



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]
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

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April 10, 2014

Via U.S. Mail and Electronic Mail (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.¹ 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**")² adopted by the European Parliament and the Council of

¹ Idaho Code §§ 26-2901 *et seq.*

² 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,³ to the airline or participating travel merchant⁴ 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

³ 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.

⁴ 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-based⁵ 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

⁵ 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.⁶ 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.”⁷

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 law⁸ provides for certain exemptions from money transmission licensing requirements; however, none immediately appear to apply based on our reading of the provisions.⁹

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

⁶ Idaho Code § 26-2903.

⁷ Idaho Code § 26-2902.

⁸ Idaho Code § 26-2904.

⁹ 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

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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 residents¹⁰ 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

¹⁰ 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.