



IDAHO
DEPARTMENT OF FINANCE

C.L. "BUTCH" OTTER
Governor

GAVIN M. GEE
Director

January 7, 2016

Re: _____ & the Access Idaho Portal

Dear _____:

In connection with our extended communications regarding the application of the Idaho Money Transmitters Act to _____, we provide the following.

We agree with your assumption that _____ activities in Idaho qualify as money transmission as contemplated under the Idaho Money Transmitters Act (IMTA).

In furtherance of your request for a no enforcement action position as it pertains to the licensing provisions of the IMTA, we find your written representations persuasive. _____ present Idaho activities are limited in scope, funds are delivered within a very limited window of time, and _____ does not engage in money transmission outside of the scope of its contract with the Idaho Department of Administration. Perhaps most importantly, _____ is otherwise subject to robust state oversight which includes financial reporting, independent auditing functions, and several other protections which ultimately benefit the users of Access Idaho.

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 Act¹.

Please be advised, that should the facts of the identified business activities be different than characterized above, change at a later date, or _____ limited activities in or from Idaho change, 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.

Regards,

James Burns

¹ This decision is based solely on _____ unique circumstances and is not intended to serve as precedent for any other money transmitter or applicant. This letter should not be construed as a finding that licensure is not required in other jurisdictions where users of the Access Idaho Portal may reside.

SECURITIES BUREAU

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James A. Burns
Investigations Chief
Idaho Department of Finance
P.O. Box 83720
Boise, ID 83720-0031

November 19, 2014

Re: Applicability of Idaho Money Transmitters Act to Idaho Government Online Payments

Dear Mr. Burns:

Several weeks ago, you and I had a telephone call regarding my client, [REDACTED]. As you might recall, [REDACTED] manages *Access Idaho*, the State of Idaho's internet portal. In connection with *Access Idaho*, [REDACTED] facilitates payments to various public agencies. During our call, we discussed whether the Department of Finance (the "Department") would take a no action position with respect to [REDACTED] licensure under the Idaho Money Transmitters Act (the "Act"), on the grounds that funds are constructively received by the recipient public agencies as soon as the funds are received by [REDACTED].¹ I am now writing to formally request that the Department take a no action position on these grounds.

Alternatively, I am writing to request that the Department take a no action position on the grounds that the contractual relationship between [REDACTED] and the State of Idaho imposes extensive requirements on [REDACTED] to protect both users of *Access Idaho* and the State. These requirements are comparable to—and in some key respects exceed—the requirements that the Act imposes to protect consumers.

I. Background

The State of Idaho, acting through the Office of the Chief Information Officer ("OCIO"), Department of Administration, has signed a Master Agreement with [REDACTED] to operate *Access Idaho*. *Access Idaho* is the State's "online transactions and citizen information service," or "Internet Portal," centered on the "State's home page" at www.idaho.gov/.² The Master Agreement is enclosed with this letter. Individual public agencies sign Service Level Agreements with [REDACTED], after prior approval from OCIO, that are "subject to" the Master

¹ For purposes of this letter, we assume that [REDACTED] is engaged in activities that qualify as "money transmission" under the Act.

² *Access Idaho Services Agreement* 1, 5 (July 1, 2008) [hereinafter "Master Agreement"].

Agreement.³ These Service Level Agreements enable public agencies (including the Department of Finance) to use *Access Idaho* to offer online services to the public.

The specific aspect of *Access Idaho* at issue is the feature that allows members of the public to make online payments to public agencies. The Master Agreement authorizes to “bill and collect statutory fees on behalf of the State, and pass those collected through to the appropriate agency via the State Treasurer's Office.”⁴ The Master Agreement establishes detailed controls to ensure that performs this function in a safe and prudent manner:

All moneys collected on behalf of a State agency must be deposited from the Contractor's bank account into the designated Idaho State Treasurer's bank account within twenty-four (24) hours following the effective receipt of those moneys by the Contractor. Deposits must be made via electronic funds transfer (EFT) using the automated clearinghouse (ACH) credit method. The Contractor must send detailed transaction information to the agency as well as separate total deposit information for financial reconciliation to the State Treasurer's Office for each agency. The ACH file format must be approved and tested by the State Treasurer's Office before it is implemented.

The Contractor must maintain procedures for billing, collections, online credit card acceptance, and issuance of payments, and carry out all other fiscal activities necessary to operate a financially sound Internet Portal service.⁵

More broadly, is subject to a comprehensive scheme of supervision by the State in the performance of its duties. activities are monitored by OCIO and by two interagency committees.⁶ must comply with “standards and polices” established by the State, and must document its work for review by the State.⁷ Also, must maintain security standards and an electronic “audit trail” to detect security breaches, as well as procedures to address “misuse or fraud, including resolution options.”⁸ provides the State with regular financial

³ Master Agreement at 1-2. The Master Agreement incorporates the definition of “public agency” found at Idaho Code § 67-2327. Under this definition, a “public agency” is “any city or political subdivision of this state, including, but not limited to, counties; school districts; highway districts; port authorities; instrumentalities of counties, cities or any political subdivision created under the laws of the State of Idaho; any agency of the state government; and any city or political subdivision of another state.” *Id.* “State” means “a state of the United States and the District of Columbia.” *Id.* In practice, *Access Idaho* does not offer services to “any city or political subdivision of another state,” but only to Idaho governmental entities.

⁴ Master Agreement at 4 (emphasis added).

⁵ Master Agreement at 8 (emphasis added).

⁶ These interagency committees are the Idaho Technology Authority, formerly known as the Information Technology Resource Management Council, and the *Access Idaho* Steering Committee. See Master Agreement at 1-2.

⁷ Master Agreement at 2.

⁸ Master Agreement at 6.

reports.⁹ Additionally, submits to an annual audit by an independent auditor approved by the State.¹⁰ The State requires to maintain commercial general liability insurance and umbrella liability insurance that together have a limit of \$1 million.¹¹ Additionally, must maintain comprehensive crime insurance of \$1 million that must cover, at a minimum, “employee dishonesty (blanket coverage), forgery, theft (inside and outside), wire transfer fraud, computer fraud or theft.”¹² The State is an additional insured on the insurance.¹³

business is focused on *Access Idaho*, and it conducts no putative “money transmission” activities other than the activities described above.

II. Licensing Requirement

Under the Act, a license is required to “engage in the business of money transmission.”¹⁴ “Money transmission” is defined, in pertinent part, as “engaging in the business of 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.”¹⁵

As you know, the Act protects customers of money transmitters from the risk of financial loss by requiring licensees to adhere to several major requirements. First, licensees must hold permissible investments equal to outstandings.¹⁶ Second, a licensee must generally maintain a security device of \$10,000 plus \$5,000 per additional location, up to a maximum of \$500,000.¹⁷ Third, licensees are subject to supervision by the Department in the form of annual reporting, reporting of certain major events such as bankruptcy or change in control, recordkeeping requirements, and examinations by the Department.¹⁸

III. Request for No Action Assurance

For purposes of this letter, we assume that activities qualify as money transmission. We nevertheless ask that the Department take a no action position for one of two independently sufficient reasons.

⁹ Master Agreement at 9.

¹⁰ *Id.*

¹¹ Master Agreement at 3.

¹² *Id.*

¹³ *Id.*

¹⁴ Idaho Code § 26-2903(1).

¹⁵ Idaho Code § 26-2902(11).

¹⁶ Idaho Code § 26-2906.

¹⁷ Idaho Code § 26-2908.

¹⁸ Idaho Code §§ 26-2911 through 26-2914.

A. The System User Has No Liability for Losses

We request that the Department take a no action position with respect to licensure for similar reasons to its no action letter of August 14, 2013 to an unnamed company. That unnamed company was “a limited purpose entity that only accepts and forwards licensing fees to participating regulatory agencies from individuals or entities that seek to become licensed in various capacities with these regulatory agencies.”¹⁹ Similarly, putative “money transmission” activities are limited to accepting and forwarding payments from members of the public to public agencies via the State Treasurer’s Office. In its August 2013 letter, the Department stated:

In Idaho, I have confirmed that the Department of Finance would honor an application fee paid through the [company] even in an instance where [the company] failed to forward such a payment. In this respect, a payment to [the company] has the equivalent outcome of a payment made directly to the Department of Finance. Such a circumstance obviates any monetary risk to the user of [the company]. Since risk to the system user has been eliminated (at least in Idaho) there would appear to be little benefit to requiring to become licensed as a money transmitter in Idaho.²⁰

Likewise, in the case of _____, we do not believe that there is any risk of financial loss to the users of *Access Idaho*. The Master Agreement authorizes _____ to collect online payments “on behalf of the State.”²¹ Thus, _____ acts as the agent of the State, not the agent of the users of *Access Idaho*. The user’s role in the transaction is complete when the user makes his or her payment to _____. Accordingly, our understanding is that the State rather than the user would bear the risk if, for some reason, _____ failed to forward a payment.

B. The State Has Established Robust Controls That Make the Risk of Loss Negligible

We also ask that the Department take a no action position because the Master Agreement imposes a set of protections that are similar to the protections under the Act.

Under the scheme established by the Master Agreement, _____ receives funds into its account at a prudentially regulated, federally insured bank. The bank holds the funds briefly, for at most twenty-four hours, before the funds are transferred to the State Treasurer’s Office.²² This model presents considerably less risk than most money transmitter businesses, which may retain customer’s funds for weeks, months, or years at locations other than a bank.

¹⁹ Letter from James A. Burns, Idaho Department of Finance, to an Unnamed Company (Aug. 14, 2013) (available in redacted form at <http://www.finance.idaho.gov/MoneyTransmitter/Documents/MT%20Interpretations%202013.pdf>), p. 7).

²⁰ *Id.*

²¹ Master Agreement at 4.

²² *See* Master Agreement at 8.

is not authorized under the Master Agreement to invest the funds anywhere other than its bank account.²³ This requirement is much stricter than the Act's permissible investments provision, which authorizes relatively more risky investments such as "stock traded on any national securities exchange or on a national over-the-counter market."²⁴

Moreover, is required by the Master Agreement to maintain commercial general liability insurance and umbrella liability insurance that together have a limit of \$1 million, as well as comprehensive crime insurance of \$1 million, which the State can claim as an additional insured.²⁵ These insurance limits are much higher than the security device required under the Act, which can never exceed \$500,000 and in practice would be on the order of \$10,000, given that currently performs its putative money transmitter activities from a single office in Idaho.⁶

Additionally, the Master Agreement provides for robust supervision of by the State. The Master Agreement imposes certain recordkeeping requirements on²⁷ and requires to submit both general financial reports and transaction-level information to the State.²⁸ also is subject to close ongoing scrutiny by the State, through OCIO and two interagency committees,²⁹ and submits to an annual independent audit.³⁰ As a whole, these supervisory procedures are comparable to the reporting, recordkeeping, and examination provisions for licensees under the Act. Furthermore, the Master Agreement's supervisory procedures have the advantage that they were tailored by OCIO to the specific characteristics of *Access Idaho*.

Overall, the requirements of the Master Agreement fully protect both the State and users of *Access Idaho* and accomplish the same objectives as the regulatory scheme under the Act. In light of this alternative and robust regulatory scheme for , we request that the Department take a no action position with request to the licensing requirement.

²³ *Id.*

²⁴ Idaho Code §§ 26-2902(14), 26-2906.

²⁵ Master Agreement at 3.

²⁶ Idaho Code § 26-2908.

²⁷ Master Agreement at 2, 6, 8.

²⁸ Master Agreement at 8-9.

²⁹ Master Agreement at 2.

³⁰ Master Agreement at 9.

* * * * *

Thank you for your time and attention to this matter. Please do not hesitate to contact
me at _____ or _____ if you have any questions.

Sincerely,

cc: