



**IDAHO**  
DEPARTMENT OF FINANCE

**C. L. "BUTCH" OTTER**  
Governor

**GAVIN M. GEE**  
Director

October 10, 2014

Tony Delgado  
1175 N. Forty Niner Ave.  
Kuna, Idaho 83634

Re: Bitcoin Vending Machine/ATM

Dear Mr. Delgado,

You propose to establish a freestanding Automated Teller Machine (ATM)<sup>1</sup>. The sole use of this machine will be to allow consumers to place cash into the ATM for the purpose of purchasing bitcoin. In association with this ATM, you have represented that:

- 1) The ATM will be a "one way" ATM. Specifically, the ATM will accept only legal tender with the promise of near immediate delivery of bitcoin to the e-wallet of the customer placing the funds.
- 2) Customers wishing to purchase bitcoin at the ATM will need to find and install an e-wallet of their choosing prior to placing funds into the ATM. The owner/operator of the ATM will not assist customers in setting up an e-wallet nor will the ATM owner/operator establish e-wallets for the customer. The ATM owner/operator will not hold or otherwise control the private keys of any customer using the ATM.
- 3) The ATM will operate as a cost plus system. More specifically, customers using the ATM will be purchasing bitcoin with a markup to the then current value of bitcoin. Customers will be provided with disclosures regarding any mark-ups or fees associated with their purchase and such disclosures will be consistent with previous guidance issued by the Office of the Idaho Attorney General (copy attached).
- 4) The operator/owner will sell only bitcoin then owned by the operator/owner. The operator/owner is neither a bitcoin "miner" nor an "exchanger" as enumerated under guidance issued by FinCEN. While the ATM may be connected to an exchanger for purposes of determining bitcoin pricing and potential reloading of the ATM, the owner/operator will not act as an exchanger and the ATM will not accept transactions once the owner/operator's inventory in the ATM has been depleted.

---

<sup>1</sup> For purposes of this guidance, the Department does not presently differentiate between ATMs, kiosks or vending apparatus. Guidance from other regulators should be sought regarding the cash aspect and any federal currency handling and reporting obligations.

**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**

Based solely upon the specific facts outlined above, the Department of Finance will take a no action position as to the licensing provisions of the Idaho Money Transmitters Act. Should your business plan deviate from the facts outlined above, it is possible that the Department would take a different position than the one noted in this letter<sup>2</sup>. Further, it is this Department's expectation that you would keep and maintain specific business records to the extent that federal Money Services Business regulations (see <http://www.fincen.gov/>) require the keeping of any such records.

Should you have any questions or need additional information, please feel free to contact the undersigned at (20-8) 332-8080.

Sincerely,



James Burns  
Idaho Department of Finance

---

<sup>2</sup> Should you need to raise funds for the purpose of implementing your business plan, you may need to consider compliance with state and federal securities laws. Investment contracts and profit sharing agreements are most often securities which are regulated as to disclosure standards and securities qualification requirements.



STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL  
ALAN G. LANCE

RECEIVED  
MAR 02 1998  
DEPARTMENT OF FINANCE

February 27, 1998

Gavin M. Gee  
Director  
Department of Finance  
P.O. Box 83720  
Boise, ID 83720-0031

Dear Gavin:

THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE ATTORNEY  
GENERAL SUBMITTED FOR YOUR GUIDANCE

*Re: ATM Fee Disclosures; Our File No. 34191*

Thank you for your letter of February 6, 1998. In it you ask whether the Idaho Consumer Protection Act requires automated teller machine (ATM) owners to disclose fees for use of an ATM prior to completion of the transaction. You point out that Idaho Code § 26-311(2) requires that customer bank communication terminals not charge consumers a fee unless "such fee is clearly disclosed to the customer at a time and in a manner that allows the user to terminate or cancel the transaction without incurring the fee." It is my understanding that Section 26-311(2) does not apply, however, to non-bank ATMs or ATMs owned by banks that are not national or Idaho chartered, and are used only as cash dispensing facilities. As long as these ATMs do not accept deposits or use the word "bank" on signs or advertising, the Department is not in a position to regulate their operation. Hence, we understand your question to be directed toward those ATMs not subject to your Department's regulatory authority.

Idaho Code § 48-603(17) of the Idaho Consumer Protection Act (CPA) prohibits a person from engaging in any act or practice which is "otherwise misleading, false, or deceptive to the consumer." Idaho Code § 48-604(2) of the CPA authorizes the Attorney General to make rules and regulations interpreting the provisions of the CPA. He has done just that.

Rule 30 of the Idaho Rules of Consumer Protection (CPR), codified at IDAPA 04.02.01030, states, in part, that it is an unfair and deceptive act for a seller to make any claim or representation that directly or by implication has the capacity, tendency, or effect of deceiving or misleading a consumer acting reasonably under the circumstances. Importantly, the rule also states that "[a]n omission of a material or relevant fact shall be treated with the same effect as a

Gavin Gee, Director  
Department of Finance  
Page 2  
February 27, 1998

false, misleading, or deceptive claim or representation, when such omission, on the basis of what has been stated or implied, would have the capacity, tendency, or effect of deceiving or misleading a consumer acting reasonably under the circumstances."

An act, practice, or omission is material if it "is likely to affect a consumer's choice of or conduct regarding a product." Cliffdale Associates, Inc., 103 F.T.C. 110, 182 (1984);<sup>1</sup> *see also* Restatement (Second) of Torts, § 538(2). (A misrepresentation or omission is material if the reasonable person would regard it as important in deciding how to act or if it is one in which the maker knows that the recipient, because of his or her peculiarities, is likely to consider important.) Claims or omissions involving costs of the product or service are presumed material. MacMillan, Inc., 96 F.T.C. 208, 303-04 (1980).

It is the position of the Attorney General that the information relating to the costs of using an ATM is material. Furthermore, it is the position of the Attorney General that the failure to disclose such fees prior to the consumer incurring them has the capacity, tendency, or effect of deceiving or misleading a consumer acting reasonably under the circumstances." Hence, it is our view that an owner of an ATM are required to advise consumers of such costs clearly and conspicuously, and at a time and in a manner that allows the consumer to terminate or cancel the transaction without incurring any such charge. Failure to do so is, in our view, a violation of Idaho's Consumer Protection Act and Rules.<sup>2</sup>

Thank you for contacting the Office of the Attorney General. If additional clarification is needed, please do not hesitate to contact me.

Very truly yours,



BRETT T. DELANGE  
Deputy Attorney General  
Consumer Protection Unit

---

<sup>1</sup> Federal Trade Commission precedent is important because the Idaho Legislature has directed that in applying the Consumer Protection Act "due consideration and great weight should be given to the interpretation of the federal trade commission and the federal courts relating to section 5(a)(1) of the federal trade commission act (15 U.S.C. § 45(a)(1))." Idaho Code § 48-604(1); Accord In re Western Acceptance Corp., 117 Idaho 399, 402, 788 P.2d 214, 216 (1990).

<sup>2</sup> It is our view that the type of disclosure that is commonly utilized—posted written notice at the ATM site and notice on the ATM screen—satisfies Consumer Protection Act and Rules requirements.



**IDAHO**  
DEPARTMENT OF FINANCE

C. L. "BUTCH" OTTER  
Governor

GAVIN M. GEE  
Director

June 11, 2014

Re: Money Transmission Licensing Inquiry

Dear M

In connection with your April 10, 2014 inquiry regarding the need to license as a money transmitter in Idaho, we provide the following.

We have reviewed your letter and the follow-up email received by us on May 16, 2014. As represented, your client advances funds to facilitate the settlement of travel product/service purchases made by customers who use your client's products/platform to purchase the travel products/services. In this regard, your client has the sole recourse against their customers in the event a customer does not pay as agreed. Travel product/service providers have no claim against customers of your client.

Based solely upon the facts presented in your communications, 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.

Please be advised, that should the facts of the identified 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,

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>

PROTECTING THE INTEGRITY OF IDAHO FINANCIAL MARKETS

## Jim Burns

---

**From:**  
**Sent:** Friday, May 16, 2014 9:33 PM  
**To:** Jim Burns  
**Subject:** Re: Licensing Inquiry

Jim -

Sorry for the delay in getting back to you. I've restated your questions and the client's confirmed response to each below:

1. In both the Travel Account and the Network Account, can you describe the customer's ultimate financial obligation. More directly, is their financial obligation directly to your client companies or are they obligated in any way to the sellers of product and services that the accounts are used for?

**When a Customer uses either the Travel Account or the Network Account, the merchant that provides the goods or services to the Customer has recourse against our client for payment of those goods or services. Our client has recourse against the Customer. Said another way, the Customer's obligation to pay is an obligation to our client. In turn, our client is obligated to pay the merchant provider for the goods or services.**

2. If a customer fails to make good on an outstanding obligation, are there any fees or charges associated with their failure to pay?

**For a Customer that fails to settle its balance timely, our client delivers four reminder letters which are generated automatically and delivered every 14 days. Our client typically blocks the Customer's account when the third letter is delivered - thus stopping the Customer from generating additional charges. Depending on the Customer's history with our client and the level of ongoing communication with the Customer, our client typically terminates the account upon delivery of the fourth letter. Following any grace period for late payments, our client may charge late fees of no more than 1.5% of the unpaid balance. Our client prefers not to invoke the late fee unless it is a "last resort" for fear that it will generate a sense of customary practice or an acceptable course of business for Customers that wish to delay and manage cash flows, which is neither the intent nor desired result of late fees.**

3. In the case of the Network Account can you provide more details of the banking arrangement where funds are swept? For example, is the settlement account an account controlled by the bank for the benefit of your client's customers?

**Our client has a settlement account at a US bank (the same bank this is the sponsor of the Network account in order to give the account access to the MasterCard network), The bank has authority to directly debit the account to settle with the merchants that provide the goods or services purchased by the Customer, consistent with**

standard payment card network settlement procedures. The titles of the account is in the client's name. Funds are swept from that account daily to the settlement account of the merchant in satisfaction of any transactions that are initiated by the merchants, again consistent with standard payment card network settlement procedures. While this wasn't specifically asked, I want to be sure you're aware that when a Customer uses either the Travel Account or the Network Account the merchant has recourse against our client for payments due to it from the Customer. In turn, the Customer is obligated to make those payments to our client. There is no risk to the Customer that it will be required to pay directly to the merchant for charges it has already paid to our client (in other words, Customers cannot be double billed).

Thank you, and please let me know if you have any additional questions.

On Apr 16, 2014, at 6:25 PM,

wrote:

Jim --

I am confirming the answers to these questions and will be back to you shortly with an email response.

Thank you,

---

**From:** Jim Burns [mailto:[jim.burns@finance.idaho.gov](mailto:jim.burns@finance.idaho.gov)]  
**Sent:** Monday, April 14, 2014 11:44 AM  
**To:**  
**Subject:** Licensing Inquiry

Dear M

Thank you for your letter of April 10, 2014 regarding the Idaho Money Transmitters Act and it potential application to your client.

After reviewing your letter we hope you can address the following items:

1. In both the Travel Account and the Network Account, can you describe the customer's ultimate financial obligation. More directly, is their financial obligation directly to your client companies or are they obligated in any way to the sellers of product and services that the accounts are used for?
2. If a customer fails to make good on an outstanding obligation, are there any fees or charges associated with their failure to pay?
3. In the case of the Network Account can you provide more details of the banking arrangement where funds are swept? For example, is the settlement account an account controlled by the bank for the benefit of your client's customers?

We thank you in advance for your response.

For your information, the Idaho Money Transmitters Act does not address transactions that are commercial in nature versus consumer oriented. Hence, transmission transactions that are for a commercial purpose remain regulated under the act. Likewise, the law is also silent on fees, meaning that transmission transactions are a licensable activity whether or not a fee is charged.

Regards,

Jim Burns, MBA, CFE, CRCP  
Securities Investigations Chief / Money Transmitter Program Mgr.  
Idaho Dept. of Finance  
P.O. Box 83720  
Boise, ID 83720-0031  
(208) 332-8080

Please consider the environment before printing this email.

The information contained in this email may be confidential and/or legally privileged. It has been sent for the sole use of the intended recipient(s). If the reader of this message is not an intended recipient, you are hereby notified that any unauthorized review, use, disclosure, dissemination, distribution, or copying of this communication, or any of its contents, is strictly prohibited. If you have received this communication in error, please reply to the sender and destroy all copies of the message. To contact us directly, send to . Thank you.

April 10, 2014

Via U.S. Mail and Electronic Mail ([finance@finance.idaho.gov](mailto:finance@finance.idaho.gov))

Gavin Gee  
Director  
Department of Finance  
P.O. Box 83720  
Boise, Idaho 83720-0031

**RE: Request for Licensing Determination**

Dear Director Gee:

We are writing on behalf of our client to request a determination that their services, as described herein, do not constitute money transmission under Idaho's money transmitter laws.<sup>1</sup> We make this request pursuant to the Department of Finance's authority to make such determinations.

**I. Background**

Our client (referred to herein as the "**Company**") is a corporation organized under the laws of a US state and a wholly owned subsidiary of a German company (referred to herein as the "**Parent**"), which is in turn a wholly owned subsidiary of an airline (referred to herein as the "**Airline**"). From its only US office located in a state other than Idaho, the Company provides commercial entities in the US, Canada and the English-speaking Caribbean (referred to herein as the "**Customers**") with business travel management services, including a service to facilitate payment for flights, rail networks, hotels, car rentals, and other travel-related business expenses of Customer employees. All of the Company's Customers are business entities whose travel-related expenses are incurred for non-consumer purposes (i.e., not for personal, family, or household purposes). Customers may be business entities from anywhere in the US, Canada or the English-speaking Caribbean, including businesses in the State of Idaho.

The German federal financial supervisory authority, Bundesanstalt für Finanzdienstleistungsaufsicht, or BaFin, has authorized the Parent to operate as a payment institution pursuant to the European Union Directive on Payment Services (referred to herein as the "**Payment Services Directive**")<sup>2</sup> adopted by the European Parliament and the Council of

---

<sup>1</sup> Idaho Code §§ 26-2901 *et seq.*

<sup>2</sup> Directive 2007/64/EC.

the European Union on November 13, 2007. In the EU, a payment institution is a business entity that provides payment services, including those typically undertaken by money order sellers and money transmitters in Idaho, such as execution of payment transactions, remittance transfers, and issuance of payment instruments. A payment institution is a highly regulated class of non-bank financial services company.

Germany has adopted and expanded on the requirements contained in the Payment Services Directive through its Act on Supervision of Payment Services, the Zahlungsdiensteaufsichtsgesetz, or ZAG, to which the Parent is fully subject. Consistent with Idaho and US federal money transmission laws, German payment institutions, such as the Parent, are required by the ZAG to meet numerous regulatory conditions in order to maintain payment institution authorization. The Parent is required to maintain adequate capital levels based on its overall transaction volume, and must submit quarterly financial reports to both BaFin and the German central bank, the Bundesbank, showing that it is meeting the capital requirements. In order to comply with requirements under the ZAG to safeguard funds received from Customers, the Parent maintains an insurance policy in an amount greater than the total amount of funds received from Customers for settlement, payable in the unlikely event that the Parent is unable to meet its financial obligations. Payment institutions must submit an annual management report and annual audited financials to both BaFin and the Bundesbank, and the ZAG confers authority on both regulators to conduct periodic and unscheduled examinations of authorized payment institutions.

In satisfaction of the requirements for payment institution authorization, the ZAG requires payment institutions under BaFin supervision, such as the Parent, to maintain and follow a comprehensive, enterprise-wide anti-money laundering and anti-terrorist financing program. As a subsidiary of the Parent, the Company is also obligated to follow this program. In this regard, BaFin requires the Parent and its subsidiaries to conduct Customer due diligence and monitor and report suspicious transactions and business relationships.

## II. Primary Company Services

***The Travel Account.*** The Company's primary product is the business travel account (referred to herein as the "**Travel Account**") which is a single virtual cardless account number lodged at the Customer's corporate travel department or the Customer's travel agency. Charges are incurred on the Travel Account as payment for airline tickets and certain limited travel-related services. The Travel Account does not function like a credit product; the Company does not offer credit lines or revolving credit to the Customer. Instead, it functions like a corporate charge account that is, by its terms, paid off in its entirety on a monthly basis. The Company does not charge interest on outstanding Travel Account balances or permit Customers to roll over their monthly balance. The Company will not permit further chargers or will close a Travel Account when Customers fail to pay their balance by a certain date.

For each Customer, the Company applies an internal spending limit on overall travel expenditures or on specific types of expenditures such as maximum daily charges for rental

cars, maximum flight costs, etc. The Company generates a monthly consolidated statement for the Customer which details the expenses of all the Customer's employees. The Travel Account statements provide the Customer additional detail and travel-related spending transparency that is not readily available from a typical monthly invoice or statement. The additional information allows Customers to have optimal control over travel expenditures and, armed with the detail afforded by the Travel Account statements, more effectively negotiate pricing, discounts and other terms with travel service suppliers. Whereas there are multiple payment options for corporate travel available in the market, the degree of data analysis and therefore the Customer's cost-saving potential are the primary or sole reasons Customers choose the Travel Account.

Funds received from the Travel Account Customers are placed in the Company's account with a depository institution located in the US, then swept nightly to the Parent's account, and ultimately settled through the Universal Air Travel Plan, or "UATP" network,<sup>3</sup> to the airline or participating travel merchant<sup>4</sup> from which the tickets were purchased. The Company's account is swept to a zero balance nightly with all funds transferred to the Parent. All payments received by the Company from Customers pass directly to the Parent.

With respect to the Travel Account services, the Company is exclusively compensated by interchange fees received from merchant airlines who are members of UATP. Unless Customers purchase additional services from third party providers beyond those described above, such as insurance coverage for lost or stolen baggage, trip insurance or passenger

---

<sup>3</sup> The UATP network is a low cost payment network privately owned by approximately 17 of the world's major airlines, including Airline. UATP issuers must be owners, and settlement of claims is performed through airline industry clearing houses such as the International Air Transport Association or IATA Clearing House, Airlines Clearing House or ACH, and UATP's own internal settlement solution, UATP Settlement Services. Airline is a UATP member and Parent transfers funds through UATP using Airline accounts.

<sup>4</sup> In the interest of full disclosure, we note that the Company and Parent offer additional functionality for Travel Account Customers to permit direct travel agency payments through the Merchant Agreement (referred to herein as "MA") program. In many markets, travel agencies are not remunerated on the basis of a commission from an airline, but instead are compensated by means of a transaction fee charged directly to the traveler. Because many Customers prefer one bulk statement for all their incurred business travel spending, including travel agency fees, the Parent enters into MAs with major travel agencies to allow charges for Customer transaction fees to be billed through the Travel Account. When MA is used, the travel agency invoices transaction fees to the Parent, which forwards expense information to the Company for inclusion in a Customer's monthly Travel Account statement. After receiving its monthly statement, the Customer pays the travel agency charges together with the other statement charges to the Company. Those funds are transferred by the Company to the Parent the same as all other statement charges, and the Parent transfers travel agency payments to the travel agency. While the functions of the Company are the same for MA charges as they are for other charges on a Travel Account statement, the Parent transfers MA charges to travel agencies directly and not to an airline or participating travel merchant through the UATP network.

death and injury insurance, the Customers are not charged any fee for the use of the Travel Account product.

**The Network Account.** As part of its effort to provide network-based<sup>5</sup> global travel and entertainment payment solutions, the Company entered into a bank identification number or BIN sponsorship agreement and related agreements with a major national bank in the US and its affiliates (referred to herein as "**Bank**"), under which the Company and the Bank jointly offer Customers a major credit card network branded virtual charge account (referred to herein as the "**Network Account**"). Under this arrangement, Customers receive a virtual account number that functions as a corporate charge access device and can be distributed to employees of the Customer who are authorized to use the Network Account. Customer employees use the Network Account to make travel and entertainment purchases at merchants that are members of the credit card network, and the charges appear on the Customer's Travel Account statement for the month. The Network Account is available exclusively to Customers located in the US.

Similar to the Travel Account, the Network Account is a lodged product with no physical plastic card involved. However, unlike the Travel Account which is used to purchase only business travel services from merchants that accept UATP, the Network Account may be used to purchase additional travel goods and services such as airline tickets for low cost carriers, rental cars and hotel stays at merchants that accept the credit card network and are not UATP merchants. The Network Account is accepted at a greater number of merchants and service providers than those that are permitted to accept UATP.

When a Customer's employee charges a purchase to the Network Account, the Company, through the Parent as its processor, authorizes and settles payments through the credit card network. From the Customer's perspective, the Network Account operates exactly the same as the Travel Account; however, the flow of funds differs. On a daily basis, the Company sends funds to its settlement account held at the Bank to cover all Customer transactions processed on that day. These funds are then settled by the Bank through the credit card network to the appropriate merchant, via the merchant's acquiring bank. The Bank has direct debit authority over the Company's settlement account for settlement purposes. The Company then recoups the funds from the Customer upon payment of the Customer's next Travel Account statement. Like the traditional Travel Account charges, Network Account charges on the Travel Account statement must be paid off in their entirety on a monthly basis. The Company does not charge interest on Network Account charges and does not permit Customers to roll over their monthly balance. The Company will not permit further charges or will close a Network Account where Customers fail to pay their balance by a certain date.

Also like traditional Travel Account charges, Network Account Customers have an internal spending limit on overall travel expenditures or on specific types of expenditures such as maximum daily meal spending. The monthly consolidated statement for the Customer offers

---

<sup>5</sup> In this context, the term network-based means a payment network that is more widely accepted than UATP which, by its terms, is limited in acceptance to only owner-airlines.

additional detail and travel-related spending transparency that is not readily available from a typical monthly invoice or statement, thereby allowing Customers to have optimal control over travel expenditures and to more effectively negotiate pricing, discounts, and other terms with service suppliers.

With respect to Network Account services, the Company is exclusively compensated by the Bank through fees received for the services performed under the program agreements. Customers are not charged any fee by the Company for use of the Network Account product.

### III. Legal Analysis

Idaho law requires any person engaged in the business of money transmission to obtain a license from the Department of Finance.<sup>6</sup> Money transmission is defined, in relevant part, as “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.”<sup>7</sup>

In connection with the services it provides, the Company accepts funds from Customers and transfers those funds to, and under an agreement with, the Parent. The Parent, in turn, transfers funds to (i) Airline and the UATP network in the case of the Travel Account product; or (ii) the travel agency in the case of the MA product. With respect to the Network Account the funds flow differs with the Company initially funding its settlement account at the Bank under an agreement for settlement through the credit card network to the appropriate merchant, and then accepting funds from the Customer in payment of the account balance created.

As part of an overall, and independently initiated, compliance review and assessment by the Company, we noted that certain aspects of the Company’s services may be interpreted to fall within the broad definition of money transmission that exists in Idaho, notwithstanding the fact that we do not believe it is the type of enterprise or business for which the Department of Finance would typically expect to require licensure. We are aware that Idaho law<sup>8</sup> provides for certain exemptions from money transmission licensing requirements; however, none immediately appear to apply based on our reading of the provisions.<sup>9</sup>

Unlike other businesses typically engaged in money transmission, the Company does not provide, and does not hold itself out as able to provide, a general service of transmitting

---

<sup>6</sup> Idaho Code § 26-2903.

<sup>7</sup> Idaho Code § 26-2902.

<sup>8</sup> Idaho Code § 26-2904.

<sup>9</sup> We also note that the Company believes its activities, as described herein, do not cause it to be a money transmitter for purposes of federal law based on certain enumerated exemptions that are available for payment processors and for transfers conducted only as an integral portion of the sale of goods or provision of services other than money transmission. See 31 C.F.R. § 1010.100(ff)(5).

Director Gee  
Department of Finance  
April 10, 2014

Page Six

funds for Customers. Nor does the Company charge fees for transferring funds. In connection with the Travel Account and Network Account products, the Company facilitates purchase transactions between its Customers and a discrete universe of travel and entertainment-related merchants. The Company provides its Customers with a detailed accounting of expenses incurred for travel and entertainment goods and services, facilitates budgeting and management of those expenses and allows Customers to utilize detailed spending information to more effectively negotiate discounts and other terms with merchants. The Company transfers Customer funds only to the Parent, which is fully regulated for these products and services as a payment institution by BaFin and Bundesbank in Germany.

We believe the purpose of Idaho's laws requiring licensure for money transmitters is to protect Idaho residents<sup>10</sup> from financial loss where they give control of their funds to a third party for transmission. Money transmitter licensure and supervision protect Idaho residents from an unlicensed money transmitter misappropriating or failing to properly transmit the funds. When a Customer uses the Company's services, however, the Customer is not at risk of financial loss because in all cases the Company is obligated to satisfy monthly charges incurred by the Customer on the Travel Account and the Network Account. Thus, we believe that a money transmission license should not be required for the Company, and we hereby request confirmation that the Company's services do not constitute licensable money transmission activity in Idaho.

Please do not hesitate to contact me at \_\_\_\_\_ if you have any questions or desire additional information.

Sincerely,

Partner

---

<sup>10</sup> We have assumed that Idaho's money transmission laws are designed to protect both individual consumers and businesses within the State. However, if instead the Department views the requirement as exclusively applicable to those parties that provide services to consumer residents, we again confirm that all of the Company's Customers are business entities, not consumers.





**IDAHO**  
DEPARTMENT OF FINANCE

C. L. "BUTCH" OTTER  
Governor

GAVIN M. GEE  
Director

March 27, 2014

Re: Bank No Action Request

Dear M

Pursuant to your correspondence of March 7, 2014, you have requested a no action position regarding the licensing provisions of the Idaho Money Transmitters Act.

As you know, the Idaho Money Transmitters Act provides an exemption for "banks...or mutual banks organized under the laws of any state or the United States, provided that they do not issue or sell...through authorized delegates who are not banks..."

In the present instance, Bank is an FDIC member institution chartered as an industrial bank in the State of Utah. Bank wishes to retail its bank-issued non-reloadable open-loop stored value cards through affiliated retail locations that are not banks or bank branches.

The bank has represented that the "Bank assumes all legal responsibility in the State of Idaho for satisfying the obligations owed to Idaho purchasers of Cards immediately upon receipt of purchase funds by" the affiliated retail store locations. Further, Bank has represented that it assumes all risk of loss that a purchaser may suffer as a result of any failure by the affiliated retail location to forward consumer funds to the bank as anticipated.

Based on the above representations and the representations made in your March 7, 2014 communication, the Department is willing to take a no action position regarding the licensure provisions of the Idaho Money Transmitters Act as it relates to the bank, the affiliated retailer and its retail locations. This no action position is based solely upon the written representations made and does not extend to other stored value card products that are issued under other agreements or issued by other providers.

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

Sincerely,

James A. Burns

**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

## Jim Burns

---

**From:**  
**Sent:** Friday, March 07, 2014 12:18 PM  
**To:** Jim Burns  
**Cc:**  
**Subject:** No Action Request  
**Attachments:** Bank Certification Letter - Idaho.PDF

Dear Jim:

Our clients, Corporation (“ ”) and Bank (“Bank”), respectfully request that the Idaho Department of Finance (the “Department”) issue a no action opinion with respect to the Idaho Money Transmitters Act (the “Act”), Idaho Code Ann. §§ 26-2901–26-2928, in connection with the future issuance of Cards (as defined below) by Bank and future sale of Cards by without a license under the Act in view of the facts and circumstances described below.

is a Minnesota corporation. Bank is an FDIC-insured, Utah-chartered industrial bank that is affiliated with . Bank’s operations and products, including the Cards, are subject to the examination and supervision of the Utah Department of Financial Institutions and the FDIC. Pursuant to an agreement between and Bank (the “Program Agreement”), Bank issues certain non-reloadable open-loop stored value cards branded by Visa (the “Cards”) and markets, distributes and sells the Cards to consumers in its retail stores (such program referred to herein as the “Program”). The Cards may be used by Cardholders to access the funds loaded to the Cards in any manner permitted by the Visa network. Bank proposes to issue and proposes to market and sell the Cards in the State of Idaho.

The responsibilities of each of and Bank in connection with the Program are set forth in the Program Agreement. In general, however, the Program Agreement provides that Bank is responsible for issuing the Cards, establishing and maintaining account balances for the Cards and processing transactions conducted with the Cards. Bank is also responsible for settlement with third parties in connection with transactions initiated with the Cards. Under the Program Agreement, is generally responsible for selling the Cards to consumers. The Program Agreement specifically provides that will perform its obligations in connection with its sale of the Cards as the agent of Bank. will be subject to the oversight and supervision of Bank for such purpose.

, as an agent of Bank, will collect funds from consumers in connection with the purchase of the Cards and is responsible to Bank for the settlement of those funds. Pursuant to the Program Agreement, Bank will be liable to the cardholder for the load amount of the Card immediately upon sale of the Card by , regardless of when, or even if, delivers funds to Bank. Accordingly, consumers will not have exposure to the credit risk of arising from their delivery of the purchase price to , as opposed to Bank. Rather, delivery of funds to as the Bank’s agent, constitutes payment to Bank. Any risk regarding the delivery of funds from to Bank is borne entirely by Bank. At no time will the cardholder be at a risk of loss due to the fact that funds were delivered to acting as the Bank’s agent. The terms and conditions of the Card provided to the cardholder reinforce the Bank’s liability by providing that upon valid activation of the Card, which occurs at the point of sale, the “[Bank] shall be immediately and solely liable to [the cardholder] for funds associated with the card under the terms of this Agreement.”

We understand that the Department takes the position that (1) open-loop prepaid cards, such as the Cards, constitute “payment instruments” under the Act and (2) a non-exempt seller of open-loop prepaid cards would not be exempt from licensing under the Act solely on the basis of its status as an authorized delegate of

an entity that is itself exempt from licensing under the Act. However, we also understand that the Department may be willing to consider taking a no action position with respect to the Act's licensing requirement for a seller and issuer of open-loop prepaid card products if (A) the issuer bank accepts the financial obligation to the cardholder for the entire amount of the card value at the moment the seller receives funds from the purchaser and (B) the cardholders are not exposed to any risk of loss as a result of the seller's receipt of funds on behalf of the issuer bank.

As described above, the Program is not a traditional money transmitter model, where consumer funds are subject to risk of loss until funds are properly delivered to the designated recipient. Rather, because the Bank accepts responsibility for the cardholder funds immediately upon receipt from [redacted] acting as the Bank's agent (regardless of when or whether the Bank receives such funds), there is no such risk to purchasers of the Cards. As described above, pursuant to the Program Agreement, [redacted] is designated as the agent of Bank in connection with the sale and distribution of Cards. By the terms of the Program Agreement, Bank makes the full face value of a Card available for use by the purchaser/holder of the Card immediately upon sale by [redacted], regardless of when (or whether) Bank receives funds from [redacted] in respect of the sale of such Card. Thus, [redacted] obligation to transmit the customer's funds is satisfied immediately upon sale of the Card. When the customer leaves the point of sale register, he or she leaves in possession of a payment instrument that represents precisely the value that the customer intended to have available. It does not matter whether the customer has yet drawn down the funds; the funds are immediately available for use by the customer due to Bank's express contractual undertaking. In fact, cardholders can use funds associated with the Cards before [redacted] settles funds to Bank. Thus, cardholders are never exposed to the credit risk of [redacted] in connection with Bank's obligations to honor the Cards. Any risk of loss, such as fraud of [redacted] employees or [redacted] failure to settle to Bank, is borne entirely by Bank and not the cardholders and would be resolved between [redacted] and the Bank as a contractual matter.

By contrast, in a traditional money transmission model, whereby a consumer delivers cash to a money transmitter for delivery to the consumer's designated recipient at a later time, the consumer's funds are subject to risk of non-delivery until such time as the funds are properly delivered to the account of the intended recipient. Accordingly, many states, such as Idaho, have adopted money transmitter licensing statutes that include various requirements designed to protect consumer funds pending proper delivery to the consumer's designated recipient. As explained above, however, regardless of whether [redacted] has completed settlement with Bank as to the loading of any particular Card, the cardholder has full use of those funds. Accordingly, the provisions of the Act applicable to money transmitter licensees that are designed to protect consumers against loss prior to receipt by the intended recipient (the Bank) would not provide any additional consumer protection that is not already provided for by the terms of the Program Agreement.

In light of the forgoing, [redacted] and Bank request that the Department issue a no action opinion with respect to the Act in connection with Bank's future issuance and [redacted] future sale of Cards in Idaho. In furtherance of [redacted] and Bank's request, Bank has executed a letter (attached hereto) acknowledging its acceptance of liability with regard to funds associated with Cards and immediately upon receipt of funds by [redacted] as described herein. [redacted] and Bank appreciate your prompt attention to this matter.

**CONFIDENTIAL TREATMENT REQUESTED**

This communication contains confidential commercial information of [redacted] and Bank. The release of such information would result in substantial harm to [redacted] and Bank if disclosed by permitting competitors to learn details of their proprietary business arrangement. Accordingly, we request confidential treatment of this communication and the attachment hereto. Also, we request that you notify us if anyone requests access to, or submits a request for a copy of, this communication.

Regards,



---

**From:** Jim Burns  
**Sent:** Monday, January 13, 2014 9:15 AM  
**To:**  
**Subject:** FW: No Action Request

---

**From:** Jim Burns  
**Sent:** Monday, January 13, 2014 9:09 AM  
**To:**  
**Cc:** Norman Real; Ginnie Sorensen  
**Subject:** RE: No Action Request

Hi

Based solely upon the representations provided in your email (see below) and the related attachments, the Department of Finance will take a no-action position as to the licensing provisions of the Idaho Money Transmitters Act in the matter of the \_\_\_\_\_ and its affiliates operating stores in the state of Idaho.

Any change in the facts underlying your request of December 26, 2013 may necessarily lead to a different conclusion.

Please let me know if you have any questions or need additional information.

Regards,

Jim Burns, MBA, CFE, CRCP  
Securities Investigations Chief / Money Transmitter Program Mgr.  
Idaho Dept. of Finance  
P.O. Box 83720  
Boise, ID 83720-0031  
(208) 332-8080

---

**From:**  
**Sent:** Thursday, December 26, 2013 8:01 AM  
**To:** Jim Burns  
**Subject:** No Action Request

Dear Mr. Burns:

Our client, The \_\_\_\_\_, respectfully requests that the Idaho Department of Finance ("Department") issue a no action opinion with respect to the Idaho Money Transmitters Act ("Act"), *Idaho Code* §§26-2901 – 26-2928, in connection with the future sale of Cards and Reload Value (as defined below) by The \_\_\_\_\_ and its affiliates that operate stores in the State of Idaho \_\_\_\_\_ without a license under the Act under the facts and circumstances described below.

markets, distributes and sells network-branded, open-loop reloadable and non-reloadable stored value cards (each a "Card") and reload value packs with which a Cardholder can add value to a reloadable Card ("Reload Value") in its grocery and multi-department retail stores across the United States, including under the \_\_\_\_\_ and \_\_\_\_\_ brands in Idaho. The Cards participate in an open-loop card network (e.g. Visa or MasterCard). Accordingly, Cardholders are able to use the Cards where debit cards participating in the designated card network are accepted, including to withdraw cash. The Cards and Reload Value are issued by \_\_\_\_\_ ("Bank"), a federally insured national bank supervised by the Office of the Comptroller of the Currency ("OCC"). Accordingly, the program under which the Cards and Reload Value are sold and issued are subject to federal laws and regulations and to the examination and supervision of the OCC, the primary regulator of the Bank.

We understand that the Department takes the position that open-loop prepaid cards, such as the Cards and Reload Value constitute "payment instruments" under the Act. Further, we understand that the Department takes the position that while a national bank, such as the Bank, would be exempt from licensing under the Act, a non-exempt seller of open-loop prepaid cards would not be exempt from licensing under the Act solely on the basis of its status as an authorized delegate of an entity that is itself exempt from licensing under the Act. Accordingly, the Cards and Reload Value are currently sold under the authority of a \_\_\_\_\_ affiliate duly licensed under the Act. However, from our earlier discussion, we understand that the Department may be willing to consider taking a no action position with respect to the Act's licensing requirement for a seller of open-loop prepaid card products if (i) the card issuer is an exempt entity that accepts the financial obligation to the cardholder for the entire amount of the card value at the moment the seller receives funds from the purchaser and (ii) the cardholders are not exposed to any risk of loss as a result of the seller's receipt of funds on behalf of the exempt issuer.

Unlike in the traditional money transmitter model, where consumer funds are subject to risk of loss until funds are properly delivered to the designated recipient, there is no such risk to the purchaser of a Bank-issued Card or Reload Value sold at \_\_\_\_\_ or \_\_\_\_\_ stores. Pursuant to an agreement between The \_\_\_\_\_ and the Bank ("Agreement"), \_\_\_\_\_ is designated as the agent of the Bank in connection with the sale of the Cards and Reload Value. By the terms of the Agreement, the Bank makes the full face value of a Card or Reload Value available for use by the purchaser/holder of the Card or Reload Value immediately upon sale by \_\_\_\_\_, regardless of when (or whether) the Bank receives funds from \_\_\_\_\_ in respect of the sale of such Card or Reload Value. Thus, \_\_\_\_\_, obligation to transmit the customer's funds is satisfied immediately upon sale of the Card or Reload Value. When the customer leaves the point of sale register, s/he leaves in possession of a payment instrument that represents precisely the value that the customer intended to have available. It does not matter whether the customer has yet drawn down the funds; the fact is that the funds are immediately available for use by the customer due to the Bank's express contractual undertaking. In fact, Cardholders can use funds associated with the Cards before \_\_\_\_\_ settles funds to the Bank. Thus, the Cardholders are never exposed to the credit risk of \_\_\_\_\_ in connection with the Bank's obligation to honor the cards. Any risk of loss, such as fraud of \_\_\_\_\_ employees or \_\_\_\_\_ failure to settle to the Bank, is borne entirely by the Bank.

By contrast, in a traditional money transmission model, whereby a consumer delivers cash to a money transmitter for delivery to the consumer's designated recipient at a later time, the consumer's funds are subject to risk of non-delivery until such time as the funds are properly delivered to the account of the intended recipient. Accordingly, many states, such as Idaho, have adopted money transmitter licensing statutes that include various requirements designed to protect consumer funds pending proper delivery to the consumer's designated recipient. For example, the Act requires licensees to maintain permissible investments equal to the value of the outstanding payment instruments and to report the value of outstanding instruments. *Idaho Code* § 26-2906 & § 26-2911. The Act defines "outstanding payment instrument" as "any payment instrument issued by the licensee which has been sold in the United States directly by the

licensee or by an authorized representative of the licensee, which has been reported to the licensee as having been sold and which has not yet been paid by or for the licensee." *Idaho Code* § 26-2902(12) (emphasis added).

The qualification that such prepaid cards constitute "outstanding payment instruments" of a licensee only when "issued by" the licensee is not an oversight. The purpose of the eligible investment obligation under the Act is to ensure that funds being held by a licensee for a consumer are fully protected until delivered. If a licensee issues its own prepaid cards, the consumer is exposed to the licensee until those funds are withdrawn or further transferred. If the cards are issued by an exempt national bank, however, the consumer is not exposed to the credit of licensee in connection with the bank's obligation to honor the cards. In the case of the Cards and Reload Value sold by [redacted] and issued by the Bank, because the prepaid card products are not themselves outstanding payment instruments of [redacted], there cannot be an "outstanding payment instrument" of [redacted] in these circumstances unless the consumer is somehow exposed to the credit risk of [redacted]. As explained above, the consumer has no such exposure. Moreover, the settlement arrangements that [redacted] has entered with [redacted] are irrelevant to the question whether [redacted] has an "outstanding payment instrument." As explained above, regardless of whether [redacted] has completed settlement with the Bank as to the loading of any particular Card or Reload Value, the cardholder has full use of those funds. Accordingly, the provisions of the Act applicable to money transmitter licensees that are designed to protect consumers against loss prior to receipt by the intended recipient would not provide any additional consumer protection that is not already inherent in the structure adopted between [redacted] and the Bank pursuant to the Agreement.

In light of the foregoing, [redacted] requests that the Department issue a no action opinion with respect the Act in connection with [redacted] future sale of Cards and Reload Value in Idaho. In furtherance of [redacted] request, the Bank has executed a letter (attached hereto) acknowledging its acceptance of liability with regard to funds associated with Cards and Reload Value immediately upon receipt of funds by [redacted] as described herein. Please let me know if you require any additional information to consider the request set forth herein. If the Department takes the requested no enforcement action position, [redacted] intends to surrender its money transmitter license in Idaho, the renewal of which is currently pending. Accordingly, [redacted] appreciates your prompt attention to this matter.

**CONFIDENTIAL TREATMENT REQUESTED**

This communication contains confidential commercial information of [redacted] and Bank. The release of such information would result in substantial harm to [redacted] and Bank if disclosed by permitting competitors to learn details of their proprietary business arrangement. Accordingly, we request confidential treatment of this communication and the attachment hereto. Also, we request that you notify us if anyone requests access to, or submits a request for a copy of, this communication.

Regards,