

DEPARTMENT OF BUSINESS OVERSIGHT*Ensuring a Fair and Secure Financial Services Marketplace for all Californians*

Jan Lynn Owen
Commissioner of Business Oversight

August 18, 2016

Re: Opinion Request

Dear _____:

Thank you for your letter to the Department of Business Oversight dated May 20, 2016. _____ has a money transmitter license with the Department. _____ requests the removal of certain activities, namely the sale and distribution of bank-issued stored value cards, from its license and the scope of the Department's safety and soundness examinations.

BACKGROUND

_____ serves as a program manager for federal and state-chartered banks. As the program manager, _____ markets and distributes bank-issued stored value cards through retailers in a manner reviewed and approved by the issuing bank under the terms of each program. Under the terms of each program, stored value cards are issued by an FDIC insured bank ("issuing bank"), which enters into an agreement with the cardholder governing use of the stored value card ("Cardholder Agreement").

According to your letter, the issuing bank holds cardholder funds in FDIC insured accounts. When a consumer purchases a stored value card, the retailer notifies the issuing bank of the purchase and the retailer credits the card with the purchased dollar amount. Pursuant to the Cardholder Agreement, the issuing bank is obligated to honor transactions or make funds available to the cardholder in accordance with the terms of the Cardholder Agreement. You state that the risk of loss of customer funds therefore resides with the issuing bank.

MONEY TRANSMISSION ACT

Financial Code section 2003, subdivision (q)(2) defines "money transmission" to include "selling or issuing stored value." Financial Code section 2003, subdivision (x) defines "stored value" to mean monetary value stored on an electronic or digital medium that can be redeemed for money or used to pay for goods and services. Financial Code section 2010, subdivision (d), provides that FDIC insured commercial banks are exempt from the Money Transmission Act.

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Financial Code section 2030 prohibits a person from engaging in the business of money transmission in this state, unless the person is licensed or exempt from licensure or is an agent of a person licensed or exempt from licensure. Financial Code section 2011 authorizes the Commissioner to exempt from the Money Transmission Act any person, if the Commissioner finds such action to be in the public interest and that the regulation of such persons or transactions is not necessary.

Because _____ markets and distributes stored value cards for sale through retailers in this state, _____'s activities fall under the definition of money transmission unless it is exempt.

In October 2015, the Department adopted a regulation that specifies exemptions from the Money Transmission Act. (*See* Cal. Code Regs., tit. 10, § 80.3002.) Title 10 of the California Code of Regulations, section 80.3002, subdivision (a)(1) exempts the sale of a money transmission service or product by a person exempt pursuant to Financial Code section 2010 (such as FDIC insured commercial banks).

The stored value cards that _____ markets and distributes for sale are bank-issued and cardholder funds are FDIC insured. The risk of loss of customer funds resides with the issuing bank at all times. Additionally, banks and their products are subject to state and federal regulatory oversight. To regulate these bank-issued products under the MTA would be unnecessary and exempting such products is in the public interest. Therefore, the Department confirms that the bank-issued, FDIC insured stored value cards, to the extent they involve money received for transmission, are exempt from the MTA pursuant to Section 80.3002, subdivision (a)(1) of the California Code of Regulations. _____ is no longer required to report the bank-issued, network-branded stored value cards within the scope of its money transmitter license.

This opinion is based solely on the facts as represented in your correspondence, and may change if any of the conditions or circumstances under which _____ provides products or services is altered in the future.

If you have any questions, please feel free to contact me at _____.

Sincerely,

Jan Lynn Owen
Commissioner of Business Oversight

By
Pamela Nakagawa
Counsel

cc: Robert Venchiarutti, Department of Business Oversight, San Francisco