

DEPARTMENT OF BUSINESS OVERSIGHT*Ensuring a Fair and Secure Financial Services Marketplace for all Californians*

Jan Lynn Owen
Commissioner of Business Oversight

June 26, 2014

Ron D. Whitney
Executive Director
International Reciprocal Trade Association
524 Middle Street
Portsmouth, VA 23704

Re: Opinion Request

Dear Mr. Whitney:

This is in response to your letter on behalf of the International Reciprocal Trade Association ("IRTA") to the Department of Business Oversight ("Department"), dated April 25, 2014. You have requested a determination of whether commercial barter exchanges are engaged in activities which are regulated by California Money Transmission Act, Financial Code Section 2000, et seq. (MTA).

According to your correspondence, barter exchanges act as a clearinghouse for barter transactions between their members. The recorded unit of account for the barter transactions is known as a "trade credit." While a trade credit has value, such credits exist solely to denote the right of a network member to receive, or the obligation of a network member to pay, a certain value in goods and services. Virtually all transactions are between members with a de minimus number of transactions occurring between a barter exchange and the network members. The barter exchange serves as an arms-length third party record keeper, not as a guarantor of a trade or holder of collateral to guarantee the trade. Trade credits are not redeemable for cash, or fiat currency, under any circumstances.

The role of a commercial barter exchange as a record keeper of trade credits does not constitute "receiving money for transmission," as defined in Financial Code Section 2003(s). Without making a determination of whether a trade credit is money or monetary value, the salient point is that a barter exchange does not "receive" any trade credits; it merely acts as the bookkeeper for keeping track of trade credits that members accumulate.

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A commercial barter exchange also does not meet the definition of an "issuer" of stored value, as defined in Financial Code Section 2003(k). "Issuer" with regard to stored value means "the entity that is liable to the holder of the stored value and has undertaken or is obligated to pay the stored value." Because a barter exchange is not liable to the members for the value of their trade credits, and it has not undertaken nor is it obligated to pay the trade credits; a barter exchange is therefore not an "issuer" of stored value. Financial Code Section 2003(v) defines "stored value" to mean monetary value representing a claim against the issuer that is stored on an electronic or digital medium, and that is a means of redemption for money or monetary value or payment for goods or services. Because a barter exchange is not an issuer of the trade credits, the trade credits do not represent a claim against the barter exchange. Thus, trade credits do not meet the definition of "stored value."

Based on all of the foregoing reasons, it is the Department's view that commercial barter exchanges, by acting as third party record keepers, are not engaged in: (1) "receiving money for transmission" as defined in Financial Code Section 2003(s); or (2) "issuing or selling stored value" as defined in Financial Code Section 2003(v). Therefore, commercial barter exchanges do not need to be licensed under the MTA.

This opinion is based solely on the facts presented in your correspondence and may change if any of the conditions or circumstances under which commercial barter exchanges provide services are altered in the future. If you have any questions or comments, please contact me at (415) 263-8528.

Sincerely,

Jan Lynn Owen
Commissioner of Business Oversight

By 

Jennifer L.W. Rumberger
Senior Counsel

JLWR:acp

cc: Robert Venchiarutti, Department of Business Oversight, San Francisco