

Writer's Direct Dial: (501) 324-8671
E-mail: bruce.bokony@mail.state.ar.us

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Mr. Ezra C. Levine
HOWREY SIMON ARNOLD & WHITE
Attorneys at Law
1299 Pennsylvania Ave., NW
Washington, DC 20004-2402

**Re: Integrated Payment Systems
Official Checks – Agent Receivables as Permissible Investments**

Opinion No. 03-90000316-NA015

Dear Mr. Levine:

The Arkansas Securities Department has reviewed your letter of September 23, 2003 wherein, on behalf of your client Integrated Payment Systems, Inc. (“IPS”), you request the Arkansas Securities Commissioner to consider “depository institution agent receivables” from “federally regulated depository institutions” as “permissible investments” for purposes of Ark. Code Ann. § 23-41-117(b)(1).¹ You recognize that the depository institution agent receivables are not included among the permissible investments listed,² but reason that they are the type of “other investments” the Commissioner may approve as permissible pursuant to Ark. Code Ann. § 23-41-117(b)(2)(H). The facts, as reflected in your letter, upon which you base your position are stated below.

IPS is a licensed check issuer in Arkansas. It is one of the preeminent issuers of official checks and financial institution money orders sold at agent banks, savings and loans, credit unions, etc in the United States. The receivables generated from these sales are “bank obligations” similar to other banks obligations such as certificates of

¹ Ark. Code Ann. § 23-41-117(b)(1) provides: “Each licensee shall at all times maintain permissible investments having a value, computed in accordance with generally accepted principles, equal to or greater than the aggregate liabilities of the licensee with respect to checks sold or issued and outstanding and money or credits received for transmission.”

² See Ark. Code Ann. § 23-41-117(b)(2)(A) – (b)(2)(G).

deposits which are permissible investments pursuant to § 23-41-117(b)(2)(B). For purposes of § 23-41-117(b)(1), IPS seeks to treat only those receivables due from its agent “federally regulated depository institutions” as permissible investments. In this regard, these receivables are treated as trust funds pursuant to § 23-41-117(c)³ and IPS imposes this same trust concept on its federally regulated depository institution agents by contract. As a result, you represent that agent “banks promptly remit to IPS sums due from the sale of these checks.” You state that, “In fact, the IPS loss rate attributable to failure of banks to remit sums due from official check sales is zero percent.”

Based upon the position and representations contained in your letter, so long as the agent institutions involved are federally regulated depository institutions and the receivables generated are treated by the agent institutions as trust funds in accordance with § 23-41-117(c), the Arkansas Securities Commissioner will approve as “permissible investments” these agent receivables for purposes of § 23-41-117(b)(1). Please note this approval is based solely upon the representations made in your letter and pertains only to the transactions identified therein. Different facts or circumstances might, and often would, require a different response.

Sincerely,

Bruce H. Bokony
Chief Counsel

³ Ark. Code Ann. § 23-41-117(c) provides:

(1) All funds collected or received from the sale of checks by an agent shall be impressed with a trust in favor of such licensee in an amount equal to the amount of the proceeds due the licensee and shall not be commingled with other funds of the agent.

(2) No proceeds received by any agent or agents of a licensee from the sale of any check issued by such licensee, while held by the agent, nor any property impressed with a trust pursuant to this section shall be subject to attachment, levy of execution, or sequestration by order of any court, except for the benefit of the licensee. In the event that a licensee's license is revoked by the commissioner, all sales proceeds then held in trust by agents of that licensee shall be deemed to have been assigned to the commissioner.