

## DEPARTMENT OF FINANCIAL INSTITUTIONS

TEVEIA R. BARNES, Commissioner of Financial Institutions  
www.dfi.ca.gov



### Opinion – “Bank Issued Stored Value Cards - Not Subject to Money Transmission Act”

July 26, 2011

Re: Opinion Request

Dear \_\_\_:

This responds to your letter dated June 3, 2011, and other various communications with the Department in which you request a determination as to whether the activities of \_\_\_ would require a money transmission license under California Financial Code § 2000 et seq [formerly § 1800].<sup>1</sup>

#### FACTUAL BACKGROUND.

You describe the facts as follows. \_\_\_ markets, distributes, and services two types of products: bank-issued, FDIC insured, reloadable prepaid MasterCard and Visa branded debit cards (Cards) and its \_\_\_ product.

#### A. Cards.

\_\_\_<sup>2</sup> (Bank) issues the Cards, enters into a cardholder agreement with the customers, holds cardholder funds in FDIC insured accounts, and honors the transactions made pursuant to the cardholder agreement. \_\_\_ has developed a network of retail locations known as the \_\_\_ Network (Network), through which customers may load funds to the Cards. These retail locations are selected by \_\_\_ and approved by the Bank. \_\_\_ has entered into various agreements with merchants and resellers, who are part of the Network, to sell \_\_\_ Network-related products (including Cards and the \_\_\_\_).

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<sup>1</sup> \_\_\_ also requested a determination as to whether licensing was required under the “Payment Instruments Law (Division 16 (commencing with section 33000) of the Financial Code).” The Payment Instruments Law was repealed as part of the newly enacted Money Transmission Act. The new Money Transmission Act (commencing with Financial Code § 2000) now provides for the regulation and licensure of persons in the business of money transmission, defined to mean the selling or issuing of payment instruments, stored value, or receiving of money for transmission. Thus, we will deem your request to be an inquiry under the Money Transmission Act.

<sup>2</sup> We acknowledge that \_\_\_ also has contractual relationships with other banks to provide services, including marketing, distribution and fulfillment, customer service, and certain information technology services, with regard to other branded prepaid cards. Those services and products are similar in nature to the Cards issued by \_\_\_ Bank. This letter and our analysis herein are intended to cover those services and prepaid card products as well.

When a customer desires to acquire a Card, the customer purchases the card from a merchant or retailer. The customer pays the retailer the purchase price for the Card plus the amount that the customer initially wants to load onto the Card. The retailer then transmits an electronic message to \_\_\_ indicating that a card package was sold and the amount of the initial value load. \_\_\_ then provides this information to the Bank. Following purchase, the customer must contact \_\_\_ to complete the activation process.

All funds received from the sale of the Cards are forwarded by the retailers directly to the Bank and into a Bank account owned and controlled by the Bank and to which neither \_\_\_ nor the retailers have access. \_\_\_ has no settlement relationship with either the Bank or any retailer, and at no time does \_\_\_ have access to customer funds. The Bank is solely liable to its customers for the Card and for all customer funds. At no point does \_\_\_ carry as an asset or liability on its balance sheet the value of funds in any of the Bank accounts through which customer Card funds flow.

B. \_\_\_\_.

The \_\_\_\_\_ is a non-reloadable multi-purpose product which can be used to: (1) reload Cards, (2) reload prepaid cards issued by other banks, (3) pay bills of contracted bill payers, and (4) add money to \_\_\_ accounts. Regardless of the use, the Bank is responsible for the funds from the time the \_\_\_\_\_ is purchased until the time the funds are loaded to the \_\_\_ or other prepaid card or account, transferred to the bank that issued the prepaid card or account, or used to make payment to a third party. In the case of bill paying, the Bank is the entity performing the bill paying. \_\_\_ is responsible for signing up retailers to sell the \_\_\_\_\_ and acceptance partners to accept the \_\_\_\_\_, but \_\_\_ has no role in the funds flow and does not ever actually pay bills. The Bank acts as the settlement agent for all funds going to other banks and to contracted payees.

The flow of funds with regard to the \_\_\_\_\_ is the same as that described above regarding the Cards. All funds received from the sale of the \_\_\_\_\_ are forwarded by the retailers directly to the Bank and into a Bank account owned and controlled by the Bank and to which neither \_\_\_ nor the retailers have access. At no point does \_\_\_ carry as an asset or liability on its balance sheet the value of funds in any of the Bank accounts through which \_\_\_\_\_ funds flow.

#### CALIFORNIA MONEY TRANSMISSION ACT.

California Financial Code (FC) § 2030(a) [formerly § 1810(a)] states: “A person shall not engage in the business of money transmission in this state, or advertise, solicit, or hold itself out as providing money transmission in this state, unless the person is licensed or exempt from licensure under this division . . . .”

FC § 2003(o) [formerly § 1803(o)] defines “money transmission” as any of the following:

- (1) “Selling or issuing payment instruments.”
- (2) “Selling or issuing stored value.”
- (3) “Receiving money for transmission.”

FC § 2011 [formerly § 1806] provides for a public interest exemption to the licensing requirement of § 2030. Section 2011 states:

The commissioner may, by regulation or order, either unconditionally or upon specified terms and conditions or for specified periods, exempt from this chapter any person or transaction or class of persons or transactions, if the commissioner finds such action to be in the public interest and that the regulation of such persons or transactions is not necessary for the purposes of this chapter.

#### APPLICATION OF MONEY TRANSMISSION ACT TO \_\_\_\_ ACTIVITIES.

Based on your representation of the facts, we consider the Cards and the \_\_\_\_\_ to be stored value products. Thus, we need to apply FC § 2003(o)(2), which includes selling *or* issuing stored value, to this situation.

##### A. The Bank is Issuing the Stored Value.

With regard to stored value, FC § 2003(k) defines “issuer” as “the entity that is liable to the holder of stored value and has undertaken or is obligated to pay the stored value.”

The cardholder agreement defines the Bank as “the issuer of the Card.” \_\_\_\_ is defined as “the third party that administers the Card program.” Thus, by the terms of the cardholder agreement, the Bank is the issuer of the Cards.

Similarly, according to the \_\_\_\_\_ Terms and Conditions of Use, the Bank is responsible for the funds from the time the \_\_\_\_\_ is purchased until the time the funds are loaded to the \_\_\_\_ or other prepaid card or account, transferred to the bank that issued the prepaid card or account, or used to make payment to a third party. \_\_\_\_ is defined as “the third party that administers the \_\_\_\_\_.” Thus, based on the definition of “issuer” in § 2003(k), we consider the Bank to be issuer of the \_\_\_\_\_.

##### B. \_\_\_\_ is Selling Stored Value.

\_\_\_\_ is selling stored value in this state through the Network and via its marketing efforts, including signing up retailers. Thus, even though the Bank is the issuer of the stored value, because FC § 2003(o)(2) broadly defines “money transmission” as “*selling or* issuing stored value” (emphasis added), \_\_\_\_ activities fall within the Money Transmission Act. Pursuant to FC §2030, \_\_\_\_ would need to obtain a license unless exempt.

##### C. Exemption.

The Cards that \_\_\_\_ sells are bank-issued and FDIC insured, and the risk of loss of customer funds resides with the Bank at all times. Because of these characteristics, we consider this type of stored value card to be a banking product.

Similarly, the Bank is responsible for the value of the \_\_\_\_\_ from the time the \_\_\_\_\_ is purchased until the time the funds are loaded to the \_\_\_\_ or other prepaid card or account, transferred to the bank that issued the prepaid card or account, or used to make payment to a third party. Therefore, we consider the \_\_\_\_\_ to be a banking product as well.

As such, the Cards and the \_\_\_\_\_ are already subject to the regulatory scheme applicable to the banking system. To require licensing under the Money Transmission Act in this circumstance would be unnecessary, would subject \_\_\_ to two regulatory schemes, and would confuse jurisdiction.

For these reasons, the selling of an FDIC insured, re-loadable, prepaid Mastercard/VISA stored value card (i.e., the Cards) and the selling of the \_\_\_\_\_ in California by \_\_\_ are considered to be in the public interest, and the regulation of which is not necessary, and therefore, are hereby exempted from Chapter 3, Division 1.2 of the FC.

Finally, the revised \_\_\_\_\_ Terms and Conditions of Use, substantially in the form attached to the e-mail of \_\_\_, are acceptable.

Sincerely,

/s/ Jennifer L.W. Rumberger

JENNIFER L.W. RUMBERGER  
Senior Counsel

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cc: Robert Venchiarutti, Department of Financial Institutions, San Francisco