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APR 21 2005

DEPT. OF FINANCE
STATE OF IDAHO

VIA PRIORITY MAIL

April 18, 2005

James A. Burns
Investigations Chief
Idaho Department of Finance
P.O. Box 83720
Boise, Idaho 83702-0031

Re: Interpretive Request

Dear Mr. Burns:

Our counsel, _____, forwarded a copy of your letter to him dated April 5, 2005. The letter indicated that _____ activities require a license under the Idaho Money Transmitters Act. This writing confirms that we have ceased processing transactions from Idaho residents and are preparing to submit a license application to the Department.

Thank you for your prompt attention to our request for an advisory opinion. We look forward to working with the Department to ensure our full compliance with Idaho laws.

Sincerely,



IDAHO
DEPARTMENT OF FINANCE

DIRK KEMPTHORNE
Governor

GAVIN M. GEE
Director

April 5, 2005

RE: Interpretive Request

Dear M

Your March 24, 2005 correspondence regarding the applicability of the Idaho Money Transmitters Act to the activities of the has been referred to the undersigned for review and response.

Your letter describes two distinct activities that is engaged in; the transmittal of funds to third parties and the marketing of stored value card products. In connection with each area of activity we provide the following.

Web-Based Money Transmission Activities

Background - As described, provides an internet-based fascia for the “payment and remittance” of funds. More specifically, the fascia provides a conduit “for individuals with internet access who wish to use the internet to send money to friends and family abroad or to pay for goods and services sold by international merchants”.

In connection with the above, you have described three mechanisms by which funds are transmitted. First, may use direct web-based linkage to redirect the remitter to PayPal where the PayPal transit system is utilized to effect the funds transfer. Secondly, the remitting customer may choose to use a debit or credit card to effect the transaction. In this instance, a third-party authorization service is used and the customer’s funds are credited to an omnibus account owned and controlled by at a federally chartered bank for further credit to the foreign disbursement agent. Finally, a customer may use an ACH electronic check for funds origination and the customer’s funds are again credited to the omnibus account for further credit to the disbursing agent.

Transmission Implications - Idaho Code §26-2902(11) defines money transmission as the “sale or issuance of payment instruments or 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...”

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Your description of services presents a fascia to consumers that funds can be remitted through the organizational efforts of _____ Indeed, the _____ website states, “_____ offers fast, reliable money transfers at a great price! Send money from the convenience of your computer to friends and family all over the world”. In this regard, one might only conclude that _____ is in the money transmission business.

Physical Presence in Idaho - Idaho Code §26-2903(1) states “no person...shall engage in the business of money transmission without a license as provided in accordance with the provisions of this chapter.” §26-2903(2) further clarifies that a “licensee may conduct its business in the state at one (1) or more locations, directly or indirectly owned, or through one (1) or more authorized representatives...”

It is our view that Idaho Code §26-2903(2) merely acknowledges that a licensee “may” conduct business in Idaho while physically located in Idaho or through authorized representatives located in this state. We do not view this language as limiting licensure solely to those businesses that have a physical presence in this state. To do so would create an “un-level playing field” where certain classes of money transmitters might circumvent the provisions of the statute and the costs and safeguards associated therein.

Bank Exemption – Idaho Code §26-2904(1)(d) generally states that banks and other classes of financial institutions are exempt from the Idaho Money Transmitters Act. However, we believe that the statute is clear that it must be the bank that is directly engaged in the money transmission business and not non-bank entities that then use the bank as a transmission conduit. In this regard, we believe that _____ cannot avail itself of the bank exemption.

Department Opinion As to _____ Money Transmission Business - It has been the Department’s continuing view that web-based money remitter services constitute “money transmission” as defined in the Idaho Money Transmitters Act. While you have made several policy arguments regarding the back-office designs used by _____ to accommodate money transmissions in, into or from Idaho, we are not convinced that the business model falls outside the scope of the Idaho Money Transmitters Act. We therefore believe that licensure in Idaho is appropriate should _____ want to accept or deliver funds in or from Idaho. This view is consistent with your observation that PayPal is a licensed money transmitter in Idaho.

Stored Value Card Product

Background – As described, _____ has entered into a networking arrangement with a federal savings bank to market stored value cards (card) issued by the bank. The card is branded with both a _____ logo and MasterCard Maestro logo. Again, the card is purchased directly through the _____ website, with the card being shipped to the user. The card is associated with an agreement between the bank and the card purchaser/holder.

Payment Instrument Issues - Idaho Code §26-2902(11) defines money transmission as the “sale or issuance of payment instruments...within the United States or to locations outside the United States by any and all means...” Idaho Code §26-2902(13) defines payment instrument to include any check, draft, money order, or other instrument...sold or issued to one or more persons.

For your information, the Department has long taken the view that stored value cards fall within the context of a payment instrument as defined under the Idaho Money Transmitters Act. As such, the offer and sale of such instruments in or into Idaho would require licensure as a money transmitter or an exemption from such licensing.

Money Transmission Issues – Your letter appears to imply that card purchasers might have the card delivered to a third party of their choice and that the purchaser can also reload the card for further benefit to the card possessor. In this regard, the system also appears to take on the flavor of “money transmission” with the card and the website being the conduit between the remitter and the card carrier.

Bank Exemption – Idaho Code §26-2904(1)(d) states that the Idaho Money Transmitters Act shall not apply to banks and other enumerated financial institutions, “provided that they do not issue or sell payment instruments through authorized delegates who are not banks...”

As described is the marketer and seller of the stored value card. Hence, while the bank may be construed to be the ultimate issuer of the stored value product, the payment instrument is being sold through an entity that is not the bank.

Department Opinion As to Stored Value Card Business - It has been the Department’s continuing view that stored value products are “payment instruments” within the context of the Idaho Money Transmitters Act. While you have made several policy arguments regarding the business model used by to sell or issue payment instruments in or into Idaho, we are not convinced that the business model falls outside the scope of the Idaho Money Transmitters Act and we therefore believe that licensure in Idaho is appropriate should want to accept or deliver funds in or from Idaho.

Other Issues Of Note

PayPal Agent Considerations – It is unclear whether has any formal contractual arrangement with PayPal for that portion of money transmission business that may access the services of PayPal. Hence, it is not clear whether could be construed to be acting as an authorized or unauthorized agent of PayPal.

ACH Advance Credits – In describing web-based money transmission model, you describe the use of ACH debit as a means to conduct a money transmission transaction. As it relates to ACH based transactions you state, “Although it sometimes takes several days for a customer’s payment to clear from his or her account, the Client frequently authorizes disbursement of funds before the funds clear from the customer’s account.”

In the above-described transactions, has your client considered whether they might be construed to be extending credit or otherwise engaging in lending transactions?

Summary

As noted above, we are of the view that business model falls within the ambit of the Idaho Money Transmitters Act and that licensure is appropriate if intends to offer its services in or into Idaho.

We note that _____ apparently already complies with federal anti-money laundering regulations, including OFAC and BSA regulations. As such, _____ may already be well positioned to obtain a money transmitters license in Idaho. I have included copies of our money transmitters application and supporting documentation for your convenience.

We thank you for your inquiry. Should you have any questions or comments or wish to discuss this matter in greater detail, please feel free to contact the undersigned directly.

Sincerely,

James A. Burns
Investigations Chief

RECEIVED

MAR 28 2005
DEPT. OF FINANCE
STATE OF IDAHO

March 24, 2005

Gavin M. Gee, Director of Finance
Idaho Department of Finance
700 West State Street, 2nd Floor
P.O. Box 83720
Boise, ID 83720-0031

Dear Mr. Gee:

This firm represents an online funds transmitter, (“Client”), a privately held company, incorporated and headquartered in California. The Client operates exclusively online and maintains its sole office in California. The Client maintains no operations or personnel in the State of Idaho. This letter serves as a request for confirmation from the State of Idaho that the Client is not required to obtain a money transmitter license under § 2903 of Idaho’s Money Transmission Act (the “Transmitter Law”) in order to offer the internet services described below.

Background

The Client facilitates “online-to-offline” payments and remittances. Its customers are typically well-educated, banked individuals with internet access who wish to use the internet to send money to family and friends abroad or to pay for goods and services sold by international merchants. The Client’s service allows customers to send money or make payments online to recipients in India, Philippines, Dominican Republic, Jamaica, Hong Kong, Nepal, Sri Lanka, Bangladesh, Argentina, Brazil, Bolivia, Chile, Paraguay, Uruguay, Pakistan, the United Kingdom, and Poland. It expects to offer services to additional destinations soon, including countries in Latin America, Asia, and Africa.

Detail of Operations

A typical transaction commences when a customer accesses the Client’s secure websites to initiate a funds transfer. Through the secure site, the customer provides relevant information about a proposed transaction, including the amount to be transmitted, the method of payment, and contact information about themselves and the intended recipient. Customers pay for the money transfer using (1) PayPal, a California-based subsidiary of eBay, Inc. that is widely known as the leading online payments system, (2) a credit or debit card, or (3) an electronic check.

A customer electing to pay through PayPal is redirected through links on the Client’s website to the PayPal secure website to access his or her account or to open a new one. Upon authorization by the customer, PayPal transmits funds from the customer’s PayPal account to a PayPal account in the name of the foreign disbursement agent. Funds are then disbursed by the disbursement agent to the designated recipient in the manner specified by the customer (typically, pick-up, home delivery, or direct deposit to the recipient’s bank account).

A customer choosing to pay with a credit or debit card enters the type of card, the card number, and the billing address on the Client's secure website. The information is verified by a third-party authorization service. If approved, a federally chartered bank with which the Client has entered into a merchant card agreement transmits the funds from the customers' credit or debit account into a non-interest bearing account in the Client's name, with the designation "As Agent for the Benefit of its Customers." The account is domiciled in the State of Montana and is maintained in a manner eligible for FDIC pass-through insurance. Funds are then transferred to the appropriate disbursement agent for disbursement to the intended recipient, as described above.

A customer electing to pay using an electronic check enters his or her bank account and ABA routing numbers. The information is verified and funds are debited from the customer's bank account via ACH transfer and settled into the non-interest bearing bank account as described above. Electronic check payments typically post to the non-interest bearing account after four or more days. Funds are then wired from the non-interest bearing account to the disbursement agent for disbursement to the intended recipient as described above. However, in instances where the customer transacts regularly and has previously passed the Client's fraud screening controls, funds may be disbursed to the recipient before the debit from the customer's account actually posts to the non-interest bearing account.

Regardless of which payment method is selected, customers are directed to a website location containing a receipt which can be printed and retained for their records. In addition, customers receive electronic mail confirmations of their transactions.

The Client tracks the status of each transaction through a web-based interface with the disbursement agents. Customers are notified of the status by email. Customers may also contact the Client or the disbursement agent by phone, fax, electronic mail, or in-person to check on a transaction's status.

Customers who access and use the money transfer services through the Client's website agree to the posted terms and conditions of the Terms of Service ("TOS") posted on the sites. Under the TOS, customers appoint the Client as their agent for the purpose of facilitating the transaction in the manner described herein.

All of the described transactions are subject to the Client's proprietary anti-fraud system to minimize the risk of fraudulent transactions and to comply with federal anti-money laundering regulations, including OFAC and BSA regulations. The automated fraud screens are supplemented with manual reviews by trained fraud analysts. Transactions that fail the Client's fraud screening procedures are rejected and recorded to prevent similar transactions in the future. The Client's staff includes a former Chief Investigating Officer with the Securities and Fraud Cell of the Central Bureau of Investigations in India who maintains a network of officials and fraud investigators in foreign countries who actively participate and cooperate in tracking fraudulent transactions and funds recovery,

State Transmitter Law

We have reviewed the Transmitter Law and have formed an initial belief that it is inapplicable to the described operations of our Client. Our view is based on the following observations.

The role of the Client is primarily to provide online informational and administrative services rather than money transmission services, offering (1) a "front-end" web-based interface for customers to remit funds overseas through PayPal or the Transmitting Bank, and (2) a "back-end" interface with PayPal or the Transmitting Bank and disbursement agent to track deliveries in real time. Funds are actually transmitted either by PayPal or a federally chartered bank (the "Transmitting Bank"), rather than directly from the Client. It is our understanding that PayPal is a licensed money transmitter in Idaho. Similarly, it is our understanding that the Transmitting Bank is a federally chartered bank and is therefore exempt from regulation as a money transmitter under § 2904 of the Transmitter Law.

In evaluating the public policy needs for protection of the customer and the recipient of the funds, the primary concern is assuring that the process offers sufficient safeguards to ensure that, if funds are not delivered to the recipient, the customer has recourse to the transmitter. In the case of the operations described herein, multiple layers of protection exist. Unlike traditional "brick-and-mortar" remitters like Western Union, the Client does not accept cash from the customer. Customers must pay for the Client online using a credit card, a debit card, or an electronic check. Therefore, the customers are protected by the Federal Fair Credit Billing Act, NACHA rules, and Regulation E. Any risk of loss to the customer is mitigated by the customer's ability to impose chargebacks against the Client. Indeed, the Transmitting Bank requires the Client to maintain a separate deposit of \$100,000 to offset any customer chargebacks. We therefore submit that the rationale for customer protection found in the Transmitter Law is neither needed nor applicable to the operations described above.

An additional factor in determining the inapplicability of the state Transmitter Law to the Client arises because the Client has no physical presence in the State of Idaho and no active marketing program targeted at residents of the State. As a result, few if any transactions implicate residents of the State. A far greater percentage of transaction volume originates from residents of states like California, where the Client has a physical presence and has a license application pending, and New York, where the Client has received formal permission to operate without a license based on a submission similar to this.

Also, any risk of loss to customers is mitigated by customers' ability to claim FDIC pass-through insurance on funds held for their benefit. Customers' funds are held in a non-interest bearing account, in the name of the Client, "As Agent for the Benefit of its Customers." FDIC regulations provide that funds deposited into an account in the name of an agent for the benefit of the principal will be insured to the same extent as if

Gavin M. Gee, Director of Finance
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deposited in the name of the principal. 2002 FDIC Interp. Ltr. LEXIS 40, *7 (February 15, 2002).

A further protection arises because recipients often receive funds before the customer's bank, credit, debit, or PayPal account is actually debited. Although it sometimes takes several days for a customer's payment to clear from his or her account, the Client frequently authorizes disbursement of funds before the funds clear from the customer's account. Therefore, the risk of loss in these particular circumstances is borne by the Client and PayPal or the Transmitting Bank rather than the customer.

Finally, the risk that the Client's services could be used to facilitate the conduct of illegal activities is mitigated because customers cannot pay with cash. All transactions are funded by credit/debit card or ACH transfer; therefore, all customers have formal relationships with third party financial institutions that are obligated to know their customers. Furthermore, all transactions are subject to the Client's rigorous anti-fraud scrutiny.

Accordingly, we believe that the Transmitters Law does not apply to the operations of the Client and we seek your concurrence in this conclusion.

Stored Value Card Product

In addition to the services discussed above, the Client has also entered into a networking arrangement with a federal savings bank (the "Issuing Bank") to market stored value cards issued by the Bank. Stored value cards have become increasingly popular in recent years. Banks have played a significant role in the cards' popularity by issuing them in coordination with retailers from most every industry. Consumers can now purchase stored value cards marketed and branded by bookstores, airlines, and amusement parks, to name just a few. More than twenty million cards have reportedly been issued in connection with over two thousand different card programs. The Client hopes to begin marketing this particular card program on behalf of the Issuing Bank later this month.

Purchasers submit their card orders through the Client's website. In purchasing the card, the customer opens a stored value account with the Issuing Bank and affirmatively acknowledges and enters into a cardholder agreement with the Issuing Bank. A copy of the cardholder agreement is also provided to the purchaser as part of an e-mailed receipt. The cardholder agreement acknowledges the Issuing Bank as the card issuer and details the terms and conditions of the card's use. The Client is not a party to the cardholder agreement.

The card is then shipped by express delivery to the intended recipient. The typical recipient is likely to be a close relative of the customer living abroad. The card identifies the Issuing Bank as the issuer and is branded with the Client's and MasterCard Maestro's logos. The recipient also receives a copy of the cardholder agreement, together with a disclosure that specifically describes the Issuing Bank as the card issuer. The recipient

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can then use the card at any Maestro-branded automatic teller machine (ATM) or point-of-sale (POS) around the world to withdraw funds or make purchases.

Purchaser funds are held in a non-interest bearing, master pooled account titled in the name of the Issuing Bank, as agent for the benefit of customers, in a manner that will entitle the purchaser to pass-through FDIC insurance. When the card is used at an ATM or POS, the master account is debited in the amount of the corresponding withdrawal or payment, plus applicable fees. The purchaser can reload the card by accessing the Client's website.

For most consumers, stored value cards are an inexpensive and convenient alternative to a traditional Western Union-style money transfer. The worldwide ATM network is exponentially larger than the agent network of any traditional remitter. Most importantly, the cost of sending a card is expected to be significantly cheaper than sending a traditional remittance through a Western Union-style service.

We believe that the stored value product described herein does not implicate the licensing requirement under the Transmitters Law as it relates to the Client. The regulated entity for the purposes of a stored value card such as the one described herein is the card issuer. Here, the card is issued by the Issuing Bank. The cardholder agreement, together with the card itself, clearly and unambiguously details the Issuing Bank as the issuing entity. Therefore, the Issuing Bank is the regulated entity. Because the regulated entity is a federal savings bank, the product falls within the scope of the exemption afforded under § 2904 of the Transmitters Law.

The Client serves as a third party marketer for the Issuing Bank, hosting and maintaining a website at which prospective customers can place their orders for cards issued by the Issuing Bank. The legal relationship is between the Issuing Bank and the customer, pursuant to a cardholder agreement that governs the terms and conditions of the card's use. As such, there is privity between the Issuing Bank and the customer, and the regulatory focus would therefore lie with the Issuing Bank rather than its marketing representative.

Moreover, the Issuing Bank itself is responsible customer funds. The Issuing Bank's obligations include those imposed under federal and state law, as well as MasterCard's own rules and regulations governing customer funds. For example, the Issuing Bank is responsible to the customer for compliance with Regulation E, state escheatment laws, and MasterCard rules requiring funds in the master pooled account to cover card balances at all times. The Issuing Bank is therefore responsible to the customer not only by virtue of the legal relationship between them, but also by virtue of state and federal law.

Accordingly, we believe that the Issuing Bank is the regulated entity for the purpose of the proposed card product; that the Issuing Bank is exempt from the State's licensing requirement, and; that the Client can properly make the card product available through its website as third party marketer for the Issuing Bank without obtaining a money transmitter license from the State of Idaho.

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Conclusion

For the foregoing reasons, it is our view that the Transmitter Law does not require the Client to obtain a money transmitter license in order to provide the internet services described herein.

Please call me at _____ if you require additional information or if you have any questions with respect to any of the information provided in this letter. I appreciate your attention and cooperation in connection with this request and request your written concurrence that the Client need not apply for a money transmission license from the State of Idaho. I look forward to hearing from you and assure you that the Client is dedicated to satisfactory compliance with Idaho laws.

Sincerely yours