



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 model¹, 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

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

SECURITIES BUREAU
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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,