



IDAHO
DEPARTMENT OF FINANCE

C. L. "BUTCH" OTTER
Governor

GAVIN M. GEE
Director

June 11, 2015

Re:

Dear _____ :

The Idaho Department of Finance has reviewed your letter dated May 14, 2015, in which you responded to our May 1, 2015 request for additional information relating to bill paying business model.

Based on the information provided in your letter, the department has determined to take a no-action position as it pertains to the licensing provisions of the Idaho Money Transmitters Act. This determination is based specifically on our understanding that _____ will be operating pursuant to a formal agreement with each utility company and that the agreement will create an agency relationship in which payment from the consumer to _____ satisfies the consumer's obligation to the utility company.

If you have questions, please feel free to contact me at 208-332-8081.

Sincerely,

A handwritten signature in black ink, appearing to read "Coleen Hodson".

Coleen Hodson
Supervising Investigator/Examiner
Idaho Department of Finance

800 Park Boulevard, Suite 200, Boise, ID 83712
Mail To: P.O. Box 83720, Boise ID 83720-0031
Phone: (208) 332-8000 Fax: (208) 332-8099
<http://finance.idaho.gov>

RECEIVED
2015 MAY 21 PM 1:55
STATE OF IDAHO
DEPT OF FINANCE

May 14, 2015

Idaho Department of Finance, Securities Bureau
P.O. Box 83720
Boise, Idaho 83720-0031
Attn: Coleen Hodson, Securities Investigator

Re: Request for Idaho Money Transmitters Act No-Action Opinion

Dear Ms. Hodson:

As you are aware, this firm represents _____ in connection with its request that Idaho Department of Finance issue a no-action opinion concerning whether _____ is required to be licensed under the Idaho Money Transmitters Act.

_____ original request for a no-action opinion was sent through correspondence from this office dated April 3, 2015 (the "No-Action Request"). In response to the No-Action Request, through correspondence dated May 1, 2015, the Idaho Department of Finance requested certain additional information and documentation prior to issuing an opinion (the "Supplemental Request"). _____ response to the enumerated questions contained in the Supplemental Request follows.

1. Enclosed is a copy of the agreement that _____ intends to enter into with utilities in Idaho (the "Agreement"). Certain terms contained in the Agreement may be negotiated with each utility. However, Section III of the Agreement indicates that _____ shall be deemed the authorized representative and agent of Utility solely for the purposes of processing and accepting bill payments on behalf of Utility."

Additionally, as further indicated in the Agreement, customer payments will be considered paid by the utilities as of the date and time the payment is received by _____. The utility will receive this information from _____ in a report that is generated each day. The information will also be available to the utility through the payment viewing portal. (See Section II of Exhibit A.) Further, customers will receive a confirmation from _____ that will be displayed on _____ website. This confirmation will also indicate that payments will be considered paid by the utilities as of the date and time the payment is received by _____. This confirmation page is still in development. However, attached is the form in its current state. While this will almost

May 14, 2015

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certainly change in formatting, all of the information should eventually be included, including the first sentence.

Finally, [redacted] intends to obtain certain insurance policies for the benefit of the utilities to mitigate any potential risk of loss to the utilities. These insurance policies are described in Section V of the Agreement. The amounts required for each type of insurance will likely vary based on the demands of each utility.

2. For the purposes of processing payments for the utilities, [redacted] intends to use an account at a bank that is subject to Bank Secrecy Act requirements.

Thank you for your time and consideration of [redacted] No-Action Request. If you have any additional questions or concerns regarding any of the foregoing, please feel free to contact me. We look forward to your determination.

Sincerely,

Enclosures



IDAHO
DEPARTMENT OF FINANCE

C. L. "BUTCH" OTTER
Governor

GAVIN M. GEE
Director

May 1, 2015

Re:

Dear _____ :

The Idaho Department of Finance has reviewed your letter dated April 3, 2015, requesting a no-action opinion regarding money transmission licensing requirements for _____ ,

The following additional information will be necessary for us to make a determination regarding your no-action request:

1. Will contracts between _____ and the Idaho utility provide that act as an authorized agent for the Idaho utility? Specifically, will the Idaho utility hold customers harmless if _____ fails to deliver the payment to the utility company? It would be helpful to the Department if you could provide us with a sample contract that _____ intends to enter into with the Idaho utility.
2. We understand from your letter that customer payments will be sent to an account held by _____ and then disbursed to the appropriate utility through the ACH network. What type of account will used to hold the funds and will the account be held at a BSA regulated financial institution?

On a final note, please identify the states that have provided _____ with a no-action opinion or license waiver.

If you have questions, please feel free to contact me at 208-332-8081.

Sincerely,

Coleen Hodson
Supervising Investigator/Examiner
Idaho Department of Finance

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<http://finance.idaho.gov>

RECEIVED
2015 APR 13 PM 2:04
STATE OF IDAHO
DEPT OF FINANCE

April 3, 2015

Idaho Department of Finance, Securities Bureau
P.O. Box 83720
Boise, Idaho 83720-0031
Attn: Coleen Hodson, Securities Investigator

Re: Request for Idaho Money Transmitters Act No-Action Opinion

Dear Ms. Hodson:

This firm represents _____, a Delaware corporation owned by _____, in connection with certain regulatory compliance issues, including the issue described below.

Request for Licensure Determination

_____ respectfully requests that the Securities Bureau of the Idaho Department of Finance issue a no-action opinion concerning whether _____ is required to be licensed under the Idaho Money Transmitters Act, IDAHO CODE ANN. § 26-2901 *et seq.* (the "Money Transmitters Act").

Factual Background

_____ is planning to operate a web-based, third-party origination bill payment processing platform (the _____ Platform") in Idaho. It is _____ intention to contract with and acquire contracts with utility companies operating in Idaho (the "Utilities"). The Utilities will contract with _____ in order to obtain the benefits of allowing their utility customers (the "Utility Customers") the convenience of making online bill payments, which the Utilities are unable to process. _____ will also provide a payment processing service for the Utilities that allows the Utility Customers to call _____ and make payments on their utility bills over the telephone (collectively with the _____ Platform, the _____

After entering into contracts with _____, the Utilities, through their websites, will provide access to the _____ Platform through a link and will also provide the _____ bill payment telephone number. Access to the _____ Services will be provided solely for the purpose of allowing the Utility Customers to pay their utility bills. Utility Customers will not be able to send any funds to any other individual or entity except the Utilities with whom _____ has contracted and the Utility Customers may only send funds to pay outstanding utility bills.

April 3, 2015

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In a typical bill payment transaction, Utility Customers will log on to their account pages with the Utilities, and, if they wish to pay their utility bills online, they will click on the link. The link to the Platform will bring the Utility Customers to Terms and Conditions Agreement, which the Utility Customers must consent to in order to use the Platform. Terms and Conditions, which may be negotiated with the Utilities, provide that will indemnify the Utility Customers for any loss suffered in connection with their use of the Platform up to the amount of the Utility Customer's bill payment plus any fee charged in connection with the bill payment.

After consenting to Terms and Conditions, the Utility Customers will be able to make payments on their utility bills using the Platform. After each day, provides a list to the Utilities of all bill payments made that day. The bill payments will be processed by using the ACH Network and the payment funds will be sent to an account held by solely for the purpose of processing these utility bill payments. After the bill payment funds are received by , they will be sent directly to the Utilities through the ACH network.

Federal, State, and Policy Analysis

It is position that it is currently exempt from federal regulation pursuant to those exemptions for third-party payment processors contained in 31 C.F.R. §1010.100(ff)(5)(ii)(b) (the "Payment Processor Exemption"), and the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") Rulings dated November 19, 2003, November 13, 2013, and October 27, 2014.

As FinCEN has acknowledged through the Payment Processor Exemption, the Services do not present traditional money transmitting risks. The Payment Processor Exemption provides that an entity will not be considered a money transmitter under federal law if the entity merely "acts as a payment processor to facilitate the purchase of, or payment of a bill for, a good or service through a clearance and settlement system by agreement with the creditor or seller."¹ This exemption requires the following four elements: "(1) the entity actually facilitates the purchase of goods or services, or payment of bills for goods or services; (2) the entity operates through a clearance and settlement system; (3) the entity operates pursuant to a formal agreement; and (4) the entity's agreement is at a minimum with the seller or creditor that is receiving the funds."² believes that the Services meet the quoted criteria, and, by doing so, similarly present no risk to Idaho.

¹ 31 C.F.R. §1010.100(ff)(5)(ii)(b).

² See FinCEN Ruling 2013-R002, "Whether a Company that Offers a Payment Mechanism Based on Payable-Through Drafts to its Commercial Customers is a Money Transmitter," November 13, 2013.

believes that the services it intends to provide in Idaho should similarly be exempt from licensure in Idaho. believes that the Services fall within the scope of the exemption criteria outlined in the Department of Finance's previously published no-action letters.³ Specifically, the Department of Finance has previously been willing to grant a no-action opinion where the services provided present no potential risk of loss to the consumer. believes its obligation to the Utility Customers pursuant to Terms and Conditions sufficiently protects Idaho's consumers from any potential risk of loss.

As indicated above, we are currently requesting the Securities Bureau of the Idaho Department of Finance's determination concerning whether is required to be licensed pursuant to the Money Transmitters Act.

Confidential Treatment Requested

This letter contains confidential commercial information the release of which would result in substantial harm if disclosed, as it would expose to potential and actual competitors non-public details of our client's proprietary business arrangements. As a result, we request confidential treatment of this communication and any attachments hereto. Additionally, we request that you notify us if anyone requests access to, or submits a request for a copy of these materials.

Conclusion

Thank you for your time and consideration of this request for a licensure determination pursuant to the Money Transmitters Act. If you have any questions or concerns regarding any of the foregoing, please feel free to contact me. We look forward to your determination.

Sincerely,

³ See Department of Finance Letters dated September 2, 2005, September 26, 2005, October 4, 2007, September 2, 2008, September 23, 2008, October 15, 2008, and August 3, 2010.