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## ARKANSAS SECURITIES DEPARTMENT

David H. Smith  
Direct Dial: 501/324-8694  
Email: [dsmith@securities.arkansas.gov](mailto:dsmith@securities.arkansas.gov)

October 21, 2014

Mr. Jeffrey Hare  
DLA Piper LLP  
500 Eighth Street NW  
Washington, DC 20004

RE: Request for No-Action Letter Regarding Business Travel  
Management Services  
No-Action 14-NA-0004

Dear Mr. Hare:

The Arkansas Securities Department ("Department") has received your request dated June 25, 2014 regarding the proposed activities in Arkansas by your client, a business travel management services company. The request seeks confirmation that the Staff of the Department ("Staff") will neither take nor recommend enforcement action regarding licensing provisions of the Uniform Money Services Act ("Act") if activities in Arkansas are undertaken without obtaining a license to engage in the business of money transmission. A copy of your request is attached to avoid reciting or summarizing the facts that you have presented.

Based upon the opinions and representations set forth in your request, the Staff will not recommend enforcement action under Section 23-55-803 of the Act should the proposed activities take place as set forth in your request.

Please note that the position of the Staff is based solely upon the representations made to us in your request and applies only to the facts set out therein. Different facts or circumstances might, and often would, require a different response. The Staff only expresses its position as to the recommendation of formal enforcement action and does not purport this position to be a legal opinion or formal conclusion.

If you should have any questions or need additional information, please contact me.

Very truly yours,

A handwritten signature in black ink that reads "David H. Smith".

David H. Smith  
Chief Counsel

Attachment



**DLA Piper LLP (US)**  
500 Eighth Street, NW  
Washington, DC 20004  
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Jeffrey L. Hare  
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T 202.799.4375  
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June 25, 2014

**Via US Mail and Electronic Mail (dsmith@securities.arkansas.gov)**

David Smith  
Chief Counsel  
Securities Department  
Heritage West Building, Suite 300  
201 East Markham Street  
Little Rock, Arkansas 72201-1692

**RE: Request for No-Action Letter**

Dear Chief Counsel Smith:

We are writing on behalf of our client to request a no-action letter confirming that the Arkansas Securities Department will take no action under Arkansas' Uniform Money Services Act<sup>1</sup> in relation to their services, as described herein. We make this request pursuant to the Securities Department's authority to indicate that it will not recommend enforcement action if our client undertakes the actions described herein.<sup>2</sup>

**I. Background**

Our client (referred to herein as the "**Company**") is a corporation organized under the laws of a US state and a wholly owned subsidiary of a German company (referred to herein as the "**Parent**"), which is in turn a wholly owned subsidiary of an airline (referred to herein as the "**Airline**"). From its only US office located in a state other than Arkansas, the Company provides commercial entities in the US, Canada and the English-speaking Caribbean (referred to herein as the "**Customers**") with business travel management services, including a service to facilitate payment for flights, rail networks, hotels, car rentals, and other travel-related business expenses of Customer employees. All of the Company's Customers are business entities whose travel-related expenses are incurred for non-consumer purposes (i.e., not for personal, family, or household purposes). Customers may be business entities from anywhere in the US, Canada or the English-speaking Caribbean, including businesses in the State of Arkansas.

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<sup>1</sup> Ark. Code Ann. §§ 23-55-101 *et seq.*

<sup>2</sup> 3-14-3 Code Ark. R. § 206.01; see also *Arkansas Securities Department Policy Statement Regarding Requests for Informal Advice* (April 9, 2008).

The German federal financial supervisory authority, Bundesanstalt für Finanzdienstleistungsaufsicht ("**BaFin**") has authorized the Parent to operate as a payment institution pursuant to the European Union Directive on Payment Services ("**Payment Services Directive**")<sup>3</sup> adopted by the European Parliament and the Council of the European Union on November 13, 2007. In the EU, a payment institution is a business entity that provides payment services, such as execution of payment transactions, remittance transfers, and issuance of payment instruments. A payment institution is a highly regulated class of non-bank financial services company.

Germany has adopted and expanded on the requirements contained in the Payment Services Directive through its Act on Supervision of Payment Services, the Zahlungsdienststeaufsichtsgesetz ("**ZAG**"), to which the Parent is fully subject. German payment institutions, such as the Parent, are required by the ZAG to meet numerous regulatory conditions in order to maintain payment institution authorization. The Parent is required to maintain adequate capital levels based on its overall transaction volume, and must submit quarterly financial reports to both BaFin and the German central bank, the Bundesbank, showing that it is meeting the capital requirements. In order to comply with requirements under the ZAG to safeguard funds received from Customers, the Parent maintains an insurance policy in an amount greater than the total amount of funds received from Customers for settlement, payable in the unlikely event that the Parent is unable to meet its financial obligations. Payment institutions must submit an annual management report and annual audited financials to both BaFin and the Bundesbank, and the ZAG confers authority on both regulators to conduct periodic and unscheduled examinations of authorized payment institutions.

In satisfaction of the requirements for payment institution authorization, the ZAG requires payment institutions under BaFin supervision to maintain and follow a comprehensive, enterprise-wide anti-money laundering and anti-terrorist financing program. As a subsidiary of the Parent, the Company is also obligated to follow this program. In this regard, BaFin requires the Parent and its subsidiaries to conduct Customer due diligence and monitor and report suspicious transactions and business relationships.

## **II. Primary Company Services**

**The Travel Account.** The Company's primary product is the business travel account (referred to herein as the "**Travel Account**") which is a single virtual cardless account number lodged at the Customer's corporate travel department or the Customer's travel agency. Charges are incurred on the Travel Account as payment for airline tickets and certain limited travel-related services. The Travel Account does not function like a credit product; the Company does not offer credit lines or revolving credit to the Customer. Instead, it functions like a corporate charge account that is, by its terms, paid off in its entirety on a monthly basis. The Company does not charge interest on outstanding Travel Account balances or permit

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<sup>3</sup> Directive 2007/64/EC.

Customers to roll over their monthly balance. The Company will not permit further charges or will close a Travel Account when Customers fail to pay their balance by a certain date.

For each Customer, the Company applies an internal spending limit on overall travel expenditures or on specific types of expenditures such as maximum daily charges for rental cars, maximum flight costs, etc. The Company generates a monthly consolidated statement for the Customer which details the expenses of all the Customer's employees. The Travel Account statements provide the Customer additional detail and travel-related spending transparency that is not readily available from a typical monthly invoice or statement. The additional information allows Customers to have optimal control over travel expenditures and, armed with the detail afforded by the Travel Account statements, more effectively negotiate pricing, discounts and other terms with travel service suppliers. Whereas there are multiple payment options for corporate travel available in the market, the degree of data analysis and therefore the Customer's cost-saving potential are the primary or sole reasons Customers choose the Travel Account.

Funds received from Travel Account Customers are placed in the Company's account with a depository institution located in the US, then swept nightly to the Parent's account, and ultimately settled through the Universal Air Travel Plan network ("**UATP**"),<sup>4</sup> to the airline or participating travel merchant<sup>5</sup> from which the tickets were purchased. The Company's account is swept to a zero balance nightly with all funds transferred to the Parent. All payments received by the Company from Customers pass directly to the Parent.

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<sup>4</sup> The UATP network is a low cost payment network privately owned by approximately 17 of the world's major airlines, including the Airline. UATP issuers must be owners, and settlement of claims is performed through airline industry clearing houses such as the International Air Transport Association or IATA Clearing House, Airlines Clearing House or ACH, and UATP's own internal settlement solution, UATP Settlement Services. The Airline is a UATP member and the Parent transfers funds through UATP using Airline accounts.

<sup>5</sup> In the interest of full disclosure, we note that the Company and Parent offer additional functionality for Travel Account Customers to permit direct travel agency payments through the Merchant Agreement (referred to herein as "**MA**") program. In many markets, travel agencies are not remunerated on the basis of a commission from an airline, but instead are compensated by means of a transaction fee charged directly to the traveler. Because many Customers prefer one bulk statement for all their incurred business travel spending, including travel agency fees, the Parent enters into MAs with major travel agencies to allow charges for Customer transaction fees to be billed through the Travel Account. When MA is used, the travel agency invoices transaction fees to the Parent, which forwards expense information to the Company for inclusion in a Customer's monthly Travel Account statement. After receiving its monthly statement, the Customer pays the travel agency charges together with the other statement charges to the Company. Those funds are transferred by the Company to the Parent the same as all other statement charges, and the Parent transfers travel agency payments to the travel agency. While the functions of the Company are the same for MA charges as they are for other charges on a Travel Account statement, the Parent transfers MA charges to travel agencies directly and not to an airline or participating travel merchant through the UATP network.

With respect to the Travel Account services, the Company is exclusively compensated by interchange fees received from merchant airlines who are members of UATP. Unless Customers purchase additional services from third party providers beyond those described above, such as insurance coverage for lost or stolen baggage, trip insurance or passenger death and injury insurance, the Customers are not charged any fee for the use of the Travel Account product.

**The Network Account.** As part of its effort to provide network-based<sup>6</sup> global travel and entertainment payment solutions, the Company entered into a bank identification number or BIN sponsorship agreement and related agreements with a major national bank in the US and its affiliates ("**Bank**"), under which the Company and the Bank jointly offer Customers a MasterCard branded virtual charge account ("**Network Account**"). Under this arrangement, Customers receive a virtual account number that functions as a corporate charge access device and can be distributed to employees of the Customer who are authorized to use the Network Account. Customer employees use the Network Account to make travel and entertainment purchases at merchants that are members of the MasterCard network, and the charges appear on the Customer's Travel Account statement for the month. The Network Account is available exclusively to Customers located in the US.

Similar to the Travel Account, the Network Account is a lodged product with no physical plastic card involved. However, unlike the Travel Account which is used to purchase only business travel services from merchants that accept UATP, the Network Account may be used to purchase additional travel goods and services such as airline tickets for low cost carriers, rental cars and hotel stays at merchants that accept the credit card network and are not UATP merchants. The Network Account is accepted at a greater number of merchants and service providers than those that are permitted to accept UATP.

When a Customer's employee charges a purchase to the Network Account, the Company, through the Parent as its processor, authorizes and settles payments through the credit card network. From the Customer's perspective, the Network Account operates exactly the same as the Travel Account; however, the flow of funds differs. On a daily basis, the Company sends funds to its settlement account held at the Bank to cover all Customer transactions processed on that day. These funds are then settled by the Bank through the credit card network to the appropriate merchant, via the merchant's acquiring bank. The Bank has direct debit authority over the Company's settlement account for settlement purposes. The Company then recoups the funds from the Customer upon payment of the Customer's next Travel Account statement. Like the traditional Travel Account charges, Network Account charges on the Travel Account statement must be paid off in their entirety on a monthly basis. The Company does not charge interest on Network Account charges and does not permit Customers to roll over their monthly balance. The Company will not permit further charges or will close a Network Account where Customers fail to pay their balance by a certain date.

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<sup>6</sup> In this context, the term network-based means a payment network that is more widely accepted than UATP which, by its terms, is limited in acceptance to only owner-airlines.

Also like traditional Travel Account charges, Network Account Customers have an internal spending limit on overall travel expenditures or on specific types of expenditures such as maximum daily meal spending. The monthly consolidated statement for the Customer offers additional detail and travel-related spending transparency that is not readily available from a typical monthly invoice or statement, thereby allowing Customers to have optimal control over travel expenditures and to more effectively negotiate pricing, discounts, and other terms with service suppliers.

With respect to Network Account services, the Company is exclusively compensated by the Bank through fees received for the services performed under the program agreements. Customers are not charged any fee by the Company for use of the Network Account product.

### **III. Legal Analysis and Request for No-Action Letter**

Absent an exclusion, Arkansas law requires any person engaged in the business of money transmission to obtain a license from the Securities Department.<sup>7</sup> Money transmission is defined as "selling or issuing payment instruments, stored value, or receiving money or monetary value for transmission."<sup>8</sup>

In connection with the services it provides, the Company accepts funds from Customers and transfers those funds to, and under an agreement with, the Parent. The Parent, in turn, transfers funds to (i) the Airline and the UATP network in the case of the Travel Account product; or (ii) the travel agency in the case of the MA product. With respect to the Network Account the funds flow differs with the Company initially funding its settlement account at the Bank under an agreement for settlement through the MasterCard network to the appropriate merchant, and then accepting funds from the Customer in payment of the account balance created.

As part of an overall, and independently initiated, compliance review and assessment by the Company, we are advising them whether their activities fall within the definition of money transmission, notwithstanding the fact that we do not believe it is the type of enterprise or business for which the Securities Department would typically expect to require licensure. We note in particular that the Securities Department's regulations provide the term "money transmission" does not include a bill payer to the extent that it transfers money or monetary value directly from a purchaser to a creditor of the purchaser or the creditor's agent.<sup>9</sup>

Both the Travel Account and the Network Account are products used exclusively to transfer payments due from Customers in satisfaction of amounts owed to airlines and other merchants from whom Customers have purchased goods and services. As such, we believe

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<sup>7</sup> Ark. Code Ann. § 23-55-201.

<sup>8</sup> Ark. Code Ann. § 23-55-102.

<sup>9</sup> 3-14-10 Code Ark. R. § 102(10)(A).

Chief Counsel Smith  
Securities Department  
June 25, 2014

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that the cited exclusion from the definition of licensable money transmission activities apply to both the Travel Account and Network Account products and exclude the Company's activities as described herein from the definition of money transmission.<sup>10</sup> Accordingly, we hereby request a no-action letter regarding the Company's activities as described herein.

Please do not hesitate to contact me at (202) 799-4375 if you have any questions or desire additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey L. Hare", with a horizontal line extending to the right.

Jeffrey L. Hare

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<sup>10</sup> We also note that the Company believes its activities, as described herein, do not cause it to be a money transmitter for purposes of federal law based on certain enumerated exemptions that are available for payment processors and for transfers conducted only as an integral portion of the sale of goods or provision of services other than money transmission. See 31 C.F.R. § 1010.100(ff)(5).