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ARKANSAS SECURITIES DEPARTMENT

December 5, 2003

Ms. Claire Shows Hancock
WRIGHT, LINDSEY & JENNINGS LLP
200 West Capitol Avenue, Suite 2300
Little Rock, AR 72201-3699

RE: ACE Cash Express, Inc.
No Action No. 12044-CS

Dear Ms. Hancock:

We are in receipt of your letter dated November 14, 2003 in which you request that the staff of the Arkansas Securities Department recommend to the Commissioner that no enforcement action be taken against your client, ACE Cash Express, Inc. ("ACE"), if it engages in the activities described in your letter without registration under the Arkansas Sale of Checks Act, Ark. Code Ann. § 23-41-101, *et seq*. A copy of your letter is attached hereto for reference.

Based upon the representations set forth in your letter, primarily that the contemplated activities will not involve the writing or issuance of a written "instrument" as that term is defined in Ark. Code Ann. § 23-41-102(2), the staff will recommend to the Commissioner that no enforcement action be taken against ACE if it engages in the described activities without registration under the Arkansas Sale of Checks Act.

Please note that the position expressed herein pertains only to the facts and circumstances described in your letter. Different facts might well result in a different response. This letter is not to be construed or relied upon as legal advice, nor does it purport to address the possible application of any other laws that may relate to the actions described in your letter.

Should you have any questions, please contact me.

Yours truly,

John E. Moore, Jr.
Chief Counsel

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11/14/2003

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VIA HAND DELIVERY

John Moore, Esq.
Chief Counsel
Arkansas Securities Department
201 East Markham
Heritage West Building, Suite 3000
Little Rock, AR 72201

Re: *No Action Request*

Dear Mr. Moore:

This firm represents ACE Cash Express, Inc.("ACE"), a company that operates retail check cashing facilities both within and outside Arkansas. ACE requests confirmation by the Arkansas Securities Department that ACE is not subject to licensure or other regulation by the Department, by virtue of the debit card program described below (the "Product" and the "Program"), under the Arkansas Sale of Checks Act, Ark. Code Ann. §23-41-101 or any other Act regulated by the Arkansas Securities Department.

I. The Product

The product is a stored value, bank-issued Mastercard debit product, which allows users to have the security and convenience of a credit card without the need for a bank account or credit history. Embossed with a Mastercard logo and user's name, each card is made to order for the individual customer through the program described below. The card is linked to a user's account and accepted by merchants that accepts Mastercard. A nationally chartered, FDIC insured bank (the "Bank") and a third-party processor (the "TPP") have entered into an agreement with Mastercard to use the Mastercard name on the cards issued by the Bank.

ACE, in its role as a distributor, utilizes its in-state existing point-of-sale ("POS") terminals to load funds onto the cards, allowing users to convert cash into "plastic" purchasing power. First time users will leave ACE with a temporary card that serves as a non-personalized debit card accepted wherever PIN based debit cards are allowed.

II. The Program

A typical transaction involving the program proceeds as follows. A customer would enter one of ACE's check cashing facilities, having either cash or a check to be cashed. After completing an application, in which the customer provides name, address, social security number and certain other information, the customer requests that a stored value card be issued, whereupon a temporary access card (the "Temporary card"), in the amount tendered (less total applicable issuance fees of between $9.95 and $19.95 (the "Issuance Fee")), is provided by ACE to the customer. Ace uses its existing POS terminals, which through a direct connection to the issuing bank's database, allows for the posting of a load of funds by a customer onto his or her Temporary card. The Temporary card carries the mark of a national PIN debit or ATM network association and can be used to withdraw cash at ATMs or to purchase goods and services from merchants that accept the network PIN-based debit cards – similar to any other debit card – up to the limit specified based on the initial purchase amount. The initial value of the Temporary card varies with the load amount, but averages around $100 and can be any amount up to $2,000. Before using the card, the customer must call a "1-800" number to activate the card and designate a PIN for use at ATMs or network PIN terminals. The Temporary card, like the personalized card (the "Personalized card"), is issued by the Bank.

Meanwhile, ACE would forward the customer's application electronically to the out-of-state data center of the TPP, which processes the request and causes to be issued to the customer the Personalized card, which is embossed with the customer's name and account number and has a magnetic strip on the back and carries the mark of the national credit card association, Mastercard. The Personalized card is issued by the Bank, which is a nationally chartered bank that is neither headquartered in the State of Arkansas nor has any branch offices in this state. The Personalized card can be used by customers wherever cards are accepted that display the Mastercard mark. In certain instances, the Personalized cards (as well as Temporary cards) may be taken by the customer to locations outside of the United States and used to effect transactions in foreign countries.

The Personalized card is typically received by the customer in the mail approximately seven (7) days after the customer receives the Temporary card. The Personalized card is meant to replace the Temporary card and, once the customer activates the Personalized card,

the Temporary card will expire in ninety (90) days and the customer then has access to his or her funds only through the Personalized card.

Neither the Temporary card nor the Personalized card (together, the "card") issued to the customers hold any stored value on the physical card. The card is connected to a host-based system maintained on behalf of the Bank by the TPP and, therefore, each customer's account data is held on a central computer server rather than in a chip or magnetic strip attached to the card. Accordingly, if any card is lost or stolen, the customer's account history and personal data are preserved.

No credit is extended to the customer in connection with the card.

The customer may periodically increase the balance on a Personalized card by returning to one of ACE's facilities (or other participating facility) and delivering cash or cashing a check. A fee (typically $2.00) (the "ACE Load Fee") is charged to the customer by ACE for loading additional funds onto the Card. Both the Temporary Card and the Personalized Card are tied to the customer's account and either can be used to load funds. Once the cash has been received from the customer, ACE swipes the card and ACE's POS terminal sends the transaction information for posting into the Bank's accountholder database, and the customer's account balance is updated. ACE presents the customer with a printed receipt evidencing the additional card load.

In connection with the cards, a custodial account has been established by the Bank, pursuant to a program agreement, into which all customer funds are placed. The Bank maintains this custodial account on behalf of the cardholders as beneficiaries. Neither the TPP nor ACE has access to any funds held in the custodial account. Each customer's account (an "Account") is part of the larger custodial account and the Bank does not pay interest on any Account to customers.

Funds received from customers, either from the initial purchase of Temporary cards or from the reloading of cards (other than a portion (typically $2.00) of the Issuance Fee (the "ACE Issuance Fee Portion") and the entire amount of the ACE Load Fee, which are retained by ACE), are transferred directly the next business day from ACE to the Bank via electronic funds transfer ("EFT"). Customer funds are then held in the special purpose, pooled account (as described above). Each customer may only use his or her card up to the amount then loaded onto it, *i.e.*, the balance of funds held in the individual customer's Account, which forms part of the custodial account held at the Bank. When a customer uses the card to make purchases, the customer's individual Account balance is updated immediately. Customers can obtain information regarding their card transactions and their current card load levels by means

of automated phone system, by internet web site and via a customer service call center operated by the TPP. The website, available 24 hours per day, enables each customer to monitor his account and view a card statement for any month the customer chooses.

Customers may close their Accounts at any time, and obtain return of their funds by following the procedures contained in the Terms and Conditions/Agreement provided to the customer at the initial sale or load. Certain fees may be generated by customer transactions including purchases, ATM withdrawals, ATM balance checks and refunds via check. Such fees are assessed by the TPP on behalf of the issuing Bank. The TPP earns commissions relating to its processing and licensing services. These commissions are paid by the Bank. ACE, in turn, earns commissions calculated by the number of dollars loaded, card sales and customer transactions. These commissions are paid by the TPP, independently of the Bank (with the exception of the ACE Issuance Fee Portion and ACE Load Fee, which are retained by ACE), and do not come from the custodial account. Neither ACE nor the TPP has access to the custodial account.

III. Analysis: The Sale of Checks Act

The Arkansas Sale of Checks Act, Ark. Code Ann. §23-41-101, *et seq.* (the "Act") provides that "[n]o person shall engage in the business of selling or issuing checks as a service or for a fee or other consideration without first securing a license to do so from the Securities Commissioner . . . ." Ark. Code Ann. §23-41-110. "Check" is defined by the Act to mean "any check, draft, money order, or other written instrument for the transmission or payment of money or credit, except that it does not mean money or currency of any nation." Ark. Code Ann. §23-41-102(2). A money order is further defined as a "bill of exchange issued at the request, and for the use or benefit, of a person other than the issuer and representing an unconditional order or obligation in writing of the issuer to pay a sum certain in money on demand to order or to bearer." Ark. Code Ann. §23-41-102(7).

In our view, the Act does not apply to the Program because the card is not a "check" as such term is defined in §23-41-110. The card fails to qualify as a "check" because it is not a written instrument, to wit, it is not a check, draft, or money order as identified in the definition, nor is it a written instrument in any form.

IV. Conclusion

ACE would appreciate the Department's confirmation that ACE, by its participation in the Program, will not be issuing a "check" as that term is defined in the Arkansas Sale of Checks Act and that, accordingly, no registration is necessary under that Act. ACE further

requests that the Department confirm that, as a result of participation in the Program, ACE is not subject to registration or licensure under any other Act regulated by the Arkansas Securities Department.

If you or any member of your staff should have questions concerning this letter or the Program, please feel free to contact me at (501) 212-1299.

Very truly yours,

WRIGHT, LINDSEY & JENNINGS LLP

Claire Shows Hancock

CSH/tab