



IDAHO
DEPARTMENT OF FINANCE

C. L. "BUTCH" OTTER
Governor

GAVIN M. GEE
Director

November 27, 2007

RE: MetaBank Prepaid Card and Gift Card

Dear M

We have reviewed and discussed your letter of November 9, 2007 wherein you seek guidance regarding the applicability of the Idaho Money Transmitters Act (IMTA) to the business model detailed in you letter. In connection with your inquiry, we provide the following.

Background - As noted in your letter, _____ has contracted with MetaBank to offer and sell Visa Gift Cards and the MetaBank Prepaid Visa Debit Card.

Idaho Code § 26-2902(13) defines a payment instrument to include "any check, draft, money order, traveler's check, **or other instrument** or written order for the transmission or payment of money..." (emphasis added). Further, money transmission is defined to include the sale or issuance of payment instruments (I.C. § 26-2902(13)).

For your information, the Department of Finance has long taken the position that cards such as broad, multi-merchant gift cards and prepaid debit cards are payment instruments, thereby falling within the legal requirements of the Idaho Money Transmitters Act.

Issue of Licensure - Since money transmission is anticipated under _____ contract with MetaBank, the only question remaining is whether the activity can be conducted without the benefit of licensure under the IMTA.

Idaho Code §26-2904 provides various exemptions from the provisions of the IMTA. More specifically, I.C. §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 payment instruments through authorized delegates who are not banks, credit unions, savings and loan associations, savings banks or mutual banks**" (emphasis added).

Based on the above criteria, it does not appear that _____ or MetaBank would be able to operate the described business model without the benefit of licensure under the IMTA. More specifically, we cannot at this time agree that _____, acting as an "authorized

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PROTECTING THE INTEGRITY OF IDAHO FINANCIAL MARKETS

delegate” of MetaBank, is entitled to the exclusion for financial institutions. As to MetaBank, the bank will be offering money transmission services through authorized delegates who are not financial institutions and thereby not within the ambit of the exclusory language of I.C. §26-2904¹.

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 and that the load/sales points be contracted as authorized representatives 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 at (208) 332-8080.

Sincerely,

James A. Burns
Investigations Chief

¹ You have indicated that the program processor, _____, is a licensed money transmitter. If _____ were to become licensed in Idaho, _____ could conceivably become an authorized delegate of _____ in order to engage in the activities that you have described.

RECEIVED

November 9, 2007

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STATE OF IDAHO
DEPT OF FINANCE

VIA OVERNIGHT DELIVERY

Mr. Michael Larsen
Department of Finance
Consumer Finance Bureau
800 Park Blvd, Suite 200
Boise, ID 83712

Re:

Sale of Bank's Prepaid Card and Gift Card

Dear Mr. Larsen:

As you know we value our good relationship with you. We work closely with our regulators to keep you informed of any Company changes, so that we always operate in compliance with federal and state laws and regulations. As such, we are pleased to announce that entered into an agreement with Bank to market, sell and distribute, as the authorized delegate of Bank, the Bank Prepaid VISA Debit Card (hereinafter the "BANK VISA") and VISA Gift Card.

We also understand that pursuant to § 28-46-413(8) of the Idaho Code, "a licensee may conduct other business at a location where it engages in payday lending unless it carries on such business for the purpose of evading or violating the provisions of this act." As such, we are requesting your approval to market, sell and distribute this "other business" in our centers, i.e. the BANK VISA and VISA Gift Card.

BANK VISA

We are very excited about this new product, and the opportunity we will have to market this financial tool to our customers. As you know, prepaid debit cards provide customers with a worldwide range of financial options. The BANK VISA will be accepted anywhere in the world that VISA debit cards are accepted - and in addition, will be accepted at thousands of ATMs.

Bank is a federally chartered savings association regulated by the Office of Thrift Supervision, with its home office in Sioux Falls, South Dakota. Bank's prepaid cards are bank products, owned, operated and controlled by Bank, and sold by authorized delegates of the bank all over the country and in several foreign countries.

Bank stands behind all of its products and remains ultimately responsible to the cardholder for any loss of funds.

Bank carefully reviews and approves each selling entity. As an authorized delegate of the Bank, _____ has agreed to comply with Bank's rules, instructions and procedures. In addition, _____ will now be subject to the authority of Bank's regulator, the Office of Thrift Supervision ("OTS"). Please note that the OTS retains complete authority to approve or disapprove any seller, and may at any time cancel the sales agreement with _____

Enclosed is a letter from _____ Bank and an attached product description. Please note that all cardholder funds will be held by _____ Bank in a custodial account held on behalf of cardholders and will be managed by _____ Bank's third party card processor, _____ Corporation. The funds underlying such cards are, to the extent permitted by applicable law, fully insured on a "pass through" basis, by the FDIC (Federal Deposit Insurance Corporation). Thus, consumer's funds are fully protected in accordance with federal regulations, which preempt state laws and regulations.

VISA GIFT CARDS

If approved, we plan to sell the VISA Gift 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 \$250 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 _____ Bank who receives and administers the funds on the cards. We are the authorized delegate of _____ Bank as a seller of the cards.

SEPARATE TRANSACTIONS

The sale of the _____ BANK VISA and the VISA Gift Cards will be completely separate transactions from any payday loan transaction conducted at our centers, with separate books and records.

Due to direct federal regulation by the OTS of _____ Bank, its authorized delegate _____ and the _____ BANK VISA and VISA Gift Card, it is our understanding that _____ Bank and its authorized delegates including _____ are exempt from state money transmitter licensing requirements, either due to an explicit exemption under the terms of the state licensing laws (that exclude supervised banks from licensing requirements), or under the Doctrine of Federal Preemption.

November 9, 2007

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Idaho Code § 26-2904 provides various exemptions from the provisions of the Idaho Money Transmitter Act and states, "...authorized representatives of a licensee, acting within the scope of authority conferred by a written contract conforming to the requirements of section 26-2918, Idaho Code, shall not be required to obtain a license pursuant to this chapter."

Even though we do not feel Bank's products require Bank of to obtain an Idaho Money Transmitter License, Bank's processor is a licensed Money Transmitter. It is our understanding that competitors are distributing prepaid and gift cards issued by other banks and processed by Again, we desire to maintain a good working relationship with you; therefore, if our understanding is incorrect, please let us know.

Our goal is to offer consumers a variety of financial service options including payday loan transactions, the BANK VISA CARD and the VISA Gift Card. We look forward to better serving our customer's financial demands. Please let us know at your earliest convenience if these new product offerings meet with the Division's approval as we would like to launch these products within the next 30 days.

If you have any questions for Bank regarding the BANK VISA CARDS, please give me a call at so that we can put you directly in touch with Bank and its legal counsel.

Very truly yours,

Vice President -- Legal & Regulatory Affairs

Enclosure