

11-5

June 14, 2011

Re: Opinion Request

Dear _____:

This responds to your letter dated April 19, 2011, in which you requested a determination as to whether the proposed activities of _____ (_____) would require a money transmission license under California Financial Code § 1800 et seq.

FACTUAL BACKGROUND.

You describe the facts as follows. _____ serves as a program manager to federal and state chartered banks who wish to offer a Visa or MasterCard branded, general purpose, reloadable debit card (Program). Specifically, in California, according to the Card Issuance Agreement (Agreement) attached to your letter of May 20, 2011, _____ will serve as the marketer of cards issued by _____ (_____). Per the Agreement, all solicitation material used by _____ will be reviewed and approved in writing by Bank prior to its use in the marketplace. In the proposed Program, the Bank would issue the cards, enter into a cardholder agreement with the customers, hold cardholder funds in FDIC insured accounts, and honor the transactions made pursuant to the cardholder agreement. _____ would sell the cards through its agent locations. _____ would not hold any cardholder funds associated with the Program. All funds would be immediately loaded onto a card, the Bank would immediately be liable to the cardholder for the funds, and _____ would settle with the Bank the next business day. Only the Bank, whose deposits are FDIC insured, would be liable to a cardholder for payment of any amount owing on a card.

CALIFORNIA MONEY TRANSMISSION ACT.

California Financial Code (FC) § 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 chapter"

FC § 1803(o)(2), in relevant part, defines “money transmission” as “selling or issuing stored value.”

FC § 1806 provides for a public interest exemption to the licensing requirement of § 1810. Section 1806 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 _____'S ACTIVITIES.

A. Engaging in the Business of Money Transmission.

Based on your representation of the facts, _____ intends to sell stored value cards in this state. Thus, even though the Bank will be the issuer of the stored value cards, because FC § 1803(o)(2) broadly defines “money transmission” as “*selling* or issuing stored value” (emphasis added), _____’s activities fall within the Money Transmission Act. Pursuant to FC § 1810, _____ would need to obtain a license unless exempt.

B. Exemption.

As you note, the stored value cards that _____ intends to sell 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. As such, these cards 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 a bank-issued, FDIC insured, general purpose, re-loadable, stored value card in California by _____ is

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considered to be in the public interest and that the regulation of this transaction is not necessary, and therefore, is hereby exempted from Chapter 14, Division 1 of the FC.

Sincerely,

PAUL T. CRAYTON
Senior Counsel

PTC:lca

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