



**IDAHO**  
DEPARTMENT OF FINANCE

C. L. "BUTCH" OTTER  
Governor

GAVIN M. GEE  
Director

April 9, 2013

Re: Money Transmitter Licensing Question

Dear M

Your April 5, 2013 letter addressed to Mike Larson of our Consumer Finance Bureau has been referred to the Department of Finance Securities Bureau for review and response. The Securities Bureau is the bureau responsible for the licensing and oversight of money transmitters in the state of Idaho.

**Background** - You have indicated that \_\_\_\_\_ services business entities such as corporations, partnerships, sole proprietorships and associations in meeting their needs for foreign exchange services. You have further represented that \_\_\_\_\_ does not have any physical locations in the state of Idaho.

As you note, there is some question regarding the applicability of the Idaho Money Transmitters Act (IMTA) to the type of business \_\_\_\_\_ conducts. To address your question regarding licensure, we provide the following.

**Do \_\_\_\_\_ proposed Idaho activities fall within the scope of the IMTA** – While \_\_\_\_\_ does not apparently initiate ACH transfers from client accounts, \_\_\_\_\_ does accept client funds. As noted in your letter, a client wishing to conduct a transaction “must request that their financial institution send us their funds...” for further payment, likely in a foreign currency, to a third party.

We note that the IMTA does not provide any exclusion from licensure for money remitter activities that are commercial in nature. While you argue that your services are essentially only foreign exchange services, we note that most, if not all licensed money transmitters conducting an international business are essentially providing foreign exchange services as an ancillary part of the money transmission transaction. In this regard, we believe it is clear that \_\_\_\_\_ proposed commercial transactions involve money transmission.

**Will Not Have Any Physical Presence in Idaho** - While the IMTA mandates additional bonding for licensees with Idaho locations, The IMTA is essentially silent on the issue of whether a physical location is needed in order for remittance transactions to be regulated. In this regard, the Department has a longstanding view that remittances involving Idaho located individuals and entities are covered under the IMTA regardless of how the transaction is initiated or completed. As you may

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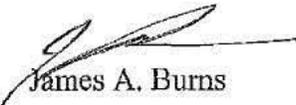
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see from the list of money transmitters licensed and published on our website, many are internet-based entities that conduct their remittance business solely through their web portals.

As you may surmise from the information provided above, the Department is of the opinion that should obtain a money transmitter license in Idaho in advance of offering remittance services to individuals or entities located in or operating from Idaho.

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. We will be happy to provide you with a licensing packet upon request, or you may want to consider licensing through the National NMLS licensing system that provides a platform for money remitter licensing in multiple states<sup>1</sup>.

Sincerely,



James A. Burns

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<sup>1</sup> <http://mortgage.nationwidelicencingsystem.org>

April 5, 2013

**CONFIDENTIAL TREATMENT REQUESTED**

Mike Larsen  
Consumer Finance Bureau Chief  
Idaho Department of Finance  
800 Park Blvd., Suite 200  
Boise, ID 83712

Sent via email to: mlarsen@finance.idaho.gov

**Re: Licensing Status under the Idaho Money Transmitters Act**

Dear Mr. Larsen:

We are writing to request confirmation that \_\_\_\_\_ proposed foreign currency exchange activities are outside the scope of the licensing requirements of the Idaho Money Transmitters Act (the "Act").

**Background Regarding**

\_\_\_\_\_ is a foreign exchange and money transmission company based in Toronto, Canada. Our clientele is largely restricted to business entities: such as corporations, partnerships, sole proprietorships and associations. Of these business entities, we only serve businesses that need foreign exchange services as an operational element of their business. We do not accept clients that engage in foreign exchange for speculative or investment purposes, even if it is not their primary objective. We offer services to consumers on a restricted basis only.

We have a single physical location, in Toronto. We do not use agents. We maintain a low risk profile by performing due diligence on all our business customers, and by strictly controlling whom we accept as clients and the types of transactions we engage in, as described above.

Our clients are typically small to medium size manufacturers or importers/exporters. They require foreign exchange and money transmittal services to pay for supplies and inputs, and to receive and convert payment for finished products or sales.

Our transactions are effected primarily through wire transfer. To conduct a transaction, our clients must request that their financial institution send us their funds via wire or ACH; we do not initiate ACH debits of our clients' accounts. To further reduce our risk profile, we never send or receive cash.

At this time, \_\_\_\_\_ does business in a very small number of states (with appropriate approvals), but not in the state of Idaho. In order to ensure compliance with US federal anti-money laundering laws \_\_\_\_\_ has registered with FinCEN as a "money transmitter" and as a "dealer in foreign exchange." Our employees are trained in the Bank Secrecy Act requirements and their knowledge of anti-money laundering and counter-terrorist financing has been tested. \_\_\_\_\_ policies and procedures for compliance with the Bank Secrecy Act have been reviewed by an outside party.

We wish to test expanding further in the US marketplace by potentially offering our services to businesses in Idaho through our website. We would like to support Idaho businesses in their foreign exchange and money transmission needs, and facilitate such payments and transactions to contribute to a vibrant economy in the state. We will not be establishing a physical location anywhere in the US but would continue to operate from our single location in Canada, without the use of any agents. We seek to leverage the strength and security of Canadian financial system to the benefit of Idaho businesses.

### **The Idaho Money Transmitters Act**

The Act provides that "no person ... shall engage in the business of money transmission without a license as provided in accordance with the provisions of this chapter." (Idaho Code § 26-2903(1).) The term money transmission is defined 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 including, but not limited to, payment instrument, wire, facsimile or electronic transfer." (Idaho Code § 26-2902(11).)

The Act does not address foreign exchange services (or currency exchange).

### **Exclusion Request**

We hereby request a determination that \_\_\_\_\_ may commence offering its services in Idaho, limited to business customers as described above, without requiring a money transmitter license under the Act. We believe that the Act's money transmitter licensing requirements are not applicable to \_\_\_\_\_ proposed foreign exchange services, based on the following:

1. The Act does not address foreign exchange services (or currency exchange).
2. We will not be providing any retail foreign exchange or money transmission services; that is, we will not process transactions for consumers. Rather, as described above, our clientele is businesses that need foreign exchange and money transmission services as an operational element of their business.
3. \_\_\_\_\_ will not have a physical presence, nor any agents, in Idaho.

If you disagree with our conclusion, please let us know. We may decide to apply for licensing in Idaho, although given that our prospective business in Idaho is nascent and potentially quite limited, we may simply elect not to offer our services in Idaho.

Thank you for your time and consideration. Please do not hesitate to contact me at \_\_\_\_\_ or \_\_\_\_\_ if you have any questions or need any additional information.

Yours truly,

Chief Compliance Officer and General Counsel