

DEPARTMENT OF FINANCIAL INSTITUTIONS

TEVEIA R. BARNES, Commissioner of Financial Institutions
www.dfi.ca.gov



Opinion – “Bank Issued Stored Value Card - Not Subject to Money Transmission Act”

April 18, 2011

Re: Opinion Request

Dear _____:

This responds to your letter dated April 1, 2011, in which you request a determination as to whether the proposed activities of ____ (____) would require a money transmission license under California Financial Code § 2000 et seq. [formerly § 1800]

FACTUAL BACKGROUND.

You describe the facts as follows. ____ is working with a commercial bank (Bank) to sell an FDIC insured, general purpose re-loadable, open loop stored value card that would be marketed to ____'s customers (Program). 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 ____ locations as authorized by the Bank. ____ 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 on a daily basis. 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) §2030(a) [formerly § 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 division. . . .”

FC §2003(o)(2) [formerly § 1803(o)(2)], in relevant part, defines “money transmission” as “selling or issuing stored value.”

FC §2011 [formerly § 1806] provides for a public interest exemption to the licensing requirement of §2030. Section 2011 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 division.

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 § 2003(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 §2030, ____ 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, there is hereby exempted from the provisions of Chapter 3, Division 1.2 of the FC, as being in the public interest and the regulation of which is not necessary, the selling of a bank-issued, FDIC insured, general purpose re-loadable, open loop stored value card in California by ____.

Sincerely,

/s/ Jennifer L.W. Rumberger

JENNIFER L.W. RUMBERGER
Senior Counsel

JLWR:lca

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