold digital currency system, any and all businesses and entities associated with the e-gold digital currency system, for criminal activity and to publicize those procedures in its User Agreement within ten (10) days of the entry of this Plea Agreement. Within ten (10) days of the entry of this Plea Agreement, the Company agrees to prominently display a disclaimer on the e-gold website, or any other website with which the Company is associated, to the effect that use of the e-gold system for criminal activity is not tolerated and e-gold is an entity subject to U.S. financial regulations.

- (c) **Customer Identification:** The Company agrees that it and e-gold, Ltd. will, pursuant to 31 U.S.C. § 5318(l) and 31 C.F.R. § 103.125, establish procedures for verifying customer identification. From the entry of this Plea Agreement, no new Omnipay account shall be opened without being in compliance with 31 U.S.C. § 5318(l) and 31 C.F.R. § 103.125. Following ninety (90) days of the entry of this Plea Agreement, no new e-gold or other digital currency account shall be opened, or if that is not reasonable and practicable, permitted to engage in any transactions (other than those incident to the Customer Identification process), without being in compliance with 31 U.S.C. § 5318(l) and 31 C.F.R. § 103.125. All existing e-gold, OmniPay or other digital currency accounts must be brought into compliance with 31 U.S.C. § 5318(l) and 31 C.F.R. § 103.125 or closed within ninety (90) days. As part its anti-money laundering program, the e-gold operation will engage an outside vendor within thirty (30) days of the entry of this Plea Agreement to provide services in proactively searching the Internet for instances where “e-gold” is being used for criminal purposes.

- (d) **OFAC Compliance.** The Company will ensure compliance of the e-gold digital currency system with all applicable regulations of the Department of Treasury, Office of Foreign Assets Control (OFAC). From the entry of this Plea Agreement, no new e-gold, Omnipay or other digital currency account shall be opened, nor shall any transactions be conducted, without being in compliance with OFAC regulations prohibiting transactions from sanctioned countries. Compliance with remaining OFAC regulations, including the blocking of transactions involving Specially Designated Nationals, shall be in accordance with the timeframe required above for customer identification measures. All existing and newly created e-gold, OmniPay or other digital currency accounts must be brought into compliance with OFAC regulations or closed within ninety (90) days of the entry of this Plea Agreement.

- (e) **Suspicious Activity Reports:** The Company agrees that it and e-gold, Ltd. will, pursuant to 31 U.S.C. § 5318(g) and 31 C.F.R. § 103.20, report suspicious transactions detected on or after the entry of this Plea Agreement relevant to a possible violation of law or regulation by its customers.

- (f) **Audit:** The Company will engage an independent third party auditor to identify all gold bars held by the e-gold operation and to conduct an accounting of the e-gold book transfer system to confirm that the amount of e-gold in circulation is fully backed by gold bullion held in allocated storage. The auditor selected to perform this audit shall be compensated for its services by the Company and/or e-gold, Ltd. at prevailing market rates and will issue a report within ninety (90) days of the entry of this Plea Agreement to both the Company and e-gold, Ltd., and this Office and the Department (through the supervising unit described in paragraph 13).

13. **Supervision**

In accordance with the above listed statutory and regulatory provisions, the Company agrees that it and e-gold, Ltd. will submit to supervision by the Internal Revenue's Bank Secrecy Act Division ("supervising unit"). This supervising unit will supervise the Company and e-gold, Ltd. for compliance with the above listed provisions for a period of three years. During this period of time, the supervising unit will perform regular and/or continuous supervision of operations, transactions, and related compliance programs of the Company and e-gold, Ltd. Thereafter, the supervising unit may supervise compliance of the operation in accordance with its regulatory authority. Based upon the determinations of the supervising unit, compliance recommendations will be made regarding the adherence of the Bank Secrecy Act Provisions contained in Title 31, Code of Federal Regulations, Part 103.

14. **Public Statements**

The Company expressly agrees that it, its employees, and its directors shall not make any public statement contradicting any statement of fact contained in the Statement of Offense or any provision of this Plea Agreement for a period of three years from the entry of this Plea Agreement. Any such contradictory public statement by the Company, its employees, or its directors shall constitute a breach of this Plea Agreement as governed by paragraph 16 of this Plea Agreement, and the Company would thereafter be subject to prosecution pursuant to the terms of this Plea Agreement. The decision of whether any statement by any such person contradicting a fact contained in the Statement of Offense or provision of this Plea Agreement will be imputed to the Company for the purpose of determining whether the Company has breached this Plea Agreement shall be in the sole discretion of the United States. Upon the United States' notifying the Company of a public statement by any such person that in whole or in part contradicts a statement of fact contained in the Statement of Offense, the Company may avoid breach of this Plea Agreement by publicly repudiating such statement within 48 hours after notification by the United States.

15. **Transfer of Business**

The Company agrees that, if it sells, merges or otherwise transfers all or substantially all of the business operations as they exist as of the entry of this Plea Agreement to a single purchaser or group of affiliated purchasers for a period of three years from the entry of this Plea Agreement, it shall include in any contract or agreement for sale, merger, or transfer a provision binding the purchaser/successor to the obligations described in paragraphs 10 through 13 of this Plea Agreement for a period of three years from the entry of this Plea Agreement.

16. **Breach of Agreement**

The Company understands and agrees that if, after entering this Plea Agreement, it fails specifically to perform or to fulfill completely each and every one of its obligations under this Plea Agreement, or engages in any felony criminal activity prior to sentencing, it will have breached this Plea Agreement. In the event of such a breach: (a) the Government will be free from its obligations under the Plea Agreement; (b) the Company will not have the right to withdraw the guilty plea; (c) the Company shall be fully subject to criminal prosecution for any other crimes, including perjury and obstruction of justice; and (d) the Government will be free to use against the Company, directly and indirectly, in any criminal or civil proceeding, all statements made by its employees and directors and any of the information or materials provided by the Company, including such statements, information and materials provided pursuant to this Plea Agreement or during the course of any debriefings conducted in anticipation of, or after entry of this Plea Agreement, including statements made on behalf of the Company during proceedings before the Court pursuant to Fed. R. Crim. P. 11.

The Company acknowledges discussing with you Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410, rules which ordinarily limit the admissibility of statements made by a defendant in the course of plea discussions or plea proceedings if a guilty plea is later withdrawn. The Company knowingly and voluntarily waives the rights which arise under these rules.

The Company understands and agrees that the Government shall only be required to prove a breach of this Plea Agreement by a preponderance of the evidence. The Company further understands and agrees that the Government need only prove a violation of federal, state, or local criminal law by probable cause in order to establish a breach of this Plea Agreement.

Nothing in this Plea Agreement shall be construed to permit representatives of the Company to commit perjury, to make false statements or declarations, to obstruct justice, or to protect the Company from prosecution for any crimes not included within this Plea Agreement or committed by the Company after the execution of this Agreement. The Company understands and agrees that the Government reserves the right to prosecute it for any such offenses. The Company further understands that any perjury, false statements or declarations, or obstruction of justice relating to its

obligations under this Plea Agreement shall constitute a breach of this Plea Agreement. However, in the event of such a breach, the Company will not be allowed to withdraw this guilty plea.

17. **Database Update**

The Company agrees that within five (5) days of entry of the Plea Agreement the Company will provide to the Government an electronic copy of the SQL server databases and/or files reflecting transactions conducted, and account owner or operator information, for all e-gold Ltd. and Gold & Silver Inc. transactions from January 8, 2008.

18. **Waiver of Statute of Limitations**

It is further agreed that should the convictions following the Company's plea of guilty pursuant to this Plea Agreement be vacated for any reason, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this Plea Agreement (including any counts that the Government has agreed not to prosecute or to dismiss at sentencing pursuant to this Plea Agreement) may be commenced or reinstated against the Company, notwithstanding the expiration of the statute of limitations between the signing of this Plea Agreement and the commencement or reinstatement of such prosecution, which commencement or reinstatement shall occur within one year of the conviction being vacated. It is the intent of this Plea Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Plea Agreement is signed.

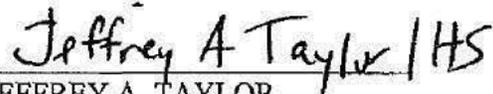
19. **Complete Agreement**

No other agreements, promises, understandings, or representations have been made by the parties or their counsel than those contained in writing herein, nor will any such agreements, promises, understandings, or representations be made unless committed to writing and signed by an authorized representative of the Company, defense counsel, and an Assistant United States Attorney for the District of Columbia.

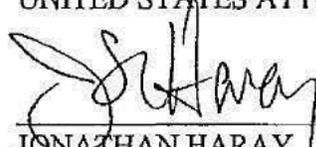
The Company further understands that this Plea Agreement is binding only upon the Criminal Division (including the Fraud and Public Corruption Section and the Asset Forfeiture Unit) of the United States Attorney's Office for the District of Columbia and the Criminal Division (including the Computer Crime and Intellectual Property Section and the Asset Forfeiture and Money Laundering Section) of the U.S. Department of Justice. This Plea Agreement does not bind the Civil Divisions of these Offices or any other United States Attorney's Office, nor does it bind any other state, local, or federal prosecutor. It also does not bar or compromise any civil, tax, or administrative claim pending or that may be made against the Company.

If the foregoing terms and conditions are satisfactory, the Company may so indicate by having its authorized representative sign this Plea Agreement in the space indicated below and returning the original to us once it has been signed by it and by you or other defense counsel.

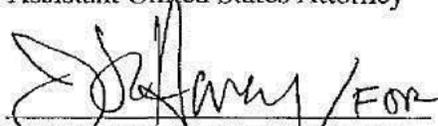
Sincerely yours,



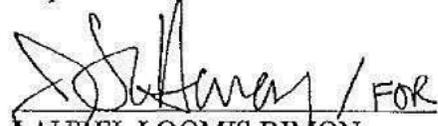
JEFFREY A. TAYLOR
UNITED STATES ATTORNEY



JONATHAN HARAY
Assistant United States Attorney



KIMBERLY KIEFER PERETTI
Senior Counsel
Criminal Division
Department of Justice



LAUREL LOOMIS RIMON
Deputy Chief
Criminal Division
Department of Justice

I have read this Plea Agreement and have discussed it with my attorney, Aron Raskas, Esq. I fully understand this Plea Agreement and agree to it without reservation. I do this voluntarily and of my own free will, intending to be legally bound. No threats have been made to me nor am I under the influence of anything that could impede my ability to understand this Plea Agreement fully. I am pleading guilty because I am in fact guilty of the offense(s) identified in this Plea Agreement.

I reaffirm that absolutely no promises, agreements, understandings, or conditions have been made or entered into in connection with my decision to plead guilty except those set forth in this Plea Agreement. I am satisfied with the legal services provided by my attorney in connection with this Plea Agreement and matters related to it.

Date: 7/21/2008

Defendant
~~Authorized Representative~~

I have read each of the pages constituting this Plea Agreement, reviewed them with my client, and discussed the provisions of the Plea Agreement with my client, fully. These pages accurately and completely sets forth the entire Plea Agreement. I concur in my client's desire to plead guilty as set forth in this Plea Agreement.

Date: 7-21-08



Aron Raskas, Esq.
Attorney for the Defendant

RECEIVED

2008 AUG 22 AM 11:02

Attorneys and Counselors at Law

STATE OF IDAHO
BOISE

August 20, 2008

Sent via United States Mail

Ms. Gennie Sorensen
Securities Bureau
Idaho Department of Finance
800 Park Blvd., suite 200
Boise, Idaho 83712

Re: ***Request for Advisory Opinion***

Dear Ms. Sorensen:

I am writing this letter on behalf of _____, to request a decision as to whether _____ is required to obtain a license pursuant to the Idaho Money Transmitters Act. Specifically we request a ruling that _____ is not required to obtain a license under the Idaho Money Transmitters Act.

_____ issues certain precious metal backed digital currencies that circulate in an account based transaction system accessible via the Internet. Each _____ digital currency functions much like a national currency, such as United States Dollars. However, _____ digital currency is not issued by the United States or by any nation and Federal law does not recognize it as a "currency."¹

¹ The term "currency" is defined in the bank Secrecy Act regulations as follows: "The coin and paper money of the United States or of any other country that is designated as legal tender and that circulates and is customarily used and accepted as a medium of exchange in the country of issuance. Currency includes U.S. silver certificates, U.S. notes and Federal Reserve notes. Currency also includes official foreign bank notes that are customarily used and accepted as a medium of exchange in a foreign country."
31 CFR § 103.11(h)

is a privately held company incorporated in 1999 under the laws of Nevis with physical operations in the state of Florida.² is an Internet company; it provides services to its customers entirely through the Internet. The company does not operate through any physical location in Idaho, has no bank account in Idaho and has no other physical nexus with the state of Idaho. The only connection that exists between and the state of Idaho is the ability of persons located in the state of Idaho to open, manage and perform transactions via their accounts on the Internet (at www

ransactions

Most simply stated, the system consists of (1) digital precious metal backed currencies issued by and (2) an Internet platform on which issued “digital currency” transactions are settled. The digital currencies circulating in the system are (collectively, “e-metal”). Transactions in the system (“Spends”) settle in troy ounce weight units of the corresponding precious metal and e-metal account balances are likewise denominated in troy ounce weight units of the corresponding precious metal.

The system is a closed system in two respects. First, cannot and does not make money payments to or receive money payments from the public, and second, e-metal Spends may only be made from and received into accounts.

Because cannot and does not make or receive money payments, it is not able to and does not offer exchange services between e-metal and United States Dollars (or any other type of national currency). Such exchange services are offered by independent third party businesses, which are necessarily customers of

Any e-metal Spend may only be initiated via the Internet from an account with a balance sufficient to make the Spend and may only be executed by the account holder. For this reason, e-metal Spends are settled automatically, instantaneously, and irrevocably. is not a party to e-metal Spends between its customers, but – as described above – merely offers the transaction system in which e-metal Spends settle.

For instance, if a merchant has an account and the merchant’s customer has an account, and merchant and customer are willing to use e-metal as a medium of exchange, the customer may purchase the merchant’s wares by spending a specified amount of e-metal into the merchant’s account. does not participate in this transaction other than to provide the platform on which the transaction takes place.

² operations address is

is contractually bound to ensure that all e-metal in circulation is 100% backed by corresponding precious metals (for example: e-silver is 100% backed by silver bullion). The (the "Trust") was formed for the express purpose of backing all e-metal in circulation for the benefit of all account holders collectively. The Trust's bullion holdings are in allocated storage in Treasury-grade vaults in London, Dubai and Switzerland.³

Background and Procedural Posture

was incorporated in 1999. Until July 2008 the company operated without a license under a good faith belief that it was not required to be licensed under state law. In April of 2007 and its three directors were indicted in the United States District Court for the District of Columbia for, *inter alia*, money laundering in violation of 18 U.S.C. § 1956 and operating as an unlicensed money transmitting business in violation of 18 U.S.C. § 1960.

On July 21, 2008, entered into a plea agreement ("Plea Agreement"),⁴ in which agreed that it is a "financial institution" as defined in 31 U.S.C. § 5312(a)(2), a money services business under 31 C.F.R. § 103.11(uu)(5) and that and is a money transmitting business within the meaning of 18 U.S.C. § 1960. Pursuant to the plea agreement will remain in business, enhance its anti-money laundering program and, within thirty days following July 21, 2008, either "submit applications to obtain State licenses in States that require licensing of businesses engaged in money transmitting or submit a request for an advisory opinion from such a state that the Company is not required to be licensed." Plea Agreement, at p.7.

Request for Advisory Opinion

According to Idaho Code Ann. § 26-2902 (11) (2008), "money transmission means the sale or issuance of payment instrument 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 including, but not limited to, payment instrument, wire, facsimile, or electronic transfer."

In our view, simply hosts a settlement platform upon which persons located around the world can use a gold-backed medium of exchange to perform transactions with one another. The company does not sell, issue or otherwise dispense checks, and it does not receive money as an agent. Additionally, does not accept and has never accepted any monetary payments in any form in the state of Idaho. The company does not have and has not previously had a bank account in

³ A report of the audit of the precious metals held by the is available at <http://www. examiner.html>.

⁴ Attached is a copy of plea agreement ("Plea Agreement").

August 20, 2008

Page – 4 –

Idaho. It is therefore the position of _____ that it is not a business subject to the Money Transmitters Act licensing requirement of the state of Idaho and that the company need not obtain a Money Transmitters Act license from the Idaho Department of Finance.

Pursuant to this letter, _____ respectfully requests that the Idaho Securities Commission issue an opinion stating that _____ is not a business subject to the Idaho Money Transmitters Act licensing requirement and is not required to obtain a Money Transmitters Act license from the state of Idaho.

Thank you for your attention to this matter. If you have any questions or if you would like to discuss this matter in greater detail, please do not hesitate to contact me. I look forward to hearing from you soon.

Very truly yours,

Esq.

ASI/



United States Attorney

District of Columbia

Judiciary Center
555 Fourth St. N.W.
Washington, D.C. 20530

07 109-0 (RMC)

July 18, 2008

Bernard S. Grimm, Esq.,
Cozen O'Connor
The Army and Navy Club Building, Suite 1100
1627 I Street, NW
Washington, DC 20006-4007
bgrimm@cozen.com

FILED

JUL 21 2008

NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

Re:

Dear Mr. Grimm:

This letter sets forth the full and complete plea offer to your client, (referred to herein as "Company," client or defendant). This offer is by the Criminal Division (including the Fraud and Public Corruption Section and the Asset Forfeiture Unit) of the United States Attorney's Office for the District of Columbia (the "Office") and the Criminal Division (including the Computer Crime and Intellectual Property Section and the Asset Forfeiture and Money Laundering Section) of the U.S. Department of Justice ("Department") and is binding upon both. This plea offer will expire on July 18, 2008. Upon receipt, the executed letter will itself become the plea agreement. The terms of the offer are as follows:

1. **Charges and Statutory Penalties**

The Company agrees to plead guilty to Count One and Count Two of the Superseding Indictment charging violations of Title 18, United States Code, Section 1956(h) (Conspiracy to Engage in Money Laundering) and Title 18, United States Code, Section 371 (Conspiracy to Operate an Unlicensed Money Transmitting Business). Your client understands that, pursuant to 18 U.S.C. § 1956, the maximum sentence that can be imposed is a fine of \$500,000, or a fine of twice the value of the property involved in the money laundering transactions, a \$400 special assessment, a five-year term of probation, an order of restitution, and an obligation to pay any applicable interest or penalties on fines or restitution not timely made. Your client understands that, pursuant to 18 U.S.C. § 371, the maximum sentence that can be imposed is a fine of \$500,000, a \$400 special assessment, a five-year term of probation, an order of restitution, and an obligation to pay any applicable interest or penalties on fines or restitution not timely made.

In consideration of your client's plea to the above offenses, your client will not be further prosecuted criminally by this Office or the Department for the conduct set forth in the attached Statement of Offense or for conduct of which the Government is aware as of the entry of this Plea

Agreement. At the conclusion of the sentencing hearing, the Government will move to dismiss the remaining counts in the Superseding Indictment. Your client agrees that with respect to any and all dismissed charges your client is not a “prevailing party” within the meaning of the “Hyde Amendment,” Section 617, P.L. 105-119 (Nov. 26, 1997), and will not file any claim under that law.

2. **Factual Stipulations**

The Company agrees that the attached “Statement of the Offense” fairly and accurately describes its actions and involvement in the money laundering and unlicensed money transmitting conspiracies. An authorized representative of the Company will admit that the Company is in fact guilty. By virtue of corporate resolution dated July 17, 2008, defendant has authorized this plea and has empowered its outside counsel, Bernard Grimm, to act on its behalf for purposes of this plea. It is anticipated that prior to or during the Rule 11 plea hearing, the company, through counsel, will adopt and sign the Statement of the Offense as a written proffer of evidence.

3. **Sentencing Guidelines Stipulations**

The Company understands that the sentence in this case will be determined by the Court, pursuant to the factors set forth in 18 U.S.C. § 3553(a), including a consideration of the guidelines and policies promulgated by the United States Sentencing Commission, Guidelines Manual 2005 (hereinafter “Sentencing Guidelines” or “U.S.S.G”). Pursuant to Federal Rule of Criminal Procedure 11(c)(1)(B), and to assist the Court in determining the appropriate sentence, the parties stipulate to the following:

Offense Level Under the Guidelines

Money Laundering

§ 2.S1.1

(a) Base Offense Level	8
Value of laundered funds of more than \$1,000,000	16
(b) Specific Offense Characteristics	
2S1.1 (b)(1) – knowledge or belief that funds were involved in child exploitation	6
2S1.1(b)(2) – conviction under 18 USC 1956	2
TOTAL:	32

Conspiracy (Operation of Unlicensed Money Transmitting Business)

§ 2S1.1

(a) Base Offense Level	8
Value of laundered funds of more than \$1,000,000	16
(b) Specific Offense Characteristics	
2S1.1 (b)(1) – knowledge or belief that funds were involved in child exploitation	6
TOTAL:	30

In accordance with the above, and in accordance with Chapter Eight of the Sentencing Guidelines, the applicable Guidelines Offense Level for the money laundering violation is 32 and the conspiracy (operation of unlicensed money transmitting business) violation is 30. The parties agree that the offenses of money laundering and conspiracy (operation of an unlicensed money transmitting business) group under USSG § 3D1.1, resulting in a total offense level of 32. The appropriate Guideline Fine is the greater of the amount calculated pursuant to USSG § 8C2.4 or twice the value of the funds laundered. The Company agrees that a Stipulated Fine in the amount of \$3,738,387.30 would be an appropriate part of its sentence. The parties agree that under the Sentencing Guidelines neither a downward nor an upward departure from the Stipulated Fine set forth above is warranted, except as set forth herein. Accordingly, neither party will seek such a departure or seek any adjustment not set forth herein. Nor will either party suggest that the Court consider such a departure or adjustment except as set forth herein.

4. Agreement as to Sentencing Allocation

The parties further agree that a sentence of the Stipulated Fine would constitute a reasonable sentence in light of all of the factors set forth in Title 18, United States Code, Section 3553(a). The Company reserves its right to argue for a reduction of the Stipulated Fine based on the Company's inability to pay pursuant to USSG § 8C3.3. The Government will not object to the Company's argument regarding its inability to pay the Stipulated Fine if, after reasonable inspection of the Company's financial records, the Government agrees that the Company is truly unable to pay the Stipulated Fine.

Nothing in this Plea Agreement limits the right of the Government to seek imposition of an adjustment for obstruction of justice, *see* U.S.S.G. §3C1.1, regardless of any stipulation set forth above, should the Company move to withdraw its guilty plea after it is entered, or should it be determined that the Company has either (i) engaged in conduct, unknown to the Government at the time of the signing of this Plea Agreement, that constitutes obstruction of justice or (ii) engaged in additional criminal conduct after signing this Plea Agreement.

5. **Court Not Bound by the Plea Agreement**

It is understood that pursuant to Federal Rules of Criminal Procedure 11(c)(1)(B) and 11(c)(3)(B) the Court is not bound by the above stipulations, either as to questions of fact or as to the parties' determination of the applicable Guidelines fine, or other sentencing issues. In the event that the Court considers any Guidelines adjustments, departures, or calculations different from any stipulations contained in this Plea Agreement, or contemplates a sentence outside the Guidelines range based upon the general sentencing factors listed in Title 18, United States Code, Section 3553(a), the parties reserve the right to answer any related inquiries from the Court.

6. **Court Not Bound by the Non-Mandatory Sentencing Guidelines**

It is understood that the sentence to be imposed upon the Company is determined solely by the Court. It is understood that the Sentencing Guidelines are not binding on the Court. The Company, through counsel, acknowledges that its entry of a guilty plea to the charged offense authorizes the sentencing court to impose any sentence, up to and including the statutory maximum sentence, which may be greater than the applicable Guidelines fine. The Government cannot, and does not, make any promise or representation as to what sentence the Company will receive. Moreover, it is understood that the Company will have no right to withdraw its plea of guilty should the Court impose a sentence outside the Guidelines fine.

7. **Restitution**

In addition to the other penalties provided by law, the Court may also order that the Company make restitution. The Government believes that no restitution is applicable under the relevant restitution statutes, and is not seeking restitution in this case. However, the Government's position is not binding on the Court and the Court may order restitution. Restitution is payable immediately unless ordered otherwise by the Court.

8. **Wiring of Plea Agreement**

The Company understands and acknowledges that this Agreement and any plea of guilty which it may enter pursuant to this Plea Agreement are contingent upon the entry of guilty pleas by co-defendants, Douglas L. Jackson, Barry K. Downey, Reid A. Jackson, and Gold & Silver Reserve, Inc., in this case. If these co-defendants fail to enter a guilty plea, this Plea Agreement and any proceedings pursuant to this Plea Agreement may be withdrawn or voided at the discretion of the Government.

9. **Forfeiture**

Criminal Forfeiture. The Company agrees to criminal forfeiture in the form of a money judgment of \$1,750,000.00, which it agrees constitutes an amount of funds involved in the offenses to which it will plead guilty. The Company agrees that it and defendant Gold & Silver Reserve, Inc.

will be jointly and severally liable for satisfaction of the money judgment. In order to effectuate this criminal forfeiture, the Company agrees to the entry of a Consent Order of Forfeiture, a copy of which is attached hereto. The defendant agrees to waive the requirements of Federal Rules of Criminal Procedure 32.2 regarding notice of the forfeiture in the charging instrument, announcement of the forfeiture at sentencing, and incorporation of the forfeiture in the judgment. The defendant understands that the forfeiture of assets is part of this Plea Agreement and waives any failure by the Court to advise it of this, pursuant to Rule 11(b)(1)(J), at the time its guilty plea is accepted.

Civil Action 07-1337 (RMC). The Company agrees to withdraw its claim to the entire defendant res (personal property) that the Government has sued in the civil forfeiture case pending in the United States District Court for the District of Columbia identified as *United States v. All Property In/Underlying E-Gold Account Numbers 544179 & 109243*, Civil Action 07-1337 (RMC), and to consent to entry of a Final Order of Forfeiture of the defendant res, in favor of the United States. Upon entry of a final order of forfeiture in Civil Action 07-1337 (RMC), and unless final judgment in favor of the United States in Civil Action 07-1337 is ever set aside, the United States will credit the value of the property forfeited in 07-1337 (including accrued interest) to the amount owed to the United States as a result of the criminal forfeiture (\$1.75 million money judgment) to which the defendant consents in this pending criminal case.

The Company agrees that 29,040.41 ounces of e-silver (worth approximately \$526,212.23) and various amounts of other e-metal currently exist in e-gold accounts 544179 and 109243, and that the property in these accounts was never liquidated and provided to the Government as was required pursuant to the seizure warrant and Court Order dated March 10, 2008 (which Order required the Company to liquidate \$275,000 of e-silver to repay the Government for funds it released to counsel for defendant/claimant e-gold, Ltd.). The Government agrees not to seek remuneration for the \$275,000 from any other source. As set forth below, the Company agrees to withdraw, in part, the claim it filed to the defendant res in Civil Action 05-2497 (RMC) to effectuate a forfeiture in 05-2497 that the parties agree will constitute satisfaction of defendant's (or codefendants') current payment and repayment obligations. In return, the Government agrees to relinquish all rights and interests to the e-silver and other e-metal currently in e-gold accounts 544179 and 109243, and agrees to consent to a request by the Company that the Court rescind its order seizing or freezing the property interest that remains in e-gold accounts 544179 and 109243.

Civil Action 05-2497 (RMC). The company agrees to withdraw its claim to \$526,212.23 of the defendant res that the Government has sued in the civil forfeiture case pending in the United States District Court for the District of Columbia and identified as *United States v. All Funds Seized From or On Deposit in SunTrust Account Number 1000028078359, in the Name of Gold and Silver Reserve, Inc., and All Funds on Deposit in Regions Bank Account Number 67-0919-4851, in the Name of Gold and Silver Reserve, Inc.*, Civil Action 05-2497 (RMC), and to consent to entry of a Final Order of Forfeiture of \$526,212.23 of the defendant res (and all accrued interest, if any), in favor of the United States. The parties agree to disposition of the remainder of the defendant res (\$315,685.23) as discussed below. Upon entry of a final order of forfeiture in Civil Action 05-2497 (RMC), and unless final judgment in favor of the United States in Civil Action 05-2497 is ever set

aside, the United States will credit the value of the property forfeited in 05-2497 (including accrued interest) to the amount owed to the United States as a result of the criminal forfeiture (\$1.75 million money judgment) to which the defendant consents in this pending criminal case.

In addition, if all claimants in Civil Action 05-2497 (RMC) consent, the Government agrees to make the remaining \$315,685.23 of seized funds available to the Company, or other persons who filed claims to the funds sued in Civil Action 05-2497 (RMC), if all claimants file with the Court a certification under oath that the funds seized are necessary and will be used for costs relating to complying with the terms of this plea agreement. In the event that the Company certifies that less than \$315,685.23 is necessary and will be used for such costs, the remaining funds will be forfeited and the Company agrees to entry of a Consent Order of Forfeiture in that case. The Government agrees to dismiss Civil Action 05-2497 (RMC) once the seized funds are either forfeited or returned to the Company or other claimants.

The Government agrees that \$1.75 million will constitute the total amount forfeitable to the Government as a result of the crimes to which the defendant will plead guilty.

The defendant warrants that it, and/or Gold & Silver Reserve, Inc., is/are the sole owner(s) of the property sued as the defendant in rem in Civil Actions 07-1337 (RMC) and 05-2497 (RMC) and agrees to hold the United States, its agents and employees harmless from any claims whatsoever in connection with the seizures and forfeitures, or attempted forfeitures, of all such money and property, including but not limited to court costs, legal expenses and attorney's fees.

The defendant further agrees to waive all constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment. The defendant agrees to take all steps as requested by the Government to pass clear title to forfeitable assets to the United States, and to testify truthfully in any judicial forfeiture proceeding. The defendant acknowledges that all property covered by this Plea Agreement is subject to forfeiture as proceeds of or property involved in its illegal conduct (or substitute assets for property otherwise subject to forfeiture).

Further, the Company agrees not to contest or file any claim of interest in "e-gold" accounts that it maintains for unrelated customers and that may be subject to a civil or criminal forfeiture, including civil forfeiture cases now pending and in which it has not previously filed a claim.

10. Registration as a Money Services Business

The Company agrees that it and Gold & Silver Reserve, Inc. are "financial institutions" as defined in 31 U.S.C. § 5312(a)(2) and are money services businesses under 31 C.F.R. § 103.11(uu)(5). Further, the Company agrees that the e-gold operation (including both e-gold, Ltd. and Gold & Silver Reserve, Inc. doing business as OmniPay) is a money transmitting business within the meaning of 18 U.S.C. § 1960, and, as such, may not operate without a money transmitting license

in States that require licensing of businesses engaged in money transmitting and without registration with the Department of Treasury (FinCEN) pursuant to 31 U.S.C. § 5330 and 31 C.F.R. § 103.41. Accordingly, the Company will not engage in operation of the e-gold digital currency system, or any other digital currency system, until it has registered with FinCEN. In addition, within thirty (30) days of entering this Plea Agreement, the Company will submit applications to obtain State licenses in States that require licensing of businesses engaged in money transmitting or submit a request for an advisory opinion from such a State that the Company is not required to be licensed. The Company shall obtain any State license to engage in money transmitting (or advisory opinion stating that a license is not required) within six (6) months of entry of this Plea Agreement or stop conducting business in any State where such money transmitting license (or advisory opinion) has not been obtained.

11. **Service of Process**

The Company agrees that it and Gold & Silver Reserve, Inc. will accept service of process at the business location in Melbourne, Florida or any other United States location from which they operate, including the location of any owner, or principal, regardless of whether that is the location of the principal place of business, incorporation, or registration.

12. **Anti-Money Laundering Program**

The Company agrees that it and Gold & Silver Reserve, Inc. are “financial institutions” as defined in 31 U.S.C. § 5312(a)(2) and are subject to the requirements to establish an anti-money laundering program in 31 U.S.C. § 5318(h) (applicable to financial institutions) and 31 C.F.R. § 103.125 (applicable to money services businesses). The Company agrees that it and Gold & Silver Reserve, Inc. will establish and maintain a Bank Secrecy Act compliance program, including an anti-money laundering program with internal controls, independent testing and other measures to detect and report potential money laundering, terrorist financing and other suspicious activity. Pursuant to 31 U.S.C. § 5318(h), this shall include, at a minimum, (A) the development of internal policies, procedures, and controls; (B) the designation of a compliance officer; (C) an ongoing employee training program; and (D) an independent audit function to test programs. Further, the Company acknowledges that it and Gold & Silver Reserve, Inc., as currently operating, are a “high risk” operation with respect to money laundering and agrees that the anti-money laundering program to be established will be commensurate with those risks pursuant to 31 C.F.R. § 103.125. Additionally, the Company agrees to the following:

- (a) **Consultant:** The Company will retain an independent service to assist in establishing an appropriate anti-money laundering program and ensure compliance with money laundering laws. The consultant selected to provide this service shall be compensated for its services by the Company or Gold & Silver Reserve, Inc. at prevailing market rates and will issue a report within ninety (90) days of the entry of this Plea Agreement to both the Company and Gold & Silver Reserve, Inc. and this Office and the Department (through the supervising unit

described in paragraph 13) which describes e-gold, Ltd.'s and Gold & Silver Reserve, Inc.'s current anti-money laundering programs and provides a plan to bring the companies into compliance with anti-money laundering laws.

- (b) **User Agreement and Website Disclaimer:** The Company agrees to establish policies and procedures for prohibiting use of the e-gold digital currency system, any and all businesses and entities associated with the e-gold digital currency system, for criminal activity and to publicize those procedures in its User Agreement within ten (10) days of the entry of this Plea Agreement. Within ten (10) days of the entry of this Plea Agreement, the Company agrees to prominently display a disclaimer on the e-gold website, or any other website with which the Company is associated, to the effect that use of the e-gold system for criminal activity is not tolerated and e-gold is an entity subject to U.S. financial regulations.

- (c) **Customer Identification:** The Company agrees that it and Gold & Silver Reserve, Inc. will, pursuant to 31 U.S.C. § 5318(l) and 31 C.F.R. § 103.125, establish procedures for verifying customer identification. From the entry of this Plea Agreement, no new Omnipay account shall be opened without being in compliance with 31 U.S.C. § 5318(l) and 31 C.F.R. § 103.125. Following ninety (90) days of the entry of this Plea Agreement, no new e-gold or other digital currency account shall be opened, or if that is not reasonable and practicable, permitted to engage in any transactions (other than those incident to the Customer Identification process), without being in compliance with 31 U.S.C. § 5318(l) and 31 C.F.R. § 103.125. All existing e-gold, OmniPay or other digital currency accounts must be brought into compliance with 31 U.S.C. § 5318(l) and 31 C.F.R. § 103.125 or closed within ninety (90) days. As part its anti-money laundering program, the e-gold operation will engage an outside vendor within thirty (30) days of the entry of this Plea Agreement to provide services in proactively searching the Internet for instances where "e-gold" is being used for criminal purposes.

- (d) **OFAC Compliance.** The Company will ensure compliance of the e-gold digital currency system with all applicable regulations of the Department of Treasury, Office of Foreign Assets Control (OFAC). From the entry of this Plea Agreement, no new e-gold, Omnipay or other digital currency account shall be opened, nor shall any transactions be conducted, without being in compliance with OFAC regulations prohibiting transactions from sanctioned countries. Compliance with remaining OFAC regulations, including the blocking of transactions involving Specially Designated Nationals, shall be in accordance with the timeframe required above for customer identification measures. All existing and newly created e-gold,

OmniPay or other digital currency accounts must be brought into compliance with OFAC regulations or closed within ninety (90) days of the entry of this Plea Agreement.

- (e) **Suspicious Activity Reports:** The Company agrees that it and Gold & Silver Reserve, Inc. will, pursuant to 31 U.S.C. § 5318(g) and 31 C.F.R. § 103.20, report suspicious transactions detected on or after the entry of this Plea Agreement relevant to a possible violation of law or regulation by its customers.
- (f) **Audit:** The Company will engage an independent third party auditor to identify all gold bars held by the e-gold operation and to conduct an accounting of the e-gold book transfer system to confirm that the amount of e-gold in circulation is fully backed by gold bullion held in allocated storage. The auditor selected to perform this audit shall be compensated for its services by the Company and/or Gold & Silver Reserve, Inc. at prevailing market rates and will issue a report within ninety (90) days of the entry of this Plea Agreement to both the Company and Gold & Silver Reserve, Inc., and this Office and the Department (through the supervising unit described in paragraph 13).

13. **Supervision**

In accordance with the above listed statutory and regulatory provisions, the Company agrees that it and Gold & Silver Reserve, Inc. will submit to supervision by the Internal Revenue's Bank Secrecy Act Division ("supervising unit"). This supervising unit will supervise the Company and Gold & Silver Reserve, Inc. for compliance with the above listed provisions for a period of three years. During this period of time, the supervising unit will perform regular and/or continuous supervision of operations, transactions, and related compliance programs of the Company and Gold & Silver Reserve, Inc. Thereafter, the supervising unit may supervise compliance of the operation in accordance with its regulatory authority. Based upon the determinations of the supervising unit, compliance recommendations will be made regarding the adherence of the Bank Secrecy Act Provisions contained in Title 31, Code of Federal Regulations, Part 103.

14. **Public Statements**

The Company expressly agrees that it, its employees, and its directors shall not make any public statement contradicting any statement of fact contained in the Statement of Offense or any provision of this Plea Agreement for a period of three years from the entry of this Plea Agreement. Any such contradictory public statement by the Company, its employees, or its directors shall constitute a breach of this Plea Agreement as governed by paragraph 16 of this Plea Agreement, and the Company would thereafter be subject to prosecution pursuant to the

terms of this Plea Agreement. The decision of whether any statement by any such person contradicting a fact contained in the Statement of Offense or provision of this Plea Agreement will be imputed to the Company for the purpose of determining whether the Company has breached this Plea Agreement shall be in the sole discretion of the United States. Upon the United States' notifying the Company of a public statement by any such person that in whole or in part contradicts a statement of fact contained in the Statement of Offense, the Company may avoid breach of this Plea Agreement by publicly repudiating such statement within 48 hours after notification by the United States.

15. **Transfer of Business**

The Company agrees that, if it sells, merges or otherwise transfers all or substantially all of the business operations as they exist as of the entry of this Plea Agreement to a single purchaser or group of affiliated purchasers for a period of three years from the entry of this Plea Agreement, it shall include in any contract or agreement for sale, merger, or transfer a provision binding the purchaser/successor to the obligations described in paragraphs 10 through 13 of this Plea Agreement for a period of three years from the entry of this Plea Agreement.

16. **Breach of Agreement**

The Company understands and agrees that if, after entering this Plea Agreement, it fails specifically to perform or to fulfill completely each and every one of its obligations under this Plea Agreement, or engages in any felony criminal activity prior to sentencing, it will have breached this Plea Agreement. In the event of such a breach: (a) the Government will be free from its obligations under the Plea Agreement; (b) the Company will not have the right to withdraw the guilty plea; (c) the Company shall be fully subject to criminal prosecution for any other crimes, including perjury and obstruction of justice; and (d) the Government will be free to use against the Company, directly and indirectly, in any criminal or civil proceeding, all statements made by its employees and directors and any of the information or materials provided by the Company, including such statements, information and materials provided pursuant to this Plea Agreement or during the course of any debriefings conducted in anticipation of, or after entry of this Plea Agreement, including statements made on behalf of the Company during proceedings before the Court pursuant to Fed. R. Crim. P. 11.

The Company acknowledges discussing with you Federal Rule of Criminal Procedure 11(f) and Federal Rule of Evidence 410, rules which ordinarily limit the admissibility of statements made by a defendant in the course of plea discussions or plea proceedings if a guilty plea is later withdrawn. The Company knowingly and voluntarily waives the rights which arise under these rules.

The Company understands and agrees that the Government shall only be required to prove a breach of this Plea Agreement by a preponderance of the evidence. The Company further understands and agrees that the Government need only prove a violation of federal, state, or local criminal law by probable cause in order to establish a breach of this Plea Agreement.

Nothing in this Plea Agreement shall be construed to permit representatives of the Company to commit perjury, to make false statements or declarations, to obstruct justice, or to protect the Company from prosecution for any crimes not included within this Plea Agreement or committed by the Company after the execution of this Agreement. The Company understands and agrees that the Government reserves the right to prosecute it for any such offenses. The Company further understands that any perjury, false statements or declarations, or obstruction of justice relating to its obligations under this Plea Agreement shall constitute a breach of this Plea Agreement. However, in the event of such a breach, the Company will not be allowed to withdraw this guilty plea.

17. **Database Update**

The Company agrees that within five (5) days of the entry of the Plea Agreement the Company will provide to the Government an electronic copy of the SQL server databases and/or files reflecting transactions conducted, and account owner or operator information, for all e-gold Ltd. and Gold & Silver Inc. transactions from January 8, 2008.

18. **Waiver of Statute of Limitations**

It is further agreed that should the convictions following the Company's plea of guilty pursuant to this Plea Agreement be vacated for any reason, then any prosecution that is not time-barred by the applicable statute of limitations on the date of the signing of this Plea Agreement (including any counts that the Government has agreed not to prosecute or to dismiss at sentencing pursuant to this Plea Agreement) may be commenced or reinstated against the Company, notwithstanding the expiration of the statute of limitations between the signing of this Plea Agreement and the commencement or reinstatement of such prosecution, which commencement or reinstatement shall occur within one year of the conviction being vacated. It is the intent of this Plea Agreement to waive all defenses based on the statute of limitations with respect to any prosecution that is not time-barred on the date that this Plea Agreement is signed.

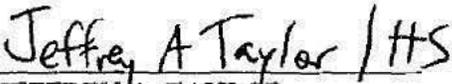
19. **Complete Agreement**

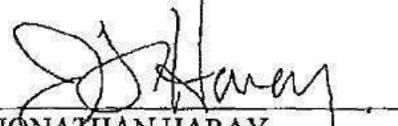
No other agreements, promises, understandings, or representations have been made by the parties or their counsel than those contained in writing herein, nor will any such agreements, promises, understandings, or representations be made unless committed to writing and signed by an authorized representative of the Company, defense counsel, and an Assistant United States Attorney for the District of Columbia.

The Company further understands that this Plea Agreement is binding only upon the Criminal Division (including the Fraud and Public Corruption Section and the Asset Forfeiture Unit) of the United States Attorney's Office for the District of Columbia and the Criminal Division (including the Computer Crime and Intellectual Property Section and the Asset Forfeiture and Money Laundering Section) of the U.S. Department of Justice. This Plea Agreement does not bind the Civil Divisions of these Offices or any other United States Attorney's Office, nor does it bind any other state, local, or federal prosecutor. It also does not bar or compromise any civil, tax, or administrative claim pending or that may be made against the Company.

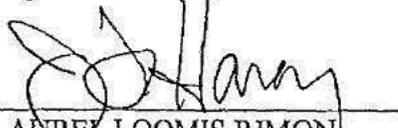
If the foregoing terms and conditions are satisfactory, the Company may so indicate by having its authorized representative sign this Plea Agreement in the space indicated below and returning the original to us once it has been signed by it and by you or other defense counsel.

Sincerely yours,


JEFFREY A. TAYLOR
UNITED STATES ATTORNEY


JONATHAN HARAY
Assistant United States Attorney


KIMBERLY KIEFER PERETTI
Senior Counsel
Criminal Division
Department of Justice


LAUREL LOOMIS RIMON
Deputy Chief
Criminal Division
Department of Justice

I have read this Plea Agreement and have discussed it with my attorney, Bernard Grimm, Esq. I fully understand this Plea Agreement and agree to it without reservation. I do this voluntarily and of my own free will, intending to be legally bound. No threats have been made to me nor am I under the influence of anything that could impede my ability to understand this Plea Agreement fully. I am pleading guilty because I am in fact guilty of the offense(s) identified in this Plea Agreement.

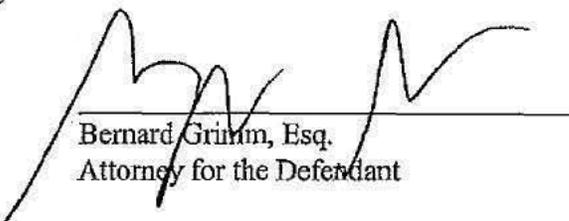
I reaffirm that absolutely no promises, agreements, understandings, or conditions have been made or entered into in connection with my decision to plead guilty except those set forth in this Plea Agreement. I am satisfied with the legal services provided by my attorney in connection with this Plea Agreement and matters related to it.

Date: 7/21/2008

Defendant
Authorized Representative

I have read each of the pages constituting this Plea Agreement, reviewed them with my client, and discussed the provisions of the Plea Agreement with my client, fully. These pages accurately and completely sets forth the entire Plea Agreement. I concur in my client's desire to plead guilty as set forth in this Plea Agreement.

Date: 7/21/08



Bernard Grimm, Esq.
Attorney for the Defendant

RECEIVED

2008 OCT 10 AM 11:43

October 7, 2008

STATE OF IDAHO
DEPT OF FINANCE

James Burns
Investigations Chief
Idaho Department of Finance
800 Park Blvd., Suite 200
Boise, Idaho 83712

RE:

Dear Mr. Burns:

Thanks for the time you spent in connection with the above referenced prepaid card program. As we discussed, I have enclosed a brief funds flow to set forth and describe how funds are moved to the prepaid cards for use by consumers.

Further to our discussion this letter will confirm certain legal and operational matters in connection with involvement in the above referenced program. First of all, the prepaid card is issued by and is a bank product. is a federal savings association regulated by the Office of Thrift Supervision, and is an authorized delegate of to provide marketing services. It is important to note that although has the primary responsibility to oversee the actions of our Regulator maintains the authority to examine or audit as well.

All funds, as depicted in the funds flow, are directed to the omnibus account held for the benefit of cardholders and controlled by In essence, does not collect, control, nor move any funds on behalf of

Cardholders have a direct contractual relationship with who is responsible for all obligations related to the card function and use. Moreover the responsibility for funds loaded to the card through any legitimate means, including (i) (ii) Visa link, (iii) ACH direct deposit of payroll, or (iv) other electronic transfer, remains solely with the Bank. In other words, is responsible to a cardholder for funds loaded, even if the funds through some act of malfeasance never are submitted to the Bank.

Please do not hesitate to call or email me if you have questions or need any further information.

Best regards,

Chief Legal Officer



IDAHO
DEPARTMENT OF FINANCE

C. L. "BUTCH" OTTER
Governor

GAVIN M. GEE
Director

September 25, 2008

Re: Money Transmission Licensing

Dear M

Thank you for meeting with us this past week regarding the activities and business model of

Background -- The Department has had ongoing communications with and its principals regarding whether a money transmitters license would be appropriate given the business model presented by More specifically, has represented that

1. is as an appointed agent of Bank for the marketing of branded stored value cards,
2. The branded stored value cards are issued by Bank and the cards are Bank products,
3. All loads to the stored value products are to occur through:
 - a) locations¹ through to Bank,
 - b) ACH electronic fund transfers direct to Bank,
 - c) VISA Link merchant locations, or
 - d) Payroll electronic direct deposit transactions to Bank,
4. complies with all federal Bank Secrecy Act requirements,
5. does not directly handle any customer funds and does not control the omnibus or individual consumer accounts associated with the omnibus account controlled by Bank, and
6. Stored value card purchasers are Bank customers and the contractual relationship with the card is solely between Bank and the card customer.

Representatives of Bank have orally represented² that is an appointed agent of their financial

¹ is a licensed Money Transmitter in Idaho and its agents operate as authorized delegates of the licensee.

SECURITIES BUREAU
800 Park Blvd., Suite 200, Boise, ID 83712
Mail To: P.O. Box 83720, Boise ID 83720-0031
Phone: (208) 332-8004 Fax: (208) 332-8099
<http://finance.idaho.gov>

institution and that ANY customer payment intended for loading to an [redacted] branded stored value card through any of the referenced loading mechanisms is ultimately the responsibility of [redacted] Bank and that the bank will properly credit [redacted] cardholder loads, even where financial loss occurs outside the control of [redacted] Bank (e.g., [redacted] agent malfeasance). [redacted] Bank is responsible to the customer for any losses which may occur once the customer has tendered funds to a merchant, [redacted], or other agent of [redacted] Bank.

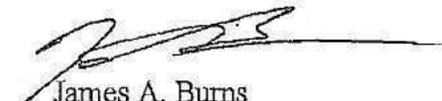
Policy Considerations – It has been your representation that consumers are not at risk of loss as long as they obtain and retain receipts provided to them through the various card loading mechanisms. As such, you believe that the activities of [redacted] present no risk to consumers and that the consumer protection element of the Idaho Money Transmitters Act is satisfied by the program as designed.

Based solely upon the facts presented above, the Department has determined to take a no enforcement action position as it pertains to the licensing provisions of the Idaho Money Transmitters Act in this instance. This determination is based specifically on our understanding that [redacted] Bank's financial obligation to the customer originates at the time the funds are presented through one of the identified loading mechanisms.

Please be advised, that should the facts of your described business activities be different than characterized above, or change at a later date, then the Department's conclusion may well be different than stated herein.

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

Sincerely,


James A. Burns
Investigations Chief

² To further formalize our opinion in this matter, we request written confirmation by [redacted] Bank of the oral representations attributed to them herein.

RECEIVED

2008 SEP 11 AM 11:25

STATE OF IDAHO
DEPT OF FINANCE

9 September 2008

James A. Burns, Investigations Chief
Idaho Department of Finance
800 Park Blvd., Suite 200
Boise, ID 83720-0031

Re: Money Transmission Licensing Inquiry

Dear Mr. Burns,

We received your letter dated August 26, 2008 regarding the Department's review of the applicability of the Idaho Money Transmitters Act to _____ business activities. We appreciate the consideration that the Department has given to this matter.

In the letter, you ask that we reply by September 12, 2008 if we have other information that we would like to have considered regarding the applicability of the Act to our prepaid card programs. In order for us to ensure a thorough understanding of the Department's analysis and conclusions we respectfully request to meet with you at your office for a more detailed discussion. We and our issuing bank partner, _____, would like to schedule this meeting at your earliest convenience and we will commit to providing the Department our response within two weeks of the meeting date.

If you would like to discuss our extension request please call me at your convenience. I can be reach at _____ Thank you for your consideration.

Sincerely,

President,

cc:



IDAHO
DEPARTMENT OF FINANCE

C. L. "BUTCH" OTTER
Governor

GAVIN M. GEE
Director

August 26, 2008

Re: Money Transmission Licensing Inquiry

Dear M

I wanted to apprise you of the Department's decision regarding the applicability of the Idaho Money Transmitters Act to the business model being applied by

Historically, the Department of Finance has taken the view that stored value instruments are a form of payment instrument, thus placing the sale or issuance of such instruments within the purview of the Idaho Money Transmitters Act¹.

Since approximately April 2008, the Department has considered the variations presented in your business model (e.g., using licensed Green Dot locations as load stations) to determine whether it would be appropriate for the firm to obtain a money transmitter license in the State of Idaho.

While the Idaho-related business activities of appear limited, we presently believe that offering payment instruments to Idaho residents via the Internet remains a licensable activity and that licensure of as a money transmitter would be appropriate.

If you believe that other information exists that should be considered in connection with our determination in this matter, please forward that information for our review not later than September 12, 2008. Should you have any questions or need additional information, please feel free to contact the undersigned at (208) 332-8080.

Sincerely,

James A. Burns
Investigations Chief

¹ Enclosed is an opinion letter previously issued by the Department that may assist you in better understanding the Department's past approach to the stored value market.

SECURITIES BUREAU
800 Park Blvd., Suite 200, Boise, ID 83712
Mail To: P.O. Box 83720, Boise ID 83720-0031
Phone: (208) 332-8004 Fax: (208) 332-8099
<http://finance.idaho.gov>

Jim Burns

To:
Subject: Services Overview

Will:

It was a pleasure to meet with you this past week. As a follow-up, I wanted to be certain that I have a clear understanding of the services and business model being used by

I have summarized what I believe to be a brief overview of programs and was hoping to get your feedback on this summary:

has been operating for approximately two years. Most company executives are formerly associated with Capital One in a variety of capacities.

acts as a program manager of various stored value products that are associated with gift cards and pre-paid debit cards issued by Metabank, a federal savings bank under OTS supervision.

is the retail marketer of Metabank cards to end users. also markets the distribution of gift cards in association with corporate internal and external incentive programs. The Metabank set-up also provides for the ability to have one's pay direct-credited to their pre-paid debit account.

program is similar to many pre-paid card programs in that a) the cards are issued by a chartered financial institution; b) is a program manager and marketer, and c) a third party processing company (Metavante) oversees the management of customer monies and sub-accounts for funds held at Metabank.

Unlike many traditional three-pronged programs, the present program has a couple of twists:

- a) presently only retails the pre-paid debit card via their website. There presently is no retail distribution network.
- b) Pre-paid card "reloads" are accomplished at current Green Dot locations. Green Dot is a licensed money transmitter in Idaho.
- c) It is possible for clients to order the payment of a paper check to third parties (debt-payments or anyone directed by the client). Here, (likely through Metavante) directs Metabank to issue and deliver a check as requested by the client.
- d) is exploring the possibility of offering what amounts to an overdraft protection plan for pre-paid card holders. The present thought is to have customer's opt-in every time that they are presented with a potential overdraft situation (normally in advance of arriving at the purchase location).

Jim Burns
Investigations Chief
MBA, CFE, CRCP
Idaho Dept. of Finance
Boise, ID
(208) 332-8080
Idaho Toll Free 1-888-346-3378

Jim Burns**From:****Sent:** Friday, April 18, 2008 3:33 PM**To:** Jim Burns**Subject:** Money Transmitter Follow Up

Hi Jim,

I just wanted to drop you a note with some follow-up on your email from earlier this week. I spoke with Metabank to make sure I provide the correct characterization of our relationship and the activities that we perform on their behalf. Below I've provided comments for each of the areas for which you requested clarification regarding our current programs. Both we and Metabank are happy to have further conversations to discuss this in more detail. Thanks.

has been operating for approximately two years. Most company executives are formerly associated with Capital One in a variety of capacities.

- This is correct. All company executives were formerly employees at Capital One for 6 or more years.

acts as a program manager of various stored value products that are associated with gift cards and pre-paid debit cards issued by Metabank, a federal savings bank under OTS supervision.

- This is also correct. As a program manager, we act as a limited agent on Metabank's behalf to provide certain services enumerated in our agreement with them. These activities generally fall into the categories of marketing and servicing card accounts issued by the bank.

is the retail marketer of Metabank cards to end users. also markets the distribution of gift cards in association with corporate internal and external incentive programs. The /Metabank set-up also provides for the ability to have one's pay direct-credited to their pre-paid debit account.

- This is also correct. We perform the marketing of cards through our programs under Metabank's supervision. The terms and conditions associated with each of the products are established by Metabank and the bank approves all of our marketing materials prior to use. For our reloadable pre-paid debit cards, customers can choose to have their pay directly deposited into their card account through the ACH network. These deposits are received directly by Metabank and held in a pooled, custodial bank controlled account for the benefit of the cardholders..

program is similar to many pre-paid card programs in that a) the cards are issued by a chartered financial institution; b) is a program manager and marketer, and c) a third party processing company (Metavante) oversees the management of customer monies and sub-accounts for funds held at Metabank.

- Yes. The one thing to add here is that Metavante processes credit and debit transactions initiated by cardholders and initiates the corresponding movement of funds for settlement at the direction of Metabank. Metabank and Metavante have a direct agreement governing such processing services..

Unlike many traditional three-pronged programs, the present program has a couple of twists:

a) presently only retails the pre-paid debit card via their website. There presently is no retail distribution network.

- This is correct.

b) Pre-paid card "reloads" are accomplished at current Green Dot locations. Green Dot is a licensed money transmitter in Idaho.

- This is also correct, or customers can direct deposit their pay via ACH as describe above.

c) It is possible for clients to order the payment of a paper check to third parties (debt-payments or anyone directed by the client)

Here, (likely through Metavante) directs Metabank to issue and deliver a check as requested by the client.

- Checks sent by customers are initiated by the customer through Metavante's online bill payment system. The processing is performed by Metavante and these checks are issued by M&I Bank FSB, the parent company of Metavante.

Jim Burns

From:
Sent: Friday, April 18, 2008 3:40 PM
To: Jim Burns
Subject: One more thing...

Hi Jim,

Regarding some sort of lending / overdraft line we're just in our initial stages of thinking how to offer and implement these sorts of services for customers and there a number of paths that we could take. At this point, we like to make sure we're all on the same page regarding the Money Transmitter thing before pursuing the additional services conversation further. When we are ready to start thinking about it more I will certainly seek input from you and other folks at the Department of Finance.

Thanks for your help on this and have a great weekend!

Jim Burns

From:
Sent: Tuesday, April 08, 2008 1:18 PM
To: Jim Burns
Cc:
Subject: About

Jim,

Some info about

We've been in business for about two years, Idaho corporation, (We have a wholly-owned subsidiary, that does some consulting work.) There are five full-time staff—all former Cap One folks. We worked together here for five or six years until Cap One pulled out of Boise. The president of

We sell reloadable Visa prepaid cards. Many of our customers have no other bank account. They direct deposit money into their account and use our online bill payment service to pay many of their bills. They use the Visa prepaid card to make purchases at stores, shop online or by phone, and get cash from ATMs. Through ACH, customers can move funds between their their card account and an outside bank account. There's a maximum balance of \$10K on the account.

Our Visa cards are issued by MetaBank, a federally-chartered Thrift in Sioux Falls. Funds are FDIC-insured. Our cardholders can deposit cash at any store that sells Green Dot MoneyPaks, including Walgreens, CVS, Rite Aid, Wal-Mart, etc. We're a Visa-approved Third Party Servicer, PCI-compliant, comply with OFAC and AML/BSA.

Since our cards are all prepaid, our customers can make purchases only if they have sufficient funds in their account. We're considering offering some sort of overdraft feature to let them go into the negative a bit, until their next deposit. There are different ways we can implement the overdraft feature—would like to discuss those with you to understand what we need to do with the State.

Thanks for your help—you and everyone we've met at the Finance Department have been very helpful.

Talk to you soon.



IDAHO
DEPARTMENT OF FINANCE

C. L. "BUTCH" OTTER
Governor

GAVIN M. GEE
Director

9-23-2008

~~October 15, 2008~~

Re: Money Transmission Licensing Inquiry

Dear M

You have provided a specific fact set for consideration as to whether the activity in question would be considered money transmission and therefore regulated pursuant to the Idaho Money Transmitters Act. In connection with your inquiry, we provide the following.

Background – In part, your letter states that "provides payment-processing services to third party services providers (e.g., wireless services and other retailers) that enable those service providers to receive payments owed by their customers at networked payment centers (e.g., a convenience store or other retailers) who, along with , act as payment agents for the service provider. "outsourcing" model is a closed-end payment system in which both and the payment centers are contractually appointed as special limited agents of the service provider so that any payments received in the care of them are binding upon the service provider as principal."

In more general language, what you appear to represent is that customer payments made at network locations are essentially as good as a payment to the biller (e.g., wireless phone company) and that the billers are willing to hold customers harmless regardless of whether or its network of agents engage in any malfeasance or otherwise fail to deliver the payment to the biller.

Policy Considerations – It has been your representation that consumers are not at risk of loss as long as they obtain and retain receipts provided to them by the network location. As such, you believe that the activities of present no risk to consumers and that the consumer protection element of the Idaho Money Transmitters Act is satisfied by the program as designed.

Based solely upon the facts presented above and in your written communication, the Department has determined to take a no enforcement action position as it pertains to the licensing provisions of the Idaho Money Transmitters Act. This determination is based specifically on our understanding that the consumer's obligation to pay the bill is extinguished at the time the funds are given to or its agents.

SECURITIES BUREAU
800 Park Blvd., Suite 200, Boise, ID 83712
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

Please be advised, that should the facts of your described business activities be different than characterized above, or change at a later date, then the Department's conclusion may well be different than stated herein.

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

Sincerely,

James A. Burns
Investigations Chief



IDAHO
DEPARTMENT OF FINANCE

C. L. "BUTCH" OTTER
Governor

GAVIN M. GEE
Director

August 4, 2008

Re: Money Transmitter Licensure Inquiry

Dear M

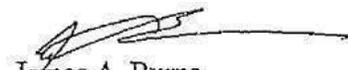
Your letter of June 10, 2008 requests interpretive guidance regarding the applicability of the Idaho Money Transmitters Act (IMTA) to the business activities being conducted or anticipated to be conducted b in Idaho.

Your description activities support a conclusion that a money transmission business is being effected as defined in Idaho Code §26-2902(11). The IMTA does not distinguish between retail money transmission and funds transmissions that are for a commercial purpose. Moreover, while the IMTA addresses bonding requirements in the context of physical locations, the law does not preclude or otherwise exempt the regulation of web-based funds transmitters or transmitters that have no physical location in this state. For your information, we have licensed multiple entities that have no physical location in Idaho.

Based on the facts presented in your letter, we are of the formative opinion that will need to become licensed as a money transmitter in Idaho to engage in the described activities. Until such time as s registered with the U.S. Commodities Futures Trading Commission, you may also wish to consider whether any of your activities are subject to the provisions of the Idaho Commodity Code (copy enclosed).

Should you have additional questions or if you would like to submit additional information that may be relevant to our consideration of this matter, please feel free to contact the undersigned directly.

Sincerely,


James A. Burns
Investigations Chief

SECURITIES BUREAU
800 Park Blvd., Suite 200, Boise, ID 83712
Mail To: P.O. Box 83720, Boise ID 83720-0031
Phone: (208) 332-8004 Fax: (208) 332-8099
<http://finance.idaho.gov>

RECEIVED
2008 JUN 30 PM 12:48
STATE OF IDAHO
DEPT OF FINANCE

June 10, 2008

State of Idaho
Department of Finance
Securities Bureau
PO Box 83720
Boise, ID 83720-0031

RE: Money Transmission License

I am writing to determine
the State of Idaho.

requires a money transmitter's license in

, incorporated in the State of Washington, is a wholly owned subsidiary,
which is federally incorporated in Canada has controlling interest

respectively. The ownership is
and the balance is made up by and the

offers foreign exchange hedging (risk management) and global foreign exchange payables and
receivables solutions for corporations and individuals engaged in commercial trade. Hedging products include
spot forward and options contracts. To accommodate settlement either to a beneficiary or the client
provides the following ancillary service:

- International electronic funds transfers where utilizes its relationship with a
worldwide network of correspondent banks and provides a mechanism for passing on the transfer
instructions.

clients are a combination of small, mid-sized and large businesses that have recurring foreign
exchange payments or receivables. It offers two delivery channels: (1) global branch (bricks and mortar) model;
and, (2) an online FX payments model.

Branch Model (Bricks and Mortar)

The dealing office for the USA is situated
located across the United States.

Toronto, Ontario, Canada. Sales personnel are

has no physical presence in the State of Idaho

sales representative establishes the relationship with the client and trading/payment instructions given by
the client are taken by a dealer in Toronto. Or, the client enters its accounts payables/receivables and payment
instructions in multi-payment platform (proprietary software) that is integrated with the client's
backend accounting systems. The branch captures the revenue.

The multi-payment (& multi-currency) platform manages foreign exchange payables and receivables using real-time exchange rates. Accounting departments' of corporate client's book quotes and the rates get immediately locked in. Upon the payables or receivables being uploaded into the system, Treasury and Operations Department, located in Victoria, British Columbia, Canada, manages settlement.

Online FX Payments Model

The online product offering for businesses and individuals is an internet based trading platform that is located in Victoria, British Columbia. This product is designed for clients wanting to do single foreign exchange payments online for commercial purposes. The average transaction size is \$11,600. The online product has not been marketed in the United States. Rather, clients locate it by searching the website and then sign-up. It is plan to begin aggressively advertising the online product in selected US states, including the State of Idaho.

Revenue

_____ makes its revenue through a margin -- the difference between the wholesale exchange rate and the exchange rate offered to each client. However, _____ may charge a service fee when a client on occasion instructs funds be paid out in the same currency it was received in. Other than for options, for spot and forward trades there are no upfront costs or services charges. A premium may be charged for options.

Licenses

_____ and its affiliates have operations in seven countries: Australia, Canada, Italy, New Zealand, Singapore, United Kingdom and United States. In Australia, _____ is registered with the Australian Securities & Investment Commission (ASIC) and maintains a Financial Services License. In Italy, _____ maintains a Leveraged Foreign Exchange Dealers License and is regulated by the Bank of Italy. In Singapore, _____ holds a Capital Markets License with the Monetary Authority of Singapore (MAS). In the United Kingdom, _____ together with its legal counsel is engaged in the application process to become licensed with the Financial Services Authority (FSA) by the summer of 2009. A recently proclaimed legal requirement for businesses engaged in foreign exchange dealings. In Canada and New Zealand there are no licensing requirements for businesses that offer hedging products and global payments. However, _____ is presently working with securities commissions in both countries to be able to sell options products to retail clients or non-eligible participants.

In the United States, _____ maintains twenty-two money transmitter licenses and has exemptions in five states. In addition to this, _____ together with legal counsel is preparing an application to the National Futures Association (NFA) for _____ to become a Futures Commissions Merchant (FCM) regulated by the Commodities Futures Trading Commission (CFTC). This license will enable _____ to expand its foreign exchange product offerings.

Should you have any questions or require additional information please do not hesitate to contact me at _____

I look forward to your response.

Sincerely,



IDAHO
DEPARTMENT OF FINANCE

C. L. "BUTCH" OTTER
Governor

GAVIN M. GEE
Director

May 20, 2008

RE: Bank Stored Value Cards

Dear M

Your letter of April 4, 2008 to Mike Larsen has been referred to the Department of Finance Securities Bureau for consideration regarding the applicability of the Idaho Money Transmitters Act. In connection with our review of your proposed business activities, we provide the following.

Background - As noted in your letter, _____ anticipates offering open-system prepaid debit cards in association with _____ Corporation and _____ Bank.

Idaho Code § 26-2902(13) defines a payment instrument to include "any check, draft, money order, traveler's check, or other instrument or written order for the transmission or payment of money..." (emphasis added). Further, money transmission is defined to include the sale or issuance of payment instruments (I.C. § 26-2902(13)).

For your information, the Department of Finance has long taken the position that cards such as broad, multi-merchant gift cards and prepaid debit cards are payment instruments, thereby falling within the legal requirements of the Idaho Money Transmitters Act.

Issue of Licensure - Since money transmission activities are contemplated in participation with _____ and _____ Bank, 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, I.C. §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 payment instruments through authorized delegates who are not banks, credit unions, savings and loan associations, savings banks or mutual banks" (emphasis added).

Based on the above criteria, it does not appear that _____ would be able to operate the described business model without the benefit of licensure under the IMTA. More specifically, we cannot

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at this time agree that _____, acting as an agent of _____ Bank, is entitled to the exclusion for financial institutions. As to _____ Bank, the bank will be offering money transmission services through authorized delegates who are not financial institutions and thereby not within the ambit of the exclusory language of I.C. §26-2904¹.

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 load/sales 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 at (208) 332-8080.

Sincerely,

James A. Burns
Investigations Chief

¹ For your information _____ is a licensed money transmitter in at least one other jurisdiction. If _____ were to become licensed in Idaho, _____ could conceivably become an authorized delegate of _____ in order to engage in the activities that you have described.

RECEIVED

April 4, 2008

2008 APR 10 AM 9:44

STATE OF IDAHO
DEPT OF FINANCE

Mr. Mike Larsen
Consumer Finance Bureau Chief
Idaho Department Of Finance
800 Park Blvd., Suite 200
Boise, ID 83712

Subject:

Dear Mr. Larsen:

I am writing to request permission to offer the Prepaid Debit Card in stores located in Idaho. I am enclosing information about the relationship between [redacted] Corporation, and the bank issuing the Prepaid Debit Cards, [redacted] Bank. [redacted] will act as an agent for [redacted] Bank ("INB"), a federally insured thrift based in [redacted] Texas. INB issues the Prepaid Debit MasterCard® pursuant to a license from MasterCard International Incorporated.

[redacted] will collect information from customers who wish to obtain the Prepaid Debit Card, and will forward that information to [redacted]. [redacted] will then determine whether to issue a [redacted] card to the customer. [redacted] will base this decision in part upon successful vetting through the OFAC list, and obtaining a sufficient amount of identification from the customer. [redacted] conducts functions for INB such as monitoring transactions, maintaining the database and records associated with the cards, and customer service. Once [redacted] approves a customer to receive a card, [redacted] will provide a temporary card to the customer. Customers may load the cards with cash in [redacted] stores, or via other methods supported at other reload stations located throughout the United States. The temporary cards must be activated by the customer prior to use by using either a telephone or the internet. A permanent card is issued to the customer within a week.

[redacted] customers who receive payday loans will receive the proceeds from their loan in cash. Customers who then wish to do so, may request a [redacted] card, although there is no obligation whatsoever to acquire a card or load funds onto it. The [redacted] card is an option for customers who may not wish to carry cash. [redacted] customers who choose to load at least \$100 onto their card, will not be charged for their card or the initial load fee. Other fees and fees for individuals who are not [redacted] customers are described in a separate attachment. Additional information is also attached describing the [redacted] Prepaid Debit Card program in more detail.

To this end, [redacted] respectfully requests approval to begin offering the Prepaid Debit Card at its retail sites in Idaho beginning in July, 2008.

If there are any additional requirements necessary to begin offering the Debit Card, please do not hesitate to contact me.

Prepaid

Thank you.

Very truly yours,

Jim Burns

To:

Subject: RE: rebate card covered under CH 29?

Dear

Based on the information presented in your email (text below) regarding the issuance of rebate-related cash cards, the Department is of the view that licensure under the Idaho Money Transmitters Act would not be appropriate.

Please let me know if you have further questions or need additional clarification.

Regards,

Jim Burns
Investigations Chief
MBA, CFE, CRCP
Idaho Dept. of Finance
Boise, ID
(208) 332-8080
Idaho Toll Free 1-888-346-3378

From:

Sent: Thursday, April 24, 2008 11:17 AM

To: Jim Burns

Subject: rebate card covered under CH 29?

Mr. Burns, thank you for speaking with me this afternoon. At your request I am putting my question in writing. We have a client that is a Delaware State Chartered Bank who like to partner with a non-bank company in offering rebate cards to consumers through national retailers. The scenario is as follows: a consumer goes into say, Circuit City, makes a purchase. On his receipt there is a message that directs the consumer to go to a website to obtain a rebate of say \$50. The consumer goes to the website and provides his information and then a VISA branded rebate card is sent to him with a card holder agreement that spells out the terms and conditions of the card program. The card may be used any place a VISA card is accepted. The card is only good for the purchase of goods and services and may not be used at an ATM to receive cash. The card is not reloadable. There are fees to activate the card, get a replacement card, etc which are deducted from the face value of the card. The retailer, the marketer and the bank share the fees.

Since the consumer does not pay for the card, is this program subject to Idaho's Money Transmitter Act? Please let me know. Thank you!

Best regards,