

State of California
Department of Financial Institutions
William S. Haraf, Commissioner of Financial Institutions

MEMORANDUM

To: Ken Sayre-Peterson
Acting General Counsel

Date: March 24, 2011

From: Diana H. Nishiura
Senior Counsel

File: _____

Subject: Whether a State-Chartered Bank May Engage in the Business
of Issuing Open System Prepaid Cards

INTRODUCTION

_____ (_____) plans to purchase a partial business unit of _____
(_____) which consists of its _____ (_____). The name is to be
changed to the _____ after the sale.

_____ is engaged in the business of issuance of _____ (sometimes referred to
as _____), and providing services related thereto including network sponsorship
activities, customization, development and implementation of prepaid card programs, ACH
processing, network settlement and payment processing.¹ _____ is to take over the
_____ business operations, including the deposit accounts of
_____/_____ customers. If the application is approved, _____ would assume
the deposit liabilities of _____ relating to the _____ operations which consist of the
operating funds of the customers of _____ and reserve balances held to cover chargebacks
and other obligations of _____ customers pursuant to Visa and MasterCard network
rules and regulations. _____ has about 40 clients, which appear to consist primarily of
sellers of _____ prepaid cards that are intended for use as a means of redemption for
money or monetary value or payment for goods or services usable with multiple sellers of goods
or services.²

In contrast, in _____, the card is usable with only one merchant. According to
_____, Executive Vice President of _____, the _____ of _____
issues no _____. _____ are often loosely referred to as “stored value
cards.”³

¹ According to the _____ application and _____, Executive VP of _____ and proposed head
of the _____ of _____ after the proposed sale.

² Ibid.

³ See Financial Code section 1801(v) and section 1002(28) of the Dodd-Frank Act.

ISSUE

Apparently, there is no known DFI legal precedent that determines whether a state bank may engage in the business of issuing _____ as defined in Paragraph 1 above to customers such as processors and program managers, who then sell and market the prepaid cards. Therefore, that is the question presented here.

CONCLUSION

For the reasons hereinafter stated, my conclusion is that a state bank may engage in the business of issuing _____ (stored value cards) for third party customers who sell them, and provide services related thereto, including network sponsorship activities and holding deposits of those customers as operating funds and reserve balances, subject to approval of the FDIC. However, such activities should comply with the applicable requirements of state law including Title 1.4A, entitled Gift Certificates (defined to include certain gift cards), commencing with section 1749.45 of the Civil Code.

DISCUSSION

Section 24 of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C.1831a(a), provides that a state bank may not engage as principal in any activity not permissible for a national bank unless the FDIC has determined that the activity would pose no significant risk to the Deposit Insurance Fund and the state bank is in compliance with applicable capital standards as determined by the appropriate federal banking agency. _____ has been engaging in the business of issuing _____ (stored value cards) for customers who sell them, through the _____ of _____. Therefore, it appears that the activity is permissible for a national bank. Accordingly, I would conclude that the same activity is permissible for a state bank, subject to approval by the FDIC. The activities of _____ conducted under state law should comply with all applicable requirements of state law, including Title 1.4A of the Civil Code. Additionally, the issuance of stored value cards by a state bank is exempted from licensing under the Money Transmission Act pursuant to Financial Code section 1805(d).

My review of the full application of _____ to acquire a partial business unit of _____ consisting of the _____ will be set forth in a separate memorandum.

DHN:lca

cc: John Ross, Department of Financial Institutions, Los Angeles
Sukyee Lok, Department of Financial Institutions, Los Angeles
Legal Opinion File, Department of Financial Institutions, Los Angeles
Legal Opinion File, Department of Financial Institutions, San Francisco