

STATE OF NEVADA



BRIAN SANDOVAL
Governor

DEPARTMENT OF BUSINESS AND INDUSTRY

CJ MANTHE
Director

FINANCIAL INSTITUTIONS DIVISION

GEORGE E. BURNS
Commissioner

July 13, 2018

Larry Lipman, Chief Executive Officer
Alliance Financial Network, Inc.
dba eXPO
7535 E. Hampden Avenue, Suite 400
Denver, Colorado 80231

**RE: Applicability of NRS Chapter 671 and NAC Chapter 671-Advisory Opinion Request
April 11, 2018**

Dear Mr. Lipman:

The State of Nevada Financial Institutions Division ("NFID") received your petition for the issuance of an advisory opinion, pursuant to NAC 232.040, concerning the applicability of Nevada Revised Statutes ("NRS") and Nevada Administrative Code ("NAC") Chapter 671. The opinion has been requested on behalf of Alliance Financial Network, Inc. dba eXPO ("eXPO").

Facts

The opinion request states that eXPO does not engage in the business of selling or issuing checks or of receiving for transmission or transmitting money or credits. It is a members-only network that offers a mobile and internet-based solution for consumer and business members. It includes a point-of-sale system with complete end-to-end accounting functionality for its business members. Consumer members use eXPO Credit to pay for member-only services and products by using their mobile device or computer.

Once approved for membership in the eXPO membership network, the member holds an account in the network in their name with a unique sixteen (16) digit account number. Members can exchange funds for eXPO credit at \$1 U.S. dollar to 1 eXPO credit. The value of eXPO credit-for-U.S. dollar and U.S. dollar-to- eXPO credit is always one-to-one and never fluctuates. All funds are maintained in an encumbered bank account. Members can use eXPO credit only with other network members. For example, consumer

LAS VEGAS
Office of the Commissioner
3300 W. Sahara Avenue, Suite 250
Las Vegas, NV 89102
(702) 486-4120 Fax (702) 486-4563

NORTHERN NEVADA
Examination
1755 East Plumb Lane, Suite 243
Reno, NV 89502
(775) 688-1730 Fax (775) 688-1735
Web Address: <http://fid.state.nv.us>

CARSON CITY
Licensing Office
1830 College Parkway, Suite 100
Carson City, NV 89706
(775) 684-2970 Fax (775) 684-2977

members can purchase goods or services using eXPO credit only with an eXPO business member. Members may also redeem eXPO credit to send funds to non-members using ACH, wire, or eChecks from eXPO bank accounts.

eXPO maintains an encumbered account for its members that is separate and distinct from the operating account. The members have access to their funds through the eXPO application. eXPO reconciles the balance between members' credit with the encumbered account totals to assure the encumbered account is equal to the total amount of eXPO credit.

Issue Presented

Whether Alliance Financial Network, Inc. dba eXPO is governed by or subject to the provisions of NRS Chapter 671.

Analysis

NRS 671.040¹ requires a license for any person that engages in “the business of selling or issuing checks or of receiving for transmission or transmitting *money or credits*,” except as an agent of a licensee or a payee. (Emphasis added).

NRS 671.010² defines check as any check, draft, money order or other instrument used for the transmission or payment of money.

31 CFR 1010.100 (ff)³ defines money services business as a person doing business in one or more of the capacities listed below:

- (1) Currency dealer or exchanger.
- (2) Check casher.
- (3) Issuer or seller of traveler's checks or money orders.
- (4) Provider of prepaid access
- (5) Money transmitter.
- (6) U.S. Postal Service.
- (7) Seller of Prepaid Access.

¹ Section 671.040 License required. 1. A person shall not engage in the business of selling or issuing checks or of receiving for transmission or transmitting money or credits unless the person is licensed pursuant to this chapter. 2. A person shall not engage in such business as an agent except as an agent of a licensee or a payee.

² Section 671.010 Definitions. As used in this chapter, unless the context otherwise requires: 1. “Check” means any check, draft, money order or other instrument used for the transmission or payment of money. “Check” does not include a traveler’s check. 2. “Licensee” means any person licensed under this chapter.

³ 31 CFR 1010.100 (ff) Money Services Business defined: A person wherever located doing business, whether or not on a regular basis or as an organized or licensed business concern, wholly or in substantial part within the United States, in one or more of the capacities listed in paragraphs (ff)(1) through (ff)(7) of this section. This includes but is not limited to maintenance of any agent, agency, branch, or office within the United States.
(1) Currency dealer or exchanger. (2) Check casher. (3) Issuer or seller of traveler's checks or money orders. (4) Provider of prepaid access. (5) Money transmitter. (6) U.S. Postal Service. (7) Seller of Prepaid Access.

31 CFR 1010.100 (ff)(5)(i) and 31 CFR 1010.100 (ww) further define money transmitter and prepaid access:

5) Money transmitter—(i) In general. Money transmitter:

(A) Any person, whether or not licensed or required to be licensed, who engages as a business *in accepting currency, or funds denominated in currency, and transmits the currency or funds, or the value of the currency or funds*, by any means through a financial agency or institution, a Federal Reserve Bank or other facility of one or more Federal Reserve Banks, the Board of Governors of the Federal Reserve System, or both, or an electronic funds transfer network; or

(B) Any other person engaged as a business in the transfer of funds.

(ww) Prepaid access. Access to *funds or the value of funds* that have been paid in advance and can be retrieved or transferred at some point in the future through an electronic device or vehicle, such as a card, code, electronic serial number, mobile identification number, or personal identification number.

31 CFR 1010.100 (ff)(4)⁴ defines provider of prepaid access as the participant that agrees to serve as the principal conduit for access to information from its fellow program participants. The provider has principal oversight and control over the prepaid program that includes:

(A) Organizing the prepaid program;

(B) Setting the terms and conditions of the prepaid program and determining that the terms have not been exceeded;

(C) Determining the other businesses that will participate in the prepaid program, which may include the issuing bank, the payment processor, or the distributor;

(D) Controlling or directing the appropriate party to initiate, freeze, or terminate prepaid access; and

(E) Engaging in activity that demonstrates oversight and control of the prepaid program.

A prepaid program is an arrangement under which one or more persons acting together provide(s) prepaid access. However, an arrangement is *not* a prepaid program if:

(A) It provides closed loop prepaid access to funds not to exceed \$2,000 maximum value that can be associated with a prepaid access device or vehicle on any day;

(B) It provides prepaid access solely to funds provided by a Federal, State, local, Territory and Insular Possession, or Tribal government agency;

(C) It provides prepaid access solely to funds from pre-tax flexible spending arrangements for health care and dependent care expenses, or from Health Reimbursement Arrangements (as defined in 26 U.S.C. 105(b) and 125) for health care expenses; or

(D) (I) It provides prepaid access solely to:

(i) Employment benefits, incentives, wages or salaries; or

(ii) Funds not to exceed \$1,000 maximum value and from which no more than \$1,000 maximum value can be initially or subsequently loaded, used, or withdrawn on any day through a device or vehicle; and

⁴ 31 CFR 1010.100 (ff)(4) *Provider of prepaid access*—(i) *In general*. A provider of prepaid access is the participant within a prepaid program that agrees to serve as the principal conduit for access to information from its fellow program participants. The participants in each prepaid access program must determine a single participant within the prepaid program to serve as the provider of prepaid access. (ii) *Considerations for provider determination*. In the absence of registration as the provider of prepaid access for a prepaid program by one of the participants in a prepaid access program, the provider of prepaid access is the person with principal oversight and control over the prepaid program. Which person exercises “principal oversight and control” is a matter of facts and circumstances. Activities that indicate “principal oversight and control” include: (A) Organizing the prepaid program; (B) Setting the terms and conditions of the prepaid program and determining that the terms have not been exceeded; (C) Determining the other businesses that will participate in the prepaid program, which may include the issuing bank, the payment processor, or the distributor;

(2) It does not permit:

- (i) Funds or value to be transmitted internationally;
- (ii) Transfers between or among users of prepaid access within a prepaid program; or
- (iii) Loading additional funds or the value of funds from non-depository sources.

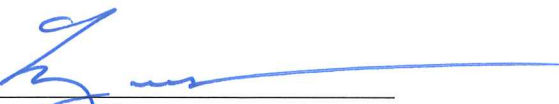
Consumer members can purchase goods or services using eXPO credit only with a network business member. U.S. dollars are exchanged for eXPO credit that is held in a digital account, and the transactions are controlled and balanced by eXPO. The encumbered bank account is in the name of and reconciled and controlled by eXPO.

eXPO serves as the principal conduit for access to information from its fellow program participants and exercises principal oversight and control of the prepaid program. The membership network permits transfers between or among users of prepaid access within a prepaid program and loading additional funds, or the value of funds from non-depository sources.

Conclusion

Alliance Financial Network, Inc. dba eXPO acts in the capacity of a money service business as both a money transmitter and provider of prepaid access as defined in state and federal law. eXPO is in the business of receiving money through its app, which will be transmitted as credit at the consumer's request by way of eXPO's software, and ultimately withdrawn as money. Therefore, Alliance Financial Network, Inc. dba eXPO is required to seek licensure under NRS Chapter 671 prior to conducting business in Nevada.

Sincerely,



George E. Burns
Commissioner
Financial Institutions Division

(continued...)

⁴ (D) Controlling or directing the appropriate party to initiate, freeze, or terminate prepaid access; and (E) Engaging in activity that demonstrates oversight and control of the prepaid program. (iii) *Prepaid program*. A prepaid program is an arrangement under which one or more persons acting together provide(s) prepaid access. However, an arrangement is *not* a prepaid program if: (A) It provides closed loop prepaid access to funds not to exceed \$2,000 maximum value that can be associated with a prepaid access device or vehicle on any day; (B) It provides prepaid access solely to funds provided by a Federal, State, local, Territory and Insular Possession, or Tribal government agency; (C) It provides prepaid access solely to funds from pre-tax flexible spending arrangements for health care and dependent care expenses, or from Health Reimbursement Arrangements (as defined in 26 U.S.C. 105(b) and 125) for health care expenses; or (D) (I) It provides prepaid access solely to: (i) Employment benefits, incentives, wages or salaries; or (ii) Funds not to exceed \$1,000 maximum value and from which no more than \$1,000 maximum value can be initially or subsequently loaded, used, or withdrawn on any day through a device or vehicle; and (2) It does not permit: (i) Funds or value to be transmitted internationally; (ii) Transfers between or among users of prepaid access within a prepaid program; or (iii) Loading additional funds or the value of funds from non-depository sources.