

November 22, 2002

Re: Money Transmission Activity in Pennsylvania

Dear _____ :

Thank you for providing the Pennsylvania Department of Banking (the "Department") documentation regarding the prepaid debit card program operated in Pennsylvania by [redacted] (the "Company"), [redacted], a [redacted] state-chartered bank (the "Bank"), and [redacted] (the "Distributor").

Please be advised that Department staff members involved in money transmitter licensing and compliance issues have reviewed the documentation and materials that you have provided and have determined, based upon the analysis below, that the Company and the Distributor [redacted] are each required to become licensed pursuant to the Money Transmitter Act ("MTA"), 7 P.S. § 6101 *et seq.*, in order to engage [redacted] in the Company's and Distributor's respective roles in the prepaid debit card program as described in the documentation you provided.

Factual Background

The following factual information is derived from the "Prepaid [redacted] Program Description" and "Prepaid [redacted] Program Money Flow" that you have submitted to the Department. You have also submitted the agreement between the Company and the Distributor (the "Company-Distributor Agreement"), and the agreement between the Company and the Bank (the "Company-Bank Agreement").

According to the documentation you provided, a customer would purchase an [redacted] Card (the "Card") by approaching a clerk at a Distributor store with a Card package in hand. The clerk accepts the customer's payment equal to the load amount, plus the "Convenience Fee" due to the Company and the Distributor, and places the payment in the Distributor store register or cash drawer. *See* Company-Distributor Agreement at ¶ 5.3 and Schedule C, ¶ 1.a. It is the Department's understanding from the materials that you have provided that payment is made to the Bank by the Company, which receives the funds from the Distributor on a pre-determined schedule and then sends such funds to the Funding Account at the Bank. *See* Company-Distributor Agreement at ¶ 5.3; Company-Bank Agreement at Sections 10 and 12. Without regard to whether payment is made to the Bank, the cardholder's funds are loaded to the account immediately by the Company and available upon activation.

In order to reload value onto a Card, a customer approaches a clerk in a Distributor store, presents his or her Card, and requests to purchase a reload. The clerk accepts the customer's payment equal to the reload amount plus the "Reload Fee" and places the payment in the Distributor store register or cash drawer. See Company-Distributor Agreement at ¶ 5.3 and Schedule C, ¶ 1.b. It is the Department's understanding from the materials that you have provided that Payment is made to the Bank by the Company, which receives the funds from the Distributor on a pre-determined schedule and then sends such funds to the Funding Account at the Bank. See Company-Distributor Agreement at ¶ 5.3; Company-Bank Agreement at Sections 10 and 12. Without regard to whether payment is made to the Bank, the cardholder's funds are loaded to the account by the Company and available immediately.

It is the Department's understanding from the materials that you have provided that all Distributor payments covering cardholder load and reload purchases are sent from the Distributor to the Company, which then sends such funds to the Funding Account at the Bank. See Company-Distributor Agreement at ¶ 5.3; Company-Bank Agreement at Sections 10 and 12. Should the Company fail to meet the funding requirements set forth in the Bank-Company Agreement, the Bank reserves the contractual right and the technical ability to halt the purchase of Cards at any or all of the Distributor's stores where the product is sold. See Company-Bank Agreement at Sections 10.3 and 16.2. The Company will have no withdrawal access to the Funding Account. See Company-Bank Agreement at Section 10.2. In the event of termination of the agreement between the Company and the Distributor, the termination of the agreement between the Company and the Bank or the insolvency of the Company, [redacted] and the Bank will continue to honor the Cards through their normal lifecycle and the customers will not lose any money or use of the Card, though customers would not be able to reload or renew the cards once spent or expired in such a case.

Each Card has the name and/or logo of the Company on the front, and the Bank is identified on the back of the Card as the issuer. See Company-Bank Agreement at Section 2.1. It is specifically noted that there is not a formal agency relationship between the Company and the Bank, the Company and the Distributor, or the Bank and the Distributor. See Company-Distributor Agreement at ¶ 11.3; Company-Bank Agreement at Section 20.

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).

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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 FDIC-insured banks chartered under the laws of any state are exempt from the licensing requirements of the MTA. 7 P.S. § 6103.

Company License Requirement

The Company is required to obtain a license pursuant to the MTA in order to engage in the activities that you describe in the materials that you have submitted to the Department because the Company is “transmitting money by means of a transmittal instrument for a fee or other consideration” as that term is used in the MTA. In addition, the activities of the Company are 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 Bank, meaning that the Bank is liable for the consumer’s funds at the time the funds are received by the Company, it is the position of the Department that the Company would be an agent of the Bank for purposes of the MTA; and therefore, the Company as agent of the Bank would be deemed exempt from the MTA’s license and related requirements, pursuant to Sections 2, 3, and 12 of the MTA, 7 P.S. §§ 6102, 6103, and 6112. In addition, provided that a formal agency relationship is established and maintained between the Company and the Bank, the activities of the Company as agent of the Bank would not be subject to the money-for-transmission provisions of Section 105(a) of the Banking Code of 1965, 7 P.S. § 105(a).

Distributor License Requirement

The Distributor is required to obtain a license pursuant to the MTA in order to engage in the activities that you describe in the materials that you have submitted to the Department because the Distributor is “transmitting money by means of a transmittal instrument for a fee or other consideration” as that term is used in the MTA. In addition, the activities of the Distributor are 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 Distributor and the Bank, meaning that the Bank is liable for the consumer’s funds at the time the funds are given to

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the Distributor, it is the position of the Department that the Distributor would be an agent of the Bank for purposes of the MTA; and therefore, the Distributor as agent of the Bank would be deemed exempt from the MTA's license and related requirements, pursuant to Sections 2, 3, and 12 of the MTA, 7 P.S. §§ 6102, 6103, and 6112. In addition, provided that a formal agency relationship is established and maintained between the Distributor and the Bank, the activities of the Distributor as agent of the Bank would not be subject to the money-for-transmission provisions of Section 105(a) of the Banking Code of 1965, 7 P.S. § 105(a).

Alternatively, if the Company becomes licensed pursuant to the MTA, and a formal agency relationship is established and maintained between the Distributor and the Company, meaning that the Company is liable for the consumer's funds at the time the funds are given to the Distributor, it is the position of the Department that the Distributor would be an agent of the Company for purposes of the MTA; and therefore, the Distributor as agent of the Company would be deemed exempt from the MTA's license and related requirements, pursuant to Sections 2, 3, and 12 of the MTA, 7 P.S. §§ 6102, 6103, and 6112. In addition, provided that a formal agency relationship is established and maintained between the Distributor and the Company, the activities of the Distributor as agent of the Company would 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

The Company and the Distributor are each required to obtain a license from the Department pursuant to the MTA in order to engage in the activities that you describe in the materials that you have submitted to the Department, unless and until the Department receives documented proof that a formal agency relationship has been created between the Company and the Bank and the Distributor and the Bank, or between the Company and the Distributor in the scenario where the Company becomes licensed pursuant to the MTA.

[redacted]

You are expected to notify the Bank and the Distributor of the Department's position regarding the activities described in this letter in addition to the resulting licensing requirement under the MTA for the Distributor.

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, Distributor, and the Bank. Furthermore, this letter does not address the permissibility of such activity for the Bank; therefore, you should contact the **[redacted]** Department of Banking and Finance for a definitive ruling on the permissibility of this proposed activity for the 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

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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,

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Staff Counsel

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