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COMMISSIONER



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ARKANSAS SECURITIES DEPARTMENT

September 17, 2010

David E. Teitelbaum
Sidley Austin, LLP
1501 K Street, N.W.
Washington, D.C. 20005

RE: The Kroger Company
Legal Opinion Letter No. 10-NA-0027

Dear Mr. Teitelbaum:

The Staff of the Arkansas Securities Department ("Staff") is in receipt of your letter dated September 2, 2010, requesting that the Staff issue a legal opinion letter concerning the applicability of Ark Code Ann. § 23-55-103(4) and Rule 103 of the Money Services Rules ("Rules") to the need for the Kroger Company ("Kroger") to be licensed under the Arkansas Money Services Act ("Act") as codified at Ark Code Ann. § 23-55-101 et seq. A copy of your request letter is attached for your reference.

Based on the specific facts contained in your request letter and its attachments, at the present time, the Staff is of the opinion that Kroger can rely on the exclusion from the licensure requirements of the Act offered by Ark Code Ann. § 23-55-103(4) and Rule 103 of the Rules.

Please note that the position of the Staff is based solely upon the representations made in your request letter and applies only to the facts as set out therein. Different facts or circumstances might and often would require a different response or opinion from the Staff.

Sincerely,

A handwritten signature in cursive script that reads "Scott S. Freydl".

Scott S. Freydl
Attorney Specialist

Enclosure



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FOUNDED 1866

September 2, 2010

CONFIDENTIAL¹

By FedEx

Kay Durham
Arkansas Securities Department
201 E. Markham, Suite 300
Little Rock, Arkansas 72201

RECEIVED
10 SEP -8 AM 9:27
ARKANSAS SECURITIES DEPT.

Re: The Kroger Co. – Authorized Delegate Exemption Request

Dear Ms. Durham:

Pursuant to a letter from Shannon Holloway, Staff Attorney, of your office dated March 26, 2010, the Arkansas Securities Department (“Department”) determined that The Kroger Co. (“Kroger”) qualifies for the exclusion pursuant Ark. Code Ann. § 23-55-103(4) and Rule 103 of the Money Services Rule of the Department as an authorized delegate of RBS Citizens NA, a federally insured national bank. This letter is to inform you that Kroger has entered into a new agreement with U.S. Bank National Association, a federally insured national bank (“U.S. Bank NA”), to be the issuer of the network-branded, open-loop stored value cards and reload value packs that Kroger proposes to sell through the retail locations it owns and/or operates in Arkansas and that RBS Citizens NA will no longer be the issuer of such cards and reload packs. However, the prepaid card will otherwise be largely unchanged.

Accordingly, Kroger believes that it continues to qualify for the exclusion from the licensing requirement under the Arkansas Money Services Act as an authorized delegate of U.S. Bank NA pursuant to Section 23-55-103(4) of the Arkansas Code and Rule 103 in

¹ We request that you treat this letter, and all exhibits and attachments hereto, as confidential and exempt from disclosure under the Arkansas Freedom of Information, Ark. Code. Ann. § 25-19-101 et. seq. (the “FOIA”). This letter, and all exhibits and attachments hereto, are exempt from disclosure under the FOIA pursuant to Ark. Code. Ann. § 23-5-607(b)(7) because they contain trade secrets of Kroger and U.S. Bank and other confidential commercial and financial information of Kroger and U.S. Bank that would cause substantial competitive harm to Kroger and U.S. Bank NA if disclosed.

September 2, 2010
Page 2

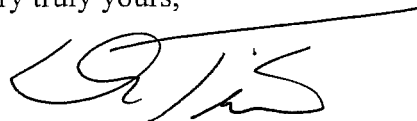
connection with the network-branded, open-loop stored value card program described in the attachments hereto.

In connection with this change in card issuer, Kroger is submitting to the Department:

- (1) a general description of the business plan for this program (Exhibit A hereto);
- (2) a letter, signed by a duly authorized officer of U.S. Bank NA that satisfies the requirements of Rule 103 of the Money Services Rule (Exhibit B hereto , including relevant portions of the agreement between Kroger and U.S. Bank NA at Exhibit B-1); and
- (3) the certification of the Secretary of U.S. Bank NA that the officer that signed such letter on its behalf is duly authorized to execute such letter (Exhibit C hereto).

Please feel free to contact me should you have any questions or require further information. We look forward to receiving the Department's determination that Kroger continues to satisfy the requirements of Ark. Code Ann. § 23-55-103(4) and Rule 103 of the Money Services Rule as an authorized delegate of and therefore continues to be excluded from the license requirements of Arkansas Uniform Money Services Act. Your prompt attention in this matter is greatly appreciated.

Very truly yours,



David E. Teitelbaum

Enclosures

cc: Kathleen Kelly, The Kroger Co.
Christine Wheatley, The Kroger Co.
Lisa Bessler, U.S. Bank
Gretchen E. Lamberg, Sidley Austin LLP



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2751 Shepard Road
EP-MN-BB1P
St. Paul, MN 55116

July 16, 2010

Kay Durham
Arkansas Securities Department
201 E. Markham, Suite 300
Little Rock, Arkansas 72201

Dear Ms. Durham:

This letter is submitted in connection with the application of The Kroger Co. ("Kroger") for the authorized delegate exclusion from the Arkansas Uniform Money Services Act. Ark. Code Ann. § 23-55-103(4) and Rule 103 of the Money Services Rule of the Arkansas Securities Department. U.S. Bank National Association, a national bank (the "Bank") has entered into an agreement with Kroger, pursuant to which Kroger will sell certain prepaid cards and reload cards in certain Kroger stores (the "Cards").

This letter confirms that pursuant to such agreement, the Bank, as a national bank issuer of the Cards:

(A) assumes all legal responsibility in the State of Arkansas for satisfying the money services obligations owed to Arkansas purchasers of the money transmission services upon receipt of the purchaser's money or monetary value by Kroger or its agents or subagents; and

(B) assumes all risk of loss that a purchaser may suffer as a result of the failure of Kroger or its agents to transmit the purchaser's funds to the Bank.

Attached hereto as Exhibit B-1 are the provisions of such agreement described in (A)-(B) of this letter. Please contact Dominic Venturo at 612-205-0542 if you have any questions or comments regarding the foregoing.

Sincerely,

Dominic V. Venturo

Title: Senior Vice President



**U.S. BANK NATIONAL ASSOCIATION
ASSISTANT SECRETARY'S CERTIFICATE**

I, Cara L. Seeley, an Assistant Secretary of U.S. Bank National Association, hereby certify that the following is a true and exact extract from the Bylaws of U.S. Bank National Association, a national banking association organized under the laws of the United States.

**ARTICLE VI.
CONVEYANCES, CONTRACTS, ETC.**

All transfers and conveyances of real estate, mortgages, and transfers, endorsements or assignments of stock, bonds, notes, debentures or other negotiable instruments, securities or personal property shall be signed by any elected or appointed officer.

All checks, drafts, certificates of deposit and all funds of the Association held in its own or in a fiduciary capacity may be paid out by an order, draft or check bearing the manual or facsimile signature of any elected or appointed officer of the Association.

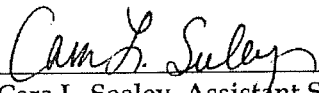
All mortgage satisfactions, releases, all types of loan agreements, all routine transactional documents of the Association, and all other instruments not specifically provided for, whether to be executed in a fiduciary capacity or otherwise, may be signed on behalf of the Association by any elected or appointed officer thereof.

The Secretary or any Assistant Secretary of the Association or other proper officer may execute and certify that required action or authority has been given or has taken place by resolution of the Board under this Bylaw without the necessity of further action by the Board.

I further certify that Dominic V. Ventura, Senior Vice President, is a duly appointed and qualified officer of the Association authorized to act under Article VI of the Bylaws of the Association and that such authority is in full force and effect as of the date hereof and has not been modified, amended or revoked.

IN WITNESS WHEREOF, I have set my hand this 26th day of August, 2010.

(No corporate seal)



Cara L. Seeley, Assistant Secretary