



**IDAHO**  
DEPARTMENT OF FINANCE

**C. L. "BUTCH" OTTER**  
Governor

**GAVIN M. GEE**  
Director

October 10, 2014

Re: Bitcoin Vending Machine/ATM

Dear

You propose to establish a freestanding Automated Teller Machine (ATM)<sup>1</sup>. The sole use of this machine will be to allow consumers to place cash into the ATM for the purpose of purchasing bitcoin. In association with this ATM, you have represented that:

- 1) The ATM will be a "one way" ATM. Specifically, the ATM will accept only legal tender with the promise of near immediate delivery of bitcoin to the e-wallet of the customer placing the funds.
- 2) Customers wishing to purchase bitcoin at the ATM will need to find and install an e-wallet of their choosing prior to placing funds into the ATM. The owner/operator of the ATM will not assist customers in setting up an e-wallet nor will the ATM owner/operator establish e-wallets for the customer. The ATM owner/operator will not hold or otherwise control the private keys of any customer using the ATM.
- 3) The ATM will operate as a cost plus system. More specifically, customers using the ATM will be purchasing bitcoin with a markup to the then current value of bitcoin. Customers will be provided with disclosures regarding any mark-ups or fees associated with their purchase and such disclosures will be consistent with previous guidance issued by the Office of the Idaho Attorney General (copy attached).
- 4) The operator/owner will sell only bitcoin then owned by the operator/owner. The operator/owner is neither a bitcoin "miner" nor an "exchanger" as enumerated under guidance issued by FinCEN. While the ATM may be connected to an exchanger for purposes of determining bitcoin pricing and potential reloading of the ATM, the owner/operator will not act as an exchanger and the ATM will not accept transactions once the owner/operator's inventory in the ATM has been depleted.

<sup>1</sup> For purposes of this guidance, the Department does not presently differentiate between ATMs, kiosks or vending apparatus. Guidance from other regulators should be sought regarding the cash aspect and any federal currency handling and reporting obligations.

**SECURITIES BUREAU**  
800 Park Blvd., Suite 200, Boise, ID 83712  
Mail To: P.O. Box 83720, Boise ID 83720-0031  
Phone: (208) 332-8004 Fax: (208) 332-8099  
<http://finance.idaho.gov>

**PROTECTING THE INTEGRITY OF IDAHO FINANCIAL MARKETS**

Based solely upon the specific facts outlined above, the Department of Finance will take a no action position as to the licensing provisions of the Idaho Money Transmitters Act. Should your business plan deviate from the facts outlined above, it is possible that the Department would take a different position than the one noted in this letter<sup>2</sup>. Further, it is this Department's expectation that you would keep and maintain specific business records to the extent that federal Money Services Business regulations (see <http://www.fincen.gov/>) require the keeping of any such records.

Should you have any questions or need additional information, please feel free to contact the undersigned at (20-8) 332-8080.

Sincerely,



James Burns  
Idaho Department of Finance

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<sup>2</sup> Should you need to raise funds for the purpose of implementing your business plan, you may need to consider compliance with state and federal securities laws. Investment contracts and profit sharing agreements are most often securities which are regulated as to disclosure standards and securities qualification requirements.



STATE OF IDAHO  
OFFICE OF THE ATTORNEY GENERAL  
ALAN G. LANCE

RECEIVED  
MAR 02 1998  
DEPARTMENT OF FINANCE

February 27, 1998

Gavin M. Gee  
Director  
Department of Finance  
P.O. Box 83720  
Boise, ID 83720-0031

Dear Gavin:

THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE ATTORNEY  
GENERAL SUBMITTED FOR YOUR GUIDANCE

*Re: ATM Fee Disclosures; Our File No. 34191*

Thank you for your letter of February 6, 1998. In it you ask whether the Idaho Consumer Protection Act requires automated teller machine (ATM) owners to disclose fees for use of an ATM prior to completion of the transaction. You point out that Idaho Code § 26-311(2) requires that customer bank communication terminals not charge consumers a fee unless "such fee is clearly disclosed to the customer at a time and in a manner that allows the user to terminate or cancel the transaction without incurring the fee." It is my understanding that Section 26-311(2) does not apply, however, to non-bank ATMs or ATMs owned by banks that are not national or Idaho chartered, and are used only as cash dispensing facilities. As long as these ATMs do not accept deposits or use the word "bank" on signs or advertising, the Department is not in a position to regulate their operation. Hence, we understand your question to be directed toward those ATMs not subject to your Department's regulatory authority.

Idaho Code § 48-603(17) of the Idaho Consumer Protection Act (CPA) prohibits a person from engaging in any act or practice which is "otherwise misleading, false, or deceptive to the consumer." Idaho Code § 48-604(2) of the CPA authorizes the Attorney General to make rules and regulations interpreting the provisions of the CPA. He has done just that.

Rule 30 of the Idaho Rules of Consumer Protection (CPR), codified at IDAPA 04.02.01030, states, in part, that it is an unfair and deceptive act for a seller to make any claim or representation that directly or by implication has the capacity, tendency, or effect of deceiving or misleading a consumer acting reasonably under the circumstances. Importantly, the rule also states that "[a]n omission of a material or relevant fact shall be treated with the same effect as a

Gavin Gee, Director  
Department of Finance  
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false, misleading, or deceptive claim or representation, when such omission, on the basis of what has been stated or implied, would have the capacity, tendency, or effect of deceiving or misleading a consumer acting reasonably under the circumstances."

An act, practice, or omission is material if it "is likely to affect a consumer's choice of or conduct regarding a product." Cliffdale Associates, Inc., 103 F.T.C. 110, 182 (1984);<sup>1</sup> *see also* Restatement (Second) of Torts, § 538(2). (A misrepresentation or omission is material if the reasonable person would regard it as important in deciding how to act or if it is one in which the maker knows that the recipient, because of his or her peculiarities, is likely to consider important.) Claims or omissions involving costs of the product or service are presumed material. MacMillan, Inc., 96 F.T.C. 208, 303-04 (1980).

It is the position of the Attorney General that the information relating to the costs of using an ATM is material. Furthermore, it is the position of the Attorney General that the failure to disclose such fees prior to the consumer incurring them has the capacity, tendency, or effect of deceiving or misleading a consumer acting reasonably under the circumstances." Hence, it is our view that an owner of an ATM are required to advise consumers of such costs clearly and conspicuously, and at a time and in a manner that allows the consumer to terminate or cancel the transaction without incurring any such charge. Failure to do so is, in our view, a violation of Idaho's Consumer Protection Act and Rules.<sup>2</sup>

Thank you for contacting the Office of the Attorney General. If additional clarification is needed, please do not hesitate to contact me.

Very truly yours,



BRETT T. DELANGE  
Deputy Attorney General  
Consumer Protection Unit

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<sup>1</sup> Federal Trade Commission precedent is important because the Idaho Legislature has directed that in applying the Consumer Protection Act "due consideration and great weight should be given to the interpretation of the federal trade commission and the federal courts relating to section 5(a)(1) of the federal trade commission act (15 U.S.C. § 45(a)(1))." Idaho Code § 48-604(1); Accord In re Western Acceptance Corp., 117 Idaho 399, 402, 788 P.2d 214, 216 (1990).

<sup>2</sup> It is our view that the type of disclosure that is commonly utilized—posted written notice at the ATM site and notice on the ATM screen—satisfies Consumer Protection Act and Rules requirements.