



**IDAHO**  
DEPARTMENT OF FINANCE

C. L. "BUTCH" OTTER  
Governor

GAVIN M. GEE  
Director

December 6, 2012

Re:

Dear M

It was a pleasure speaking with you earlier today and thank you for following up on your letter of June 13, 2012 on behalf of

Based upon the card distribution model<sup>1</sup>, the flow of funds described in your letter and the understanding that any physical location re-loads will be conducted at locations operated by existing money transmitters, we do not believe that is required to license as a money transmitter in Idaho.

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

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<sup>1</sup> It is our understanding that the cards are marketed directly to consumers and not sold through non-bank intermediary retail locations.

**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>

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2012 JUN 14 AM 11:56  
STATE OF IDAHO  
DEPT OF FINANCE

June 13, 2012

**VIA OVERNIGHT DELIVERY**

Mr. Gavin Gee  
Director  
Idaho Department of Finance  
800 Park Blvd., Suite 200  
Boise, ID 83712

**Re:**

Dear Mr. Gee:

On behalf of our client \_\_\_\_\_ we are writing to request your guidance with respect to whether a license is appropriate under the Idaho Money Transmitters Act, Title 26 Chapter 29. Please find below a description of \_\_\_\_\_ business model and products.

***Program Business Description***

\_\_\_\_\_ is the program manager for the \_\_\_\_\_ a bank-issued prepaid debit card. Two banks currently issue the \_\_\_\_\_ First California Bank ("FCB") issues the \_\_\_\_\_ td as a MasterCard prepaid debit card; and The Bancorp Bank, Inc. ("Bancorp") issues the \_\_\_\_\_ as a Visa prepaid debit card. FCB is chartered under the laws of the State of California and Bancorp is chartered under the laws of the State of Delaware. Both banks are members of the Federal Deposit Insurance Corporation.

Pursuant to its respective agreements with FCB and Bancorp (each, a "Bank" and collectively, the "Banks"), \_\_\_\_\_ acts as a limited agent of the Bank, providing marketing-related services, compliance support and customer service functions on behalf of the Banks with respect to cards. Each card is co-branded with the logos of \_\_\_\_\_ and the Bank and carries the marks (*i.e.*, trademarks) of each network that may process transactions for Cardholders. The \_\_\_\_\_ managed programs provide Cardholders typical prepaid card services including point of sale purchases, on-line purchases, cash access from ATMs and bank tellers, and card to card transfers among \_\_\_\_\_ holders. The programs also offer Cardholders a bill pay service through an independent, non-affiliated third party bill pay service provider. The bill pay service offered with each program is established by each program's respective processors: FIS as processor for the

Bancorp program and i2c as processor for the FCB program. \_\_\_\_\_ is not a party to that arrangement. A description of the bill pay service is provided below.

\_\_\_\_\_ does not receive or have access to or control over Cardholder funds at any time. Instead, the Banks maintain access to and control over Cardholder funds throughout the funding, receipt and settlement processes. We note that both Banks have affirmed by executing an addendum or amendment to the program agreement that they exercise principal oversight and control for purposes of the new Financial Crimes Enforcement Network (“FinCEN”) regulations governing prepaid access at 31 CFR 1010.100(ff)(4) (the “FinCEN Prepaid Access Rule”).

### *Cardholder Funding, Receipt and Settlement Process*

For each program, at the direction and under the supervision of each of its respective issuing Banks \_\_\_\_\_ handles registration and activation of the Cards, which activation must occur before the Cards may receive their first load or before they are used to conduct valid transactions in any form. Cardholders are directed to the \_\_\_\_\_ website or to live customer support to register and activate the Card. After registration and activation, Cards may then be loaded or reloaded through one of the card issuing banks via direct deposit or with cash by purchasing a Green Dot MoneyPak. We note that Green Dot, an unaffiliated third-party, is a licensed money transmitter in the Idaho, and that \_\_\_\_\_ does not have a physical presence in Idaho.

#### *1. The FCB Program*

Cardholder funds are loaded through the above load options into a Funding Account established by and maintained at FCB. \_\_\_\_\_ is listed as the owner of the Funding Account, but the Funding Account is structured as a trust account whereby access to the funds is restricted and the funds are held for the benefit of (“EBO”) the Cardholder. Similarly, while \_\_\_\_\_ is listed as the owner of the Settlement Account, its access to the funds is completely restricted and the funds are held *solely* for the benefit of the Cardholders. At no time does \_\_\_\_\_ collect, accept, receive, access or transmit any Cardholder or Bank funds in relation to the cards.

Once in the Funding Account, the funds are transferred by FCB to the Cardholder Funds Account, a custodial account that is owned and controlled by FCB. The Cardholder Funds Account holds funds that represent the active balances of Cardholders. Based on daily activity reports from the processor, FCB then transfers funds into the Settlement Account, which was established for the networks to debit the daily settlement of transactions made by the Cards through the network and to credit the daily or monthly settlement of interchange. The bill pay functionality operates the same as other funding and access options within the program. Cardholder funds are loaded into the Funding Account upon instruction of the Cardholder, transferred by FCB to the Cardholder Account and then to the Settlement Account where they

are debited by the processor. The account is structured in this way to ensure FDIC pass-through insurance is maintained at all times for the Cardholders.

## *2. The Bancorp Program*

In the Bancorp program, all Cardholder funds are initially deposited into an Activity Account owned and controlled by Bancorp. has no authority to direct funds flows or to access Cardholder funds in the Activity Account. Because the Bancorp program does not have separate funding or settlement accounts, all funding and settlement transactions occur within the Activity Account. Like the FCB program, does not at any time collect, accept, receive, access or transmit any Cardholder or Bank funds in relation to Bancorp-issued cards. The bill pay functionality operates within the same funding and access structure under the Bancorp program. The Bancorp program accounts have been structured in such a manner as to ensure Cardholder funds are covered by FDIC pass-through insurance at all times.

### *The Bill Pay Service*

As we understand, within each program, the processor selects and maintains the contractual relationship with the third party bill pay provider and is responsible for ensuring such provider's compliance with applicable state and federal law. The processor under each program is also responsible for settling the flow of funds between the Cardholder and the third party bill pay provider. As mentioned previously, never accepts or receives payment for the bill pay service and never transmits funds between Cardholders and the third party bill pay service provider. This payment activity is strictly the responsibility of the processor under each of the programs. Furthermore, the processor contracts directly with the third party bill pay provider and offers this service to issuing banks as part of its product service offerings. No contracts are or have been executed between and the third party bill pay providers; this is the responsibility of the processor under each program.

### *Rights and Obligations under the Programs*

#### *1. The FCB Program.*

FCB serves as the Card issuer; has the ultimate authority to approve or deny any changes to the Cardholder terms and conditions, or any change to the program in general; and is party to the respective agreement with the Cardholder. FCB reviews and approves new programs, program affiliates and Program Materials. Under the terms of the FCB program, is generally responsible for the day-to-day management, marketing and preparation and maintenance of Program Materials on FCB's behalf. may recommend the charges and fees to be paid by Cardholders, but FCB is ultimately responsible for approving such charges and fees.

The Bank has established, and \_\_\_\_\_ funds, a Program Manager Reserve Account to cover corporate losses such as compliance risk or defaults of \_\_\_\_\_ responsibilities. This account is not funded with and does not otherwise hold Cardholder funds. In summary, FCB exercises principal oversight and control over the program.

The \_\_\_\_\_ program operated through FCB is granted the right to participate in the Green Dot Network pursuant to the Network Sponsored Membership Agreement with Green Dot, establishing the Cardholder's ability to load cash directly to the Card with such loads being settled through FCB.

i2c Incorporated ("i2c"), the processor for the FCB program, provides host-based stored value prepaid card programs and services to issue and process prepaid transactions, including authorization, processing, clearing and settlement, and system access and services. \_\_\_\_\_ is responsible for ensuring that the information ("load file") required to load Cardholder accounts is processed daily between the Bank and the processor to ensure that Cards are loaded electronically. \_\_\_\_\_ is not responsible at any time for the flow of actual funds.

Each issuing Bank, as a principal member of MasterCard or Visa, as appropriate, is directly and contractually responsible for the timely settlement of all Cardholder funds related to the program. Furthermore, although \_\_\_\_\_ has a contractual liability to each of its issuing Banks for any losses related to the program (meaning they could have a claim against \_\_\_\_\_ for any loss), for which \_\_\_\_\_ is required to hold funds in reserve at each issuing Bank, the issuing Bank is liable to Cardholders for any losses in the account should \_\_\_\_\_ become insolvent. All Cardholders' funds are protected by Federal Deposit Insurance Corporation coverage on a pass-through basis to the maximum extent permitted by law.

## *2. The Bancorp Program*

In the Bancorp program, \_\_\_\_\_ is responsible for promoting and marketing the Cards to prospective customers, for developing Card marketing efforts for marketing and distributing the Cards, subject to review and approval of the Bank. \_\_\_\_\_ also is responsible for manufacturing and printing the Cards and Cardholder Agreements, although the Cards are the property of the Bank. Customer service is also provided by \_\_\_\_\_. The Bank approves all programs and load mechanisms, although \_\_\_\_\_ is responsible for the cost of load failures.

FIS is the processor in the Bancorp program for Cardholder transactions and provides transaction authorization, processing and settlement services relating to the prepaid cards and associated accounts. FIS processes requests by Cardholders to load value to the Cardholder Accounts. \_\_\_\_\_ acts as Bancorp's agent for purposes of giving instructions to the Processor regarding use of data and other matters, and the processor takes directions and instructions from

***Program Revenues and Financial Reporting***

In addition to the above, all program revenues are owned and collected by the Bank under each program. does not directly collect any fees related to any program and does not report any of the Program Accounts in its financial statements. All fees payable to are earned in conjunction with performance of its services under its issuing Bank agreements and are payable to by such issuing Banks.

***Conclusion***

We appreciate in advance the Department's review and consideration of this request. As detailed above, acts solely in the capacity of a program manager for the prepaid access programs. Both of the card-issuing banks exercise full oversight and control over their respective programs. is solely a third party service provider to the banks with respect to their prepaid card programs. Thus, we request confirmation that not required to be licensed under Idaho law. Please do not hesitate to contact me if you have any further questions regarding this request.

requests that this letter be afforded confidential treatment as it contains proprietary business information, the release of which to the public could be damaging to the competitive position of the various program participants. Should a request for such information be made, we request notice 10 days prior to the release of any of this information to afford us time to take action to protect the information.

Thank you again for your consideration.

Very truly yours,

cc: President,





**IDAHO**  
DEPARTMENT OF FINANCE

C. L. "BUTCH" OTTER  
Governor

GAVIN M. GEE  
Director

August 10, 2012

Re: Money Transmitter Licensing Inquiry

Dear M

Thank you for your letter of August 2, 2012 and associated request for an "exemption" from the Idaho Money Transmitters Act. In connection with our review of this matter, we have considered your August 2<sup>nd</sup> letter along with the information contained in your prior communications.

We note that Money Tree, Inc. is a licensed money transmitter in Idaho and that they will be the exclusive distribution mechanism for the reloadable, open loop prepaid card offered in association with \_\_\_\_\_ and \_\_\_\_\_ Bank.

While the Department is not in a position to "exempt" you from compliance with the requirements of the Idaho Money Transmitters Act, we do grant "no action" requests relative to the licensing requirements imposed by the law.

Based solely upon the written representations made in your various communications, the Department is agreeable to taking a no action position as it pertains to the licensing of \_\_\_\_\_ as a money transmitter in Idaho.

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

Sincerely,

James A. Burns  
Investigations Chief

CC

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>

August 2, 2012

VIA E-MAIL (jburns@finance.idaho.gov)

Mr. James Burns  
Idaho Department of Finance  
Securities Bureau  
800 Park Blvd., Suite 200  
Boise, ID 83712

Dear Mr. Burns:

Thank you for taking the time to discuss \_\_\_\_\_ request for an exemption under Idaho's Money Transmitters Act.

Per our conversation \_\_\_\_\_ is an approved Program Manager with the \_\_\_\_\_ Sloux Falls, SD for marketing and distribution of a general purpose re-loadable, open loop prepaid card product to be sold exclusively through \_\_\_\_\_ in Idaho. Under this program, \_\_\_\_\_ will not sell cards to consumers and will not hold any cardholder funds associated with the program.

We have attached a copy of the bank's funds flow indicating that upon the sale and acceptance of a load or re-load from a consumer, \_\_\_\_\_ will send the applicable data regarding the transaction to Visa DPS, the processor responsible for transaction processing. Upon receipt of that information, \_\_\_\_\_ assumes the liability to load the consumer's card and subsequently processes an ACH debit to \_\_\_\_\_ bank for reimbursement (Step 1a on the Funds Flow.)

Based upon the exclusivity of the \_\_\_\_\_ arrangement and the funding mechanism in place with the bank, \_\_\_\_\_ seeks your approval of a waiver to the Idaho \_\_\_\_\_ Transmitters Act.

Thank you for your consideration.

Sincerely,

resident

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**IDAHO**  
DEPARTMENT OF FINANCE

C. L. "BUTCH" OTTER  
Governor

GAVIN M. GEE  
Director

May 17, 2012

Re:

Dear M

In response to your letter of April 26, 2012 we provide the following.

The Idaho Money Transmitter Act provides an exemption from licensing for "banks, credit unions, savings and loan associations, savings banks or mutual banks organized under the laws of any state or the United States."

Given the above, it appears that the \_\_\_\_\_ will need to obtain a money transmitters license in the state of Idaho in order to continue to provide money remittance services to Idaho-based entities and individuals.

On a secondary note, your letter requested confidential treatment. Unfortunately, we cannot guarantee the confidentiality of your letter, although it is possible that portions of your letter might be deemed confidential in the context of Idaho's public record laws.

If you have any questions or need to discuss this matter directly, please feel free to contact the undersigned directly at (208) 332-8080. If you would like further information regarding licensing or need an application package, these materials are available on our website at <http://finance.idaho.gov> or we can mail you an application package if you would prefer delivery in that medium.

Sincerely,

A handwritten signature in black ink, appearing to read "James A. Burns".

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>

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STATE OF IDAHO  
DEPT OF FINANCE

Idaho Financial Institutions Bureau  
800 Park Blvd, Suite 200  
P.O. Box 83720  
Boise, ID 83720-0031

Re: - Internet Based Home Remittance Service.

Dear Sir/Madam,

provides an internet-based money transfer remittance service named to persons who wish to transfer money from their accounts at any bank in the United States to any bank in or U.S. dollars for purpose of family maintenance in is the largest Commercial Bank in and has a Foreign Branch Office in New York and also a Branch Office in Washington D.C and a Representative Office in Chicago. At present, pursuant to a services agreement (the "Service Provider Agreement") between and N.A. (" ") a number of functions for the service are performed by . These functions include regulatory compliance with BSA/AML/OFAC obligations, ACH/credit card collection of funds, acceptance and monitoring of remitters, website hosting, and settlement, reconciliation and customer services. is the "Payor of Record" or "Corresponding Bank" for and handles all money transfers that take place on www. The service has been operational since 2005.

Recently, informed that it plans to exit the global remittance services business. Representatives of New York Branch (the "New York Branch") have discussed with the best ways to continue the service while meeting all applicable regulatory and compliance requirements.

The New York Branch is currently in the process of assuming full responsibility for performing the functions now provided by under the Service Provider Agreement. The New York Branch will become the Payor of Record and will become responsible for all other operational aspects of the service, including all BSA/AML/OFAC requirements. Because it will need the ability to debit customer accounts in the United States, the New York Branch is becoming a member of the Automated Clearing House ("ACH"). The New York Branch will enter into a Services Agreement with a specialized Vendor to perform technical functions and monitor the website. The Vendor will provide interfaces for www, including: registration, login and authentication, profile maintenance, establishment of transaction limits, identity verification and KYC interface, transaction initiation and status and ACH interface.

Currently, the service processes each year approximately 50 transactions for money transmission from Idaho residents who wish to transfer money from a bank located in the United States to a bank located in . Further, information about the program is available upon request.

We wish to inform you that operates a New York State-licensed branch (the "Branch") through which it conducts commercial banking business. will be operating its money transmission business within the Branch as an activity closely related to banking and subject to the supervision of the New York State Department of Financial Services ("NYDFS").

We request that all information contained in this letter (the "Confidential Material") be maintained in confidence and exempt from disclosure by the DFI and its staff. Accordingly, this letter has been marked "Confidential Treatment Requested."

The Confidential Material concerns the conduct of business and is proprietary and maintained in confidence by and the Branch. The Confidential Material also relates to confidential business plans for the conduct of money transmission business through the Branch. Release of the Confidential Material to the public, including competitors, could provide competitors with knowledge of business plans and activities, and result in substantial harm to its competitive position.

Accordingly, this Confidential Material is submitted to the DFI with our request that it be kept in a non-public file and that only DFI staff have access to it. If any person not a member of the DFI's staff (including, without limitation, any governmental employee) should request an opportunity to inspect or copy the Confidential Material, or if any member of the DFI's staff contemplates disclosure of the Confidential Material to any other person, requests that the undersigned immediately be notified of such request, be furnished a copy of all written materials pertaining to such request (including but not limited to the request itself) and be given advance notice of any intended disclosure so that may, if deemed necessary or appropriate, request that such information not be disclosed and pursue any available remedies.

\* \* \*

If you have any questions concerning the above, please do not hesitate to contact the undersigned.

Sincerely,

Executive Vice President & General Manager