



IDAHO
DEPARTMENT OF FINANCE

DIRK KEMPTHORNE
Governor

GAVIN M. GEE
Director

November 1, 2005

Re: Interpretive Request

Dear M

In response to your licensing inquiry dated October 19, 2005, we provide the following.

Background - As noted in your letter, _____ anticipates offering prepaid debit cards on behalf of the First Bank of Delaware. These cards will be made available to consumers directly through _____ or through "contracted delegates" on behalf of the issuer.

Applicability of Idaho Money Transmitters Act (IMTA) - The IMTA 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...by any and all means including, but not limited to, payment instrument, wire, facsimile or electronic transfer (Idaho Code §26-2901).

The statute further defines payment instrument to include any check, draft, money order, traveler's check *or other instrument for the transmission or payment of money*, sold or issued to one or more persons, whether or not such instrument is negotiable (emphasis added).

For your information, the Department is of the opinion that stored value instruments that use an "open" architecture are payment instruments as defined in the IMTA. By open architecture, we mean that the stored value / cash card can be used at a wide variety of merchants that are unrelated to one another. In the present instance, the cards are also reloadable and can access ATMs for cash.

Based on the above, we believe that the IMTA applies to the retail distribution of the pre-paid debit cards in Idaho. Having reached this conclusion, one must consider whether licensure under the IMTA is appropriate.

Issue of Licensure - Idaho Code §26-2904 provides various exemptions from the provisions of the IMTA. More specifically, §26-2904(d) states that the IMTA shall not apply to "Banks, credit unions, savings and loan associations, savings banks or mutual banks organized under the laws of any state or the United States, **provided that they do not issue or sell payments instruments**

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PROTECTING THE INTEGRITY OF IDAHO FINANCIAL MARKETS

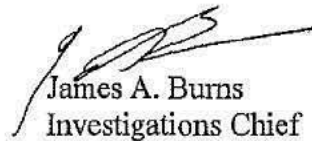
through authorized delegates who are not banks, credit unions, savings and loan associations, savings banks or mutual banks” (emphasis added)¹.

Based on the above criteria, we do not believe that non-bank “contract delegates” can market the payment instruments without the benefit of licensure under the IMTA. More specifically, we cannot at this time agree that _____ even where acting as an agent of _____ of _____ is entitled to the exclusion for financial institutions. As to _____ the bank will be offering payment instruments through agents that are not a financial institution and thereby not within the ambit of the exclusory language of §26-2904.

Conclusion - As noted in the preceding paragraph, we believe that the proposed business model will require that at least one entity become licensed under the IMTA. If you would like to discuss the various licensing models that might be applied given the described business model, please feel free to contact the undersigned directly.

Should you have any questions or comments, or wish to discuss this matter in greater detail, please also contact me directly.

Sincerely,


James A. Burns
Investigations Chief

¹ While the statutory exclusion in §26-2904 directs itself to “payment instruments”, the definition of money transmission under the IMTA includes “the business of...transmitting money...by any and all means including, but not limited to, payment instrument, wire, facsimile or electronic transfer”. Based on this language, we believe that the exclusion found at §26-2904(d) would include any form of “money transmission” as defined under the IMTA.

RECEIVED

OCT 25 2005
DEPT. OF FINANCE
STATE OF IDAHO

Wednesday, October 19, 2005

Mr. Jim Byrnes
State of Idaho
Department of Finance Securities Bureau
700 West State Street, 2nd Floor
Boise, ID 83702

Subject: Idaho Money Transmitters Law –
Request for Opinion and Guidance

Dear Mr. Byrnes

I am writing on behalf of _____, a Limited Liability Company based in Ohio since October 11, 2002. _____ is a Certified Third-Party Processor ('TPP') of Prepaid Debit MasterCard® Cards and Maestro® Cards ('Prepaid Debit Cards') for state chartered banks, nationally chartered banks, and federal thrift banks ('Issuing Bank(s)' or 'Issuer(s)'). The _____ is the only active Issuer of the Axxess America® MasterCard® Card and Axxess America® Maestro® Card Programs at this time.

_____ is responsible for processing the transactions of Prepaid Debit Cards on behalf of its Issuing Banks. _____ also processes additional co-branded cards on behalf of Issuers and registered Member Service Providers ('MSP'). _____ is a registered MSP, which allows it to perform duties such as marketing, customer service and value loading on behalf of Issuers.

_____ is interested in conducting business in the State of Idaho either directly or through contracted delegates on behalf of the Issuers. To this end, the question is whether _____ and/or its delegates, is/are subject to the licensing requirements of Money Transmitters Act, § 26-2901 through § 26-2928 of the Idaho Code (the 'Money Transmitters' Law). _____ interpretation is that neither its delegates, nor itself, are required to register as a Money Transmitters business.

The basis for this contention is that _____ an agent of the Issuing Banks, and its delegates as subagents, fall under the exemption enjoyed by the Issuing Banks. Specifically, Issuing Banks are not required to file a money transmitter license application. Seeing as that the Issuing Banks have contractually agreed to indemnify both _____ and its delegates for the sale, distribution, and value loading of the Issuing

Banks' prepaid debit Axxess America® MasterCard® Cards and Axxess America® Maestro® Cards, they are covered under the exemption umbrella.

is seeking guidance and a formal opinion from the State of Idaho regarding whether or not it is required to register as a 'Money Transmitters' licensee for the purpose of conducting business on behalf of its Issuing Banks.

As a certified TPP/MSP, is authorized to market and sell Prepaid MasterCard® Cards on behalf of Issuers via its delegated agents and/or through direct marketing channels.

When operating under the TPP/MSP processing model, responsible for processing transactions related to each cardholder account. Transactions include daily account settlement, fee reversals, ATM credits and debits, POS debits and credits, chargeback functions, lost/stolen card replacements, re-issuance requests, and value loading.

When operating under the TPP/MSP customer support model, provides customer support to programs processed by provides customer support on two levels: a) its delegated agents (clients); and b) cardholders possessing the Issuing Banks' Prepaid MasterCard® and/or Maestro® Cards.

Under the Bank Secrecy Act ('BSA'), the definition of a financial institution includes a money services business. In turn, the definition of a money services business includes a check casher. The question of whether must comply with regulations the BSA confers on a money services business or a financial institution, rests on whether may be fairly considered a check casher under the BSA.

does not constitute a check casher under the BSA, because does not cash checks. From time to time, does accept value-loads from cardholders, but these value-loads only include cash, cashier's checks, money orders, Automated Clearing House ('ACH') entries, and wire transfers. does not accept personal checks from cardholders for the purpose of loading value to a prepaid debit card. Indeed, the typical method for a cardholder to load value to a prepaid Axxess America® Card is to authorize a direct deposit of wages or other income to the card.

intends to contract with distributors that will distribute Prepaid Axxess America® MasterCard® Cards and Axxess America® Maestro® Cards throughout the United States. and its contracted representatives will accept non-check funds from cardholders on behalf of its Issuing Banks.

The Issuing Banks are required to take responsibility for funding the cards they issue. Axxess America® Cardholders are able to spend the value immediately upon loading of their card accounts. All funds collected by cardholders are aggregated into federally insured accounts held by Issuing Banks. A daily report is sent to the Issuers

informing them as to the precise amounts collected at delegated agent's locations in a given program.

A daily ACH debit/credit is created by _____ and forwarded to Jack Henry & Associates instructing them to debit the delegated agent's clearing account for the required amount to transfer to the Issuing Bank's funding account for the Access America® Card programs. Regardless of whether the funds arrive at the bank the next day or in a couple of days due to weekends or holidays, the Issuers are responsible for insuring that the cardholders have access to their card account's funds.

It is important to note that MasterCard International does not view the cards processed by _____ as "Stored Value Cards", as the cards themselves do not 'store' the value. As stated previously, all of the funds for the cards are held by the Issuing Banks in federally insured accounts. Also, aggregated accounts are insured for each active cardholder within the card program.

All cardholders are protected from losing any value from their cards, even if the card is lost or stolen, according to the Issuing Bank's Cardholder Agreement. It is also important to note that Cardholder Agreements are agreements between the Issuing Banks and the Cardholder. _____ is not a party to cardholder agreements; however, _____ does perform customer service on behalf of the Issuing Banks.

In researching Idaho law, we have not located entities similar to _____ that are licensed with the State of Idaho as a 'Money Transmitters' licensee. As such, it is our interpretation of the law, that _____ may immediately begin conducting its business in Idaho, either directly or through its delegates.

To this end, _____ would appreciate receiving a formal written opinion from your office by November 15th, 2005.

Thank you for your assistance and cooperation. If you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

Staff Counsel