



**IDAHO**  
DEPARTMENT OF FINANCE

**DIRK KEMPTHORNE**  
Governor

**GAVIN M. GEE**  
Director

November 7, 2005

Re: Interpretive Request

Dear

Your letter to Michael Larson dated October 19, 2005 has been referred to the Department of Finance Securities Bureau for further review. In connection with your inquiry, we provide the following.

Background - As noted in your letter, ( ) anticipates offering Visa Gift Cards for sale. Such cards will allow the consumer to spend the value underlying the gift card anywhere that Visa is accepted. The gift cards will not be reloadable and cannot be used to obtain cash at a bank or through an ATM.

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, but for their independent contractual relationship with the card provider (Visa and/or MetaBank). In such a context, it is not necessary that the card be reloadable or be redeemable for cash<sup>1</sup>.

Based on the above, we believe that the IMTA applies to the retail distribution of the Visa Gift Cards in Idaho. Having reached this conclusion, one must consider whether licensure under the

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<sup>1</sup> Indeed, since the cards are not reloadable, it appears possible that consumers intent on obtaining cash could make purchases only to return the purchased items for cash.

IMTA is appropriate.

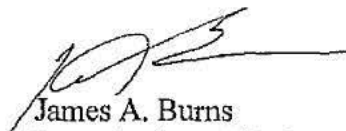
Issue of Licensure – Idaho Code §26-2904 provides various exemptions from the provisions of the IMTA. More specifically, §26-2904(d) states that the IMTA shall not apply to “Banks, credit unions, savings and loan associations, savings banks or mutual banks organized under the laws of any state or the United States, **provided that they do not issue or sell payments instruments through authorized delegates who are not banks, credit unions, savings and loan associations, savings banks or mutual banks**” (emphasis added)<sup>2</sup>.

Based on the above criteria, we do not believe that \_\_\_\_\_ 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 \_\_\_\_\_ is entitled to the exclusion for financial institutions. As to \_\_\_\_\_, the bank will be offering payment instruments through an authorized delegate that is not a financial institution and thereby not within the ambit of the exclusionary 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 at (208) 332-8080.

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

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<sup>2</sup> 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.



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DEPARTMENT OF FINANCE

**DIRK KEMPTHORNE**  
Governor

**GAVIN M. GEE**  
Director

October 27, 2005

SENT VIA FACSIMILE

AND U.S. MAIL

*Re: Visa Gift Cards*

Dear M.

I have been out of the office for the past week, and wanted to let you know that I am in receipt of your letter of October 19th regarding proposed Visa gift cards.

To avoid any misunderstanding, the Idaho Department of Finance has not issued a tentative approval of Visa Gift Card proposal. Inasmuch as regulation of the Idaho Money Transmitters Act comes under the Department's Securities Bureau, I have forwarded your letter to the Idaho Department of Finance Securities Bureau Chief, Marilyn Chastain. While the Department does its best to respond to such requests as quickly as possible, approval of any particular program should not be presumed in the absence of a definitive written statement by the Department to that effect.

Thank you for contacting the Idaho Department of Finance.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Larsen".

Michael Larsen  
Consumer Finance Bureau Chief  
Idaho Department of Finance

**CONSUMER FINANCE BUREAU**  
700 West State Street, 2nd Floor, Boise, ID 83702  
Mail To: P.O. Box 83720, Boise ID 83720-0031  
Phone: (208) 332-8002 Fax: (208) 332-8099  
<http://finance.idaho.gov>

October 19, 2005

Mr. Michael Larsen  
Idaho Department of Finance  
Consumer Finance Bureau  
700 West State Street  
Boise, ID 83720-0031

Via facsimile to (208) 332-8098

Re:

Approval for Sale of VISA® Gift Cards

Dear Mr. Larsen:

This letter is to confirm our earlier communication regarding our proposal to sell Visa Gift Cards in the centers of \_\_\_\_\_ a licensee of your Department. It was our understanding that this new product offering tentatively met with your approval, subject to the provision of additional information to you.

We plan to sell the Visa Gift Cards (the "Cards") to anyone interested in purchasing such Cards for gift-giving or other personal use, regardless of whether they do business with us in any other capacity. The Cards we propose offering can be for any amount up to \$500 and will be sold for a price of less than \$5.00 per Card.

The Visa Gift Card can be used at any retailer where Visa is accepted and has all the benefits of the Visa network (such as lost/stolen protection), making it an excellent option for gift giving. Once the recipient has spent the amount of the Card, the Card will no longer be operational and cannot be reloaded. Additionally, the Card cannot be used to redeem cash at a bank or other financial institution, and will not be operational at any automated teller machines. The Cards are issued by \_\_\_\_\_ South Dakota federally chartered savings bank regulated by the Office of Thrift Supervision (OTS). \_\_\_\_\_ receives and administers the funds on the Cards. We will be appointed by \_\_\_\_\_ as an agent to sell the Cards.

The sale of a Visa Gift Card will be a completely separate transaction from any payday advance transaction conducted at our center, with separate books and records. The two transactions will be completely independent of each other.

Thank you for the opportunity to explain the Cards to you. If the above does not meet with your approval, please let us know. Otherwise, we will plan to begin selling these Cards in our centers in about 30 days. Please let us know if you have any questions or need any additional information by calling \_\_\_\_\_.

Respectfully,

Compliance Specialist