

11-6

June 17, 2011

VIA E-MAIL & U.S. MAIL

Re: Opinion Request

Dear \_\_\_\_\_:

This responds to your letters and various communications with the Department of Financial Institutions, in which you request 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. \_\_\_\_\_ is working with a commercial bank (Bank) to sell: (1) an FDIC insured, re-loadable, prepaid VISA stored value card with the brand name "\_\_\_\_\_" (\_\_\_\_\_ Program) and (2) a "white label" FDIC insured, re-loadable, prepaid VISA stored value card (e.g., \_\_\_\_\_ Program). \_\_\_\_\_ also may offer a mobile top-up minutes feature with the two Programs, which would enable customers to refill or top-up their mobile phones with minutes by transferring funds from their prepaid cards to their phone cards. In both proposed Programs, 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 not hold any cardholder funds associated with the Programs. Cardholder funds are not included on the balance sheet of \_\_\_\_\_. All funds would be immediately loaded onto a card, and the Bank would immediately be liable to the cardholder for the funds. Only the Bank, whose deposits are FDIC insured, would be liable to a cardholder for payment of any amount owing on a card.

\_\_\_\_\_ would also act as a processor and program manager for the bank issuing the stored value cards.

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 FC § 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 for the selling of stored value unless exempt.

\_\_\_\_\_’s processor and program management services for the Bank and for the mobile top-up minutes feature with the two Programs would not constitute “money transmission” as that term is defined in Financial Code § 1803(o).

B. Exemption.

As you note, the stored value cards that \_\_\_\_\_ intends to sell as part of the \_\_\_\_\_ Program and the \_\_\_\_\_ Program 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

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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 FDIC insured, re-loadable, prepaid VISA stored value card as described in the \_\_\_\_\_ Program and the \_\_\_\_\_ Program in California by \_\_\_\_\_ is 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,

JENNIFER L.W. RUMBERGER  
Senior Counsel

JLWR:lca

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