



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,

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

James A. Burns

SECURITIES BUREAU
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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,