

August 12, 2002

Re: Proposed Money Transmission Activity

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

This is in response to your letter to the Pennsylvania Department of Banking (the "Department") in which you request that the Department indicate its position regarding whether the activities of your company, [redacted] (the "Company"), [redacted] (the "National Bank"), or any affiliated third-party promotional partners in regard to a prepaid debit card program are subject to Section 105 of the Banking Code of 1965, 7 P.S. § 105, or the Money Transmitter Act ("MTA"), 7 P.S. § 6101 *et seq.*

Factual Background

You have indicated the following factual scenario, which is essentially quoted directly from your letter.

The National Bank issues the [redacted] National Bank Card pursuant to a license agreement with [redacted] Card. Cardholder funds for the prepaid debit card program reside in a special purpose bank account maintained and managed by the National Bank. As customers use the prepaid debit card, funds are debited from the special purpose bank account to cover customer transactions. Customer funds flow from the card distributor, which can be the Company or an affiliated third-party promotional partner, directly to the National Bank, via electronic funds transfer ("EFT") on a daily basis. For example, it is the Department's understanding that when a customer purchases a prepaid debit card from the Company, the customer will pay the appropriate amount to the Company which the Company will then transfer directly to the National Bank via EFT. On the revenue side, the National Bank must both approve and initiate all revenue disbursements from the special purpose account to the Company or any affiliated third-party promotional partners.

The Company, a co-brander on the National Bank [redacted] Card, serves as third-party processor member service provider for the National Bank. Responsibilities

include monitoring fund transfers, managing customer service agents, and maintaining the database and records associated with the system. In addition to those duties, the Company is an independent sales organization for the National Bank/Company [redacted] National Bank Card program. Operations as an independent sales organization concentrate on marketing the program and establishing distribution channels for the National Bank/Company [redacted] National Bank Card. The Company is not a financial institution, is not an affiliate of the National Bank, and does not have dominion over customer money.

You have submitted an additional letter to the Department stating that the Agreement between the Company and the National Bank “creates an agency relationship between [the Company] and the [National] Bank.” In addition, you have submitted the aforementioned Agreement between the Company and the National Bank, which indicates in at least one section that the Company will be paid “transaction fees” for its role in the National Bank/Company [redacted] National Bank Card program. *See* Agreement at 1.6.

#### Legal Analysis

Section 105(a) of the Banking Code of 1965 states that:

[n]o person may lawfully engage in this Commonwealth in the business of receiving money for deposit or transmission, or lawfully establish in this Commonwealth a place of business for such purpose, except . . . a person duly authorized by Federal law to engage in the business of receiving money for deposit or transmission . . . .

7 P.S. § 105(a).

Section 2 of the MTA states that:

[n]o person shall engage in the business of transmitting money by means of a transmittal instrument for a fee or other consideration without first having obtained a license from the Department of Banking nor shall any person engage in such business as an agent except as an agent of a person licensed or exempted under [the MTA].

7 P.S. § 6102. A “transmittal instrument” is defined as “any check, draft, money order, personal money order or method for the payment of money or transmittal of credit . . . .”

7 P.S. § 6101(2). Section 3 of the MTA provides that national banks are exempt from the licensing requirements of the MTA. 7 P.S. § 6103.

To the extent that a formal agency relationship is not established and maintained between the Company and the National Bank, the Company will be required to obtain a license pursuant to the MTA in order to engage in the activities you describe in your letter and subsequent accompanying documents because, as co-brander of the National Bank/Company [redacted] National Bank Card, the Company will be “transmitting money by means of a transmittal instrument for a fee or other consideration” as that term is used in the MTA. In addition, if a formal agency relationship is not established between the Company and the National Bank, the proposed activities of the Company will be subject to the money-for-transmission provisions of Section 105(a) of the Banking Code of 1965, 7 P.S. § 105(a).

If a formal agency relationship is established and maintained between the Company and the National Bank, it is the position of the Department that the Company would be an agent of the National Bank for purposes of the MTA, and therefore would be deemed exempt from the MTA’s license and related requirements. In addition, provided that a formal agency relationship is established and maintained between the Company and the National Bank, the proposed activities of the Company will not be subject to the money-for-transmission provisions of Section 105(a) of the Banking Code of 1965, 7 P.S. § 105(a).

### Conclusion

It is not clear to the Department from your letter and subsequent accompanying documents that a formal agency relationship has been established between the Company and the National Bank. Therefore, unless and until the Department receives documented proof that a formal agency relationship has been created between the Company and the National Bank, the Company will be required to obtain a license pursuant to the MTA in order to engage in the activities you describe in your letter and subsequent accompanying documents.

The activities of any affiliated third-party promotional partners in regard to the activities of the Company and the National Bank as described in your letter and subsequent accompanying documents may or may not require licensing under the MTA, depending upon the circumstances. The Department does not have sufficient information from you at this time to make a determination regarding the activities of any affiliated third-party promotional partners.

This letter does not address any other state or federal law outside of the Department’s jurisdiction that may be applicable to the proposed activities of the Company and the National Bank. Furthermore, this letter does not address the permissibility of such activity for the National Bank; therefore, you should contact the Office of the Comptroller of the Currency for a definitive ruling on the permissibility of this proposed activity for the National Bank.

The Department's analysis is based upon the facts as stated in this letter. Any change in the facts could result in an amendment or reversal of the Department's position. This letter has been authorized by the appropriate Department personnel and constitutes a duly authorized statement of the Department's position regarding the issues discussed herein. This letter may not be relied upon or construed as constituting legal advice.

Please do not hesitate to contact me if you have any further questions regarding this matter.

Sincerely,

Carter D. Frantz  
Staff Counsel