

September 2, 2005

Re: Payroll Debit Cards

Dear [redacted]:

This is in response to your letter to the Department of Banking (the "Department") on behalf of [redacted] (the "Company"), in which you request the Department's position regarding the applicability of any statute under the Department's jurisdiction to your company's proposed payroll debit card program.

Factual Background

You indicate in your letter that the Company is interested in offering payroll debit cards to the Company's employees in Pennsylvania. Under the payroll debit card program (the "Program"), which will be voluntary, debit cards will be issued to an employee containing the amount of the employee's pay for the period. Payroll debit cards will likely be issued to employees that may not have bank accounts and are unable to request direct deposit. These employees are currently paid by check and are potentially exposed to fees associated with check cashing. The Program would offer employees payment without any associated costs.

Based on the materials you have submitted, it is the Department's understanding that the Program will operate in an "open system," meaning that the payroll debit cards will be accepted at any ATM, point of sale, or merchant location that accepts debit cards. The Company will deposit funds at a designated depository institution ("Program Bank") and then distribute the payroll debit cards to employees. After the distribution, the employees would be able to immediately access the funds using their payroll debit cards. There would be two free ATM withdrawals each month, with a \$1.50 charge for each extra withdrawal. There is no fee charged to an employee for enrollment in the Program or for withdrawals at a teller window from Program Banks.

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### Legal Analysis

It is the Department's determination that the Check Casher Licensing Act ("CCLA"), 63 P.S. § 2301 *et seq.*, the Money Transmitter Act ("MTA"), 7 P.S. § 6101 *et seq.*, and the Banking Code of 1965 ("Banking Code"), 7 P.S. 101 *et seq.*, are potentially applicable to the Program.

#### *CCLA*

Section 301(a) of the CCLA states that "[n]o person or business entity shall engage in the business of cashing checks for a fee without first obtaining a license under this act for each fixed location or mobile unit." 63 P.S. § 2311(a). A "check" is defined in Section 103 of the CCLA as "[a] type of negotiable instrument as defined in 13 Pa.C.S. § 3104(f), (g) and (h) (relating to negotiable instrument) and domestic postal money orders." 63 P.S. § 2303.

Since the Company is not cashing anything for a fee as part of the Program, the Company is not engaged in the "business of cashing checks for a fee" as part of the Program and is not required to obtain a license under the CCLA in order to conduct the Program in Pennsylvania.<sup>1</sup>

#### *MTA*

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 this act.

7 P.S. § 6102. A "transmittal instrument" is defined in Section 1 of the MTA as "any check, draft, money order, personal money order or method for the payment of money or transmittal of credit, other than a merchandise gift certificate sold in the regular course of business by a vendor of personal property or services." 7 P.S. § 6101. It is the position of the Department that debit cards are a "method for the payment of money or transmittal of credit," and thus are "transmittal instruments" under Section 2 of the MTA.

However, it is the position of the Department that the Company would not be transmitting money within the meaning of Section 2 of the MTA. The Company would place the funds at a Program Bank, as it would normally do for payroll purposes, after which the funds would be accessible by employees through use of the payroll debit cards. Once such funds are deposited with a Program Bank, the liability for the funds would pass to the Program Bank. Moreover, the Company

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<sup>1</sup> While it is possible that the payroll debit cards could be considered "checks" within the meaning of Section 103 of the CCLA and 13 Pa.C.S. § 3104(f), the Department does not find it necessary to address this issue in order to opine on the applicability of the CCLA to the Program.

would not be charging employees a fee or other consideration for access to the funds. Therefore, the Company is not “transmitting money by means of a transmittal instrument for a fee or other consideration” within the meaning of Section 2 of the MTA, and is not required to obtain a license under the MTA in order to conduct the Program in Pennsylvania.

### *Banking Code*

Section 105(a) of the Banking Code states that “[n]o person may lawfully engage in this Commonwealth in the business of receiving money for deposit or transmission . . . [except entities permitted by Federal and Pennsylvania law to accept deposits or transmit money].” 7 P.S. § 105(a). Based upon the materials you have submitted, it is the position of the Department that the Company is not engaging in the “business of receiving money for deposit” within the meaning of Section 105(a) of the Banking Code because the Company is not receiving deposits from employees as part of the Program. The Company would be depositing funds with a Program Bank for access by employees, which would be deposits of the Company or the employees.<sup>2</sup> However, the Company would not be receiving money from employees for deposit within the meaning of Section 105(a).

Additionally, based upon the inapplicability of the MTA to the conduct of the Program as addressed above, it is the position of the Department that the Company is not engaging in the “business of receiving money for . . . transmission” within the meaning of Section 105(a) of the Banking Code by its conduct of the Program in Pennsylvania.

Please be advised that this letter provides the Department’s position on the applicability of the laws under the Department’s jurisdiction to the conduct of the Program, and does not address any other Federal or Pennsylvania law<sup>3</sup> that is outside the Department’s jurisdiction that may be applicable to the Program or the Company’s conduct of the Program in Pennsylvania.

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<sup>2</sup> This view is consistent with that of the Federal Deposit Insurance Corporation (“FDIC”), which has stated in a proposed rule that the funds underlying payroll cards are insurable deposits of the employer except when:

(A) the account records of the insured depository institution reflect the fact that the first party is not the owner of the funds; and (B) either the first party or the depository institution (or an agent on behalf of the first party or the depository institution) maintains records reflecting the identities of the persons holding the access mechanisms and the amount payable to each such person. If both of these conditions are satisfied, then the funds would be insurable to the persons holding the access mechanisms.

*See* 70 Fed. Reg. 45571 (August 8, 2005). Please be advised that the issue of deposit insurance coverage for payroll debit cards is still under review by the FDIC, and that the requirements related to deposit insurance coverage for funds underlying payroll debit cards may change. Furthermore, the Department does not have the authority to opine upon the deposit insurance status of such funds; thus, any opinion contained in this letter regarding the deposit insurance status of such funds is not binding upon the FDIC.

<sup>3</sup> *See, e.g.*, 7 P.S. §§ 6121, 6122.

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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  
Deputy Chief Counsel

cc: Timothy J. Blase  
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