

STATE OF MICHIGAN  
DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES

Before the Director of Insurance and Financial Services

Department of Insurance and Financial  
Services,

Petitioner,

v

Case No. 18-981-MT  
Docket No. 17-003313

Comdata Network, Inc. d/b/a  
Comdata Corporation,

Respondent.

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Issued and entered  
this 7<sup>th</sup> day of August 2019  
by Anita G. Fox  
Director

FINAL DECISION

I. BACKGROUND

This matter concerns an enforcement action initiated by the Department of Insurance and Financial Services (DIFS) staff alleging that Comdata Network, Inc., d/b/a Comdata Corporation

(Respondent), violated Michigan's Credit Card Arrangements Act (Act), MCL 493.101, *et seq.*, in connection with Respondent's MasterCard program (Program).

The Program allows truck drivers, while on the road, to pay for a variety of transactions. The drivers submit transactions through the MasterCard payment network by presenting a Comdata MasterCard. Regions Bank is a member of the payment network and is responsible for supporting the sponsorship and registration of Respondent as a member service provider of Regions Bank. Regions Bank also approves the Program and works with Respondent to propose any changes to the Program. Respondent maintains responsibility for day-to-day operation of the Program, including customer relationships, as well as for paying all expenses and ensuring the system is adequately funded and underwritten.<sup>1</sup>

The sole issue remaining for consideration is whether the Program constitutes credit card arrangement activity for which Respondent is required to be licensed under the Act. Petitioner maintains that a license is required because the Program consists of Respondent making and negotiating credit card arrangements, while Respondent maintains that the Act does not apply to the Program 1) because the cards are "issued" by Regions Bank, pursuant to the contract between it and Respondent; and 2) because the cards are issued to businesses, not consumers.<sup>2</sup>

Respondent was represented by counsel. Pursuant to the scheduling order entered into the record<sup>3</sup>, dated September 25, 2018, the "parties stipulated to presenting their evidence on count 1

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<sup>1</sup> A more detailed description of the Program is contained in the contracts, forms, and agreements attached to Respondent's Brief and Exceptions as Exhibits 1-3.

<sup>2</sup> Respondent also argues that because Regions Bank, is referred to as the card "issuer" in the contract it is exempt from regulation under the Act. As set forth in the PFD, because Regions Bank is not a party to this matter and its involvement in the Program has no bearing on whether the Respondent is required to be licensed under the Act, this additional argument is not ripe for consideration.

<sup>3</sup> See Item No. 9 on the Amended Certified Record.

exclusively by briefs.” An Amended Proposal for Decision (PFD) was issued on January 23, 2019,<sup>4</sup> in which Administrative Law Judge Erick Williams concluded that “[Respondent] is responsible for ‘making’ or ‘negotiating’ [Respondent’s] MasterCard program and should secure a license. Failing to secure a license, [Respondent] violated MCL 493.102(1).” See PFD, p 10.

## II. EXCEPTIONS

On February 20, 2019, Respondent filed Exceptions to the PFD.<sup>5</sup> On March 6, 2019, Petitioner filed a Reply to Respondent’s Exceptions.

In its Exceptions to the PFD, Respondent argues that the PFD’s Findings of Facts were in error as follows: 1) the finding that Respondent is the “real issuer” of the cards<sup>6</sup> was in error because Regions Bank should be deemed the issuer; and 2) the finding that the cards were used “to pay wages” was in error because the finding is incomplete and not supported by the record. Respondent also contends that the PFD violates Section 85 of the Administrative Procedures Act (APA), MCL 24.285, because the parties “agreed to a hearing by brief under the understanding that there were no contested facts, including the fact that the issuer of the cards is Regions Bank.” See Respondent’s Exceptions, p 2.

Respondent further argued that the PFD is in error with regard to its Conclusion of Law that the Act requires a license for bank-issued card programs for the following reasons: 1) the plain language of the Act limits the definition of “credit card arrangement” to only those arrangements involving non-bank-issued cards; 2) Regions Bank is the “real issuer” of the cards; and 3) Respondent acts only in the capacity as Region Bank’s limited agent and service provider. Respondent also argued that the PFD is in error with regard to its Conclusion of Law that the Act applies only to cards issued to non-consumers because the

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<sup>4</sup> The sole difference between the initial and amended PFD was a change made to the language reflecting the parties’ right to file exceptions to the PFD.

<sup>5</sup> The initial deadline to file exceptions was extended to this date pursuant to a stipulated motion dated January 25, 2019.

<sup>6</sup> Respondent defines “Cards” to include all cards under the Program. See Respondent’s Exceptions, p 1.

Act does not apply to cards issued to non-consumer/commercial customers. For these reasons, Respondent asks the Director to issue a Final Decision concluding that Comdata is not required to obtain a license under the Act to service the Program in Michigan.

In its Reply to Respondent's Exceptions, Petitioner restated its position that it believes Respondent is conducting unlicensed activity under the Act as evidenced by its operation and control of the Program pursuant to the terms of the contracts, forms and agreements. Petitioner reiterated that Regions Bank has a very limited role with the cards and that Regions Bank gives Respondent access to the MasterCard network so that Respondent, not Regions Bank, can administer the Program. Petitioner further noted that Regions Bank does not extend credit to Respondent's customers, nor does Regions Bank act as a credit card arrangement licensee with regard to Respondent's business. Instead, Petitioner argues, it is Respondent that extends credit to its customers by creating the Program and establishing and administering the terms and conditions concerning the extension of credit and the use of the cards. Petitioner argued that the contract language is clear on these points and that the PFD accurately summarizes and analyzes the contracts and agreements governing the Program.

Petitioner further argued that Respondent's Exceptions do nothing to change the Administrative Law Judge's Findings of Fact or Conclusions of Law, and asks the Director to adopt the analysis, statutory interpretation, and conclusions set forth in the PFD. Petitioner asks the Director to issue a Final Decision finding that Respondent is conducting unlicensed activity under the Act and ordering all appropriate sanctions and/or remedies as provided under the Act.

### **III. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

As a preliminary matter, Respondent's argument that the PFD violates MCL 24.285 on the basis that there remains a disputed fact regarding the "real issuer" of the cards is without merit. There is no

evidence of any factual dispute in the record that Regions Bank is referred to as the “issuer” of the cards solely in the contract between Regions Bank, Comdata, and FleetCor Technologies, Inc.<sup>7</sup> The mere fact that Regions Bank is referred to as an “issuer” in the contract has no bearing on whether it is an “issuer” for purposes of the Act. Rather, the PFD reflects a conclusion under the Act that, despite references to Regions Bank as the card “issuer” in the aforementioned contract, Regions Bank is not—after an examination of the totality of the contract and evidence—the actual issuer with any real authority, but merely the “titular” issuer of the cards.<sup>8</sup> Moreover, even if there were a remaining contested issue of fact, the parties entered into a stipulation, which was entered into the record, to present their evidence “exclusively by briefs.” See Scheduling Order, dated September 25, 2018; see also Item No. 9 on the Amended Certified Record. The stipulation to proceed to a contested case hearing exclusively via briefs is binding on both parties pursuant to Michigan Administrative Code Rule 792.10116.

Accordingly, the Findings of Fact in the January 23, 2019, Amended Proposal for Final Decision are adopted and made a part of this Final Decision, and the Conclusions of Law are restated, with modifications as follows:

1. The Act, through the definitions of “credit card arrangement” under MCL 493.101(d) and “credit card” under MCL 493.101(e), applies to Respondent’s Program and is applicable to Respondent. Respondent, not Regions Bank, retains authority and control over the cards in the Program, and therefore “issues” the Cards for the purposes of the Act;

2. The exception under the Act for Consumer Financial Services Act licensees, see MCL 493.102(1), is inapplicable to this matter because Respondent is not a licensee under the Consumer Financial Services Act;

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<sup>7</sup> This Contract was contained in Exhibit 3 of Comdata’s Brief and Exceptions.

<sup>8</sup> See PFD, p 4, fn 10; p 5 fn 15; p 6 fns 17-18.

3. The exception under the Act for banks, see MCL 493.114(1), is inapplicable to this matter because (a) Respondent is not a bank; and (b) Regions Bank is not a party. Therefore, Regions Bank's involvement in the Program does not affect the question of whether Respondent violated the Act;

4. Petitioner's argument that the Act applies to both personal and commercial credit card arrangements is supported and justified;

5. There is no exception under the Act for commercial credit card arrangements;

6. Petitioner has met its burden of proof that Respondent is violating MCL 493.102(1) by "making" or "negotiating" credit card arrangements through the Program without a license.

#### IV. ORDER

Therefore, it is ORDERED that:

1. The Amended PFD is adopted, subject to the above modifications, and made part of this Final Decision.
2. Respondent shall immediately CEASE AND DESIST from all activities in violation of the Act, as described herein, and in the Amended PFD until such time as Respondent obtains a license pursuant to the Act, MCL 493.101.
3. In the event Respondent fails to immediately CEASE AND DESIST, the Director will refer the matter to the Department of Attorney General to pursue a cause of action and damages, as well as fees and costs, pursuant to the Act, see MCL 493.112.



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Anita G/Fox  
Director

STATE OF MICHIGAN  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM

IN THE MATTER OF:

Docket No.: 17-003313

Department of Insurance and  
Financial Services,  
Petitioner

Case No.: 16-981-MT

Agency: Department of Insurance  
and Financial Services

v

Comdata Network, Inc. d/b/a  
Comdata Corporation,  
Respondent

Case Type: Money Transmission  
Services and Credit Card  
Arrangements

Filing Type: Sanction/Cease & Desist

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Issued and entered  
this 23rd day of January, 2019  
by: Erick Williams  
Administrative Law Judge

**AMENDED<sup>1</sup> PROPOSAL FOR DECISION**

**BACKGROUND**

This opinion concludes that Comdata needs a license to operate the Comdata MasterCard program.

On February 8, 2017 the Department of Insurance and Financial Services (DIFS) issued a complaint against Comdata Network Inc. Comdata Network no longer exists and is now known as Comdata Inc. The company is referred to below as Comdata. This hearing involves count 1 of the DFIS complaint, which alleges a violation of the Credit Card Arrangements Act, MCL 493.101 *et seq.* Count 2 has been dismissed.

The issue here is whether the Comdata MasterCard program is subject to MCL 493.102 (1), which makes it illegal to operate "credit card arrangements" without a license. In general, Comdata, a subsidiary of FleetCor Technologies, Inc., has developed a system, designed for truck drivers and trucking companies, that allows truck drivers, while on the road, to pay for fuel, tolls, lodging, and other items, and to receive wages. Drivers can make payments through the MasterCard network (and other payment networks such as Accel and MoneyPass ATMs) by presenting the Comdata MasterCard. Regions Bank, headquartered in Alabama, is a member of those payment networks and serves as the official card issuer. Regions Bank has a contract with Comdata under which Comdata is responsible for operating the Comdata MasterCard

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<sup>1</sup> This Proposal for Decision is being amended to show the correct exception language. (pg.11)

program day-to-day, paying all expenses, and keeping the system adequately funded and underwritten.

DIFS argues that Comdata is engaged in credit card arrangement activity, that a license is required, and no exemption applies. Comdata argues that Regions Bank, the card issuer, is exempt from regulation under the act. Comdata also argues that the cards are issued to trucking companies, not consumers, and the cards are not subject to regulation under the act because they are not used for personal, family or household purposes.

Pursuant to MCL 24.275, the parties agreed to submit their evidence in written form. DIFS filed a brief on November 8, 2018. Comdata filed a brief on December 4, 2018. DIFS filed a reply brief on December 20, 2018.

Scott M. Watson and Kristina M. Araya, of Warner Norcross and Judd, represent Comdata. William R. Peattie, DIFS staff attorney, represents DIFS.

### **APPLICABLE LAW**

MCL 493.102 (1) reads:

Except for a person licensed under the consumer financial services act [MCL 487.2051, *et seq.*], a person shall not make or negotiate, or offer to make or negotiate, a credit card arrangement unless that person is licensed as provided in this act.

“Credit card arrangement” is defined at MCL 493.101 (d) as follows:

“Credit card arrangement” means an unsecured loan or unsecured extension of credit made to the holder of a credit card or charge card which loan or extension of credit is accessed in connection with a credit card or charge card authorized by this act.

### **FINDINGS OF FACT**

A detailed description of the Comdata MasterCard program is contained in the set of contracts linking Comdata, Regions, FleetCor, the trucking companies, and the drivers.

Exhibit 1 to Comdata’s brief are contract forms entered into between Comdata and its trucking company customers. Selected clauses of the “Standard Customer Agreement” read as follows:

#### 1. Account and Services

1(a) General. Customer requires the use of a payment program to facilitate payments made in conjunction with transportation services by customer’s drivers, staff and representatives (whether employees or independent contractors.)



Comdata will provide customer with an account (the account) and Comdata cards (Cards) and Comchek drafts, through the use of which customer may access the credit, funds distribution, financial information and other services chosen by customer on Schedule A (the services), and customer agrees to administer the program and utilize the services in accordance with Comdata's instructions ...<sup>2</sup>

1(c) Payroll distribution. This provision applies to the use of the debit service by customer for distribution of payroll to employees. For purposes of this agreement, the parties acknowledge and agree that the cards are payroll cards as defined in Regulation E (12 CFR Part 205)...<sup>3</sup>

2. Credit limit

If approved, Comdata will establish a credit limit for the account, which is subject to periodic review and adjustment by Comdata....<sup>4</sup>

16. Notices

All written notices required to be given by this agreement shall be deemed to be duly given if delivered personally or sent by US mail, facsimile or overnight courier to Comdata, 5301 Maryland Way, Brentwood, TN, 37027 ...<sup>5</sup>

Exhibit 1 to Comdata's brief also includes a Comdata Card Consent form, presumably to be signed by truck drivers who sign up for Comdata Cards. Drivers can use Comdata cards to -- among other things -- receive their wages by electronic transfer.<sup>6</sup>

Exhibit 2 to Comdata's brief are contract forms entered into between Comdata and its trucking company customers. Selected clauses of the "Comdata MasterCard Corporate Card Agreement" read as follows:

8. Disputed items. Customer must notify Comdata in writing of any disputed item on customer's billing statement within sixty (60) days ...<sup>7</sup>

10. Limitation of liability. ... Comdata's sole responsibility, and customer's sole remedy, for damages for error, delay or any action or failure to act shall be limited to direct money damages ...<sup>8</sup>

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<sup>2</sup> Comdata transmits the terms of the transaction. (These footnotes are mine.)

<sup>3</sup> Cards can be used to pay wages.

<sup>4</sup> Comdata controls the credit limit extended to the trucking company.

<sup>5</sup> Comdata handles all communications.

<sup>6</sup> Cards can be used to pay wages.

<sup>7</sup> Comdata handles all communications.

<sup>8</sup> Comdata is liable for errors and omissions.

Exhibit 3 to Comdata's brief is a contract between Regions Bank, Comdata and FleetCor Technologies. Comdata is a wholly-owned subsidiary of FleetCor Technologies. The "Second Amended and Restated Card Program Agreement" describes the business arrangement in detail, and selected clauses read as follows:

Section 2.4 Bank's Responsibilities

Section 2.4 (a)

MasterCard Membership. Bank, as a principal member of MasterCard, shall support the sponsorship and registration of Comdata as a member service provider of Bank. Bank shall use commercially reasonable efforts to maintain its MasterCard membership for so long as a card remains active. Bank, once it becomes a card issuer member of the Access Network, shall support the sponsorship and registration of Comdata as a member service provider of Bank. Bank shall use commercially reasonable efforts to maintain its Accel Network membership for so long as an Accel Card remains active.<sup>9</sup>

Section 2.4 (c)

Card Issuance. Bank shall be the issuer of all cards hereunder....<sup>10</sup>

Section 2.5 Comdata's Responsibilities

Section 2.5(a) Program Development. Comdata shall develop each program and promote and market cards and programs to customers. Comdata shall submit all card and program materials to MasterCard and Bank for prior approval by Bank and MasterCard....<sup>11</sup>

Section 2.5 (b)

Customer relationships. Comdata shall be responsible for the customer relationship, including, without limitation, entering into the agreement with the customer for the program and cards; establishing an account for each customer and for each card; making credit decisions and credit extensions to customers, as applicable; customer billing and payments; ownership of customer accounts receivables; complaints, disputes and delinquencies; and customer and cardholder support. All proposed customer and third-party reseller customer relationships must be submitted, in writing, to bank for banks' prior approval before any cards are issued to such customer or third-party reseller customer. If

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<sup>9</sup> Membership in the MasterCard network is about the only thing of value the bank brings to the transaction; the bank's only real job is to keep that membership active.

<sup>10</sup> The bank is the titular -- but not the real -- issuer; see below.

<sup>11</sup> Comdata is responsible for the development and marketing work.

bank has not declined the proposed issuance of cards within two business days, the submission shall be deemed to be approved.<sup>12</sup>

Section 2.5 (e)

Settlement accounts. Comdata shall maintain one or more accounts at bank for settlement of all transactions (each, a "settlement account" or cumulatively "settlement accounts") and shall furnish each settlement account to meet the daily settlement obligations of MasterCard, the Accel Network or the MoneyPass Network for Transactions cleared through that settlement account. MasterCard, the Accel Network or Fidelity Information Services, LLC ("FIS") will directly debit Comdata's settlement accounts for settlement via the draw-down wire requests for the credit card program and via ACH debit for the debit card program....<sup>13</sup>

Section 2.5 (f)

Security. Comdata shall be required to provide security ("security") for the settlement obligations of MasterCard, the Accel Network or the MoneyPass Network described in section 2.5 (e) above, and for any and all obligations, liabilities or losses and related costs or expenses that arise from or are related to transactions and the bank's sponsorship obligations under this agreement ...<sup>14</sup>

Section 2.5 (i)

Taxes. Comdata shall pay any sales, use or other taxes due in connection with the issuance of cards or processing of transactions.<sup>15</sup>

Section 2.5 (o)

FleetCor Guaranty. As a condition precedent to the execution of this Agreement, FleetCor shall execute and deliver to Bank a Guaranty in the form attached as Exhibit H hereto. During the term of this agreement, FleetCor shall unconditionally and absolutely guarantee the indebtedness, obligations and liabilities of Comdata to Bank arising under Sections 2.5 (e) – (g), 2.5 (j), 3.2, 3.3, 10.2, 11.1, 11.3 and Exhibit C of this agreement, automated clearing house (ACH) exposure, and wire transfer daylight overdraft exposure.<sup>16</sup>

Section 3.1

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<sup>12</sup> Comdata is responsible for customer service.

<sup>13</sup> Comdata is responsible for accounting.

<sup>14</sup> Comdata assumes the financial risk.

<sup>15</sup> Comdata is the real "issuer" for purposes of paying taxes.

<sup>16</sup> Comdata's parent underwrites Comdata's assumption of the financial risk; the Bank is left with no discernable financial risk.

Interchange Fees. Comdata will receive all interchange fees and other amounts payable to the card issuer....<sup>17</sup>

### Section 3.2

Fees.- Comdata shall pay bank fees as set forth in the attached Exhibit C. Additionally, Comdata shall reimburse bank for any MasterCard, Accel Network or MoneyPass Network fees and assessments that are billed to bank and that are directly attributable to a program or a card ...<sup>18</sup>

### Section 9.4 (b)

During the term of this agreement, the bank hereby appoints Comdata as the Bank's authorized limited agent and representative limited solely to (a) provide the services set forth in this agreement and to assist the bank in the development and marketing of the program; (b) market and distribute cards subject to the program; and (c) perform services that are necessary or appropriate to support the cards and the program, solely in accordance with the terms of the agreement....<sup>19</sup>

## CONCLUSIONS OF LAW

The question in this case is whether Comdata is violating MCL 493.102 (1), which reads:

Except for a person licensed under the consumer financial services act, a person shall not make or negotiate, or offer to make or negotiate, a credit card arrangement unless that person is licensed as provided in this act.

### **Exception for Consumer Financial Services Act Licensees**

MCL 493.102 (1) contains an exception for persons licensed under the consumer financial services act. DIFS alleges in its complaint that Comdata Network has never been licensed under the consumer financial services act, and Comdata has not contested that allegation. Accordingly, this opinion presumes that neither Comdata Inc nor Comdata Network Inc are licensed under the consumer financial services act. Thus, Comdata does not fit within the exception for consumer financial services act licensees.

### **Exception for Banks**

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<sup>17</sup> Comdata is the real "issuer" for purposes of receiving issuer revenue.

<sup>18</sup> Comdata is the real "issuer" for purposes of paying issuer costs.

<sup>19</sup> Comdata exercises all the powers of an issuing bank.

Comdata argues that the Comdata MasterCard program is exempt under MCL 493.114 (1), which reads:

(1) A state or national bank, state or federal savings and loan association, state or federal credit union, or a retail seller or other creditor under [the retail installment sales act] shall not be subject to the provisions of this act except that, to the extent such a lender is authorized by law to use the rate authority provided in this act and uses the rate authority provided in section 10, the lender shall also comply with the other provisions of section 10 and with section 11.

Comdata argues that, as a bank, Regions is exempt under MCL 493.114 (1). I do not reach the issue of whether Regions Bank is exempt. Regions Bank is not a party here, and I am not asked to adjudicate the rights and responsibilities of Regions Bank.

But regardless of the status of Regions Bank under MCL 493.114(1), there is no warrant for Comdata to conclude that a credit card arrangement is exempt merely because a bank is one of the parties to the arrangement.

The issue here is whether Comdata is violating MCL 493.102 (1), which applies to “a person” who makes, negotiates, or offers to make or negotiate a credit card arrangement. MCL 493.102 (1) does not use the terms “bank”, “issuer”, or “issuing bank.” The critical inquiry is whether Comdata is “making” or “negotiating” a credit card arrangement.

A credit card arrangement is defined under MCL 493.101 (d) as --

... an unsecured loan or unsecured extension of credit made to the holder of a credit card or charge card which loan or extension of credit is accessed in connection with a credit card or charge card authorized by this act.

The definition of “credit card arrangement” in MCL 493.101 (d) does not mention banks or issuers or issuing banks. The definition simply describes a kind of payment system -- an unsecured loan or extension of credit accessed by a credit card -- and any person who makes, negotiates, or offers to make or negotiate such a system needs a license, regardless whether or not the maker/negotiator is a bank.

The definition of “credit card” supports the same analysis. MCL 493.101 (e) defines “credit card” or “charge card” as

... any card or device issued by a licensee under a credit card arrangement which arrangement gives to a cardholder the privilege of obtaining credit from the card issuer or any other person in purchasing or leasing property or services, obtaining credit or loans, or otherwise.

MCL 493.101 (e) recognizes that the “issuer” or issuing bank need not be the exclusive source of credit extended through a credit card. Credit can be extended through the

card issuer or through “any other person.” Thus, credit may be extended through a person who is neither a bank nor an issuer.

Having a bank as one of the parties to the arrangement does not exempt the arrangement from regulation.

### **Exception for Commercial Customers**

Comdata argues that the Credit Card Arrangement Act was designed or intended to regulate only those credit cards that are used for personal, family or household uses. However, there is no support for that claim.

MCL 493.101 (d), the definition of “credit card arrangement”, does not confine regulated credit card arrangements to any particular category of uses. On the contrary, MCL 493.101 (e), the definition of “credit card”, explicitly contemplates a wide range of uses. The uses include “purchasing or leasing property or services, obtaining credit or loans, or otherwise.”

Nowhere does the act suggest that it intends to cover only those cards that are used for personal, family or household uses or intends to exempt cards that are used for commercial purposes.

Comdata’s argument on this point was tied in part on SB 728, a piece of legislation introduced in 2017 that would have limited the scope of the act to credit cards used for personal, family or household uses. The text of SB 728 is included as Exhibit 10 to Comdata’s brief. In its brief, Comdata argued that the exemption for extensions of credit for personal, family, or household purposes written into the bill was merely a restatement of existing law. There is little support for that argument. As discussed above, the current law draws no distinction among the different possible uses of credit card proceeds. I am unable to find any explicit statement in the 1984 Senate Bill Analysis, attached to Comdata’s brief as Exhibit 5, suggesting that the Credit Card Arrangements Act was only meant to apply to loans and extensions of credit for personal, family, or household purposes. The ultimate failure of SB 728 deflates Comdata’s argument on this point. The bill was vetoed by Governor Snyder on December 27, 2018.

Even if, *mirabile dictu*, the Credit Card Arrangements Act only covered cards issued for personal, family, and household purposes, and exempted cards used for commercial purposes, Comdata would still need a license because the Comdata MasterCard program includes wage payments. According to the “Standard Customer Agreement”, section 1(c), and the “Comdata Card Consent Form”, Comdata cards can be used to pay wages. Drivers presumably use the cards to collect wages while they are on the road. Paying wages is hardly a commercial transaction; on the contrary, wages are payments for personal, family, and household purposes. Thus, even if the act only regulated cards used for personal, family and household purposes, it would require Comdata to secure a license in this case.

## Representation

MCL 493.106 (1) (a) and (b) give the grounds for revoking licenses. The grounds include, in subsection (1) (a), making a material misstatement in the application, and in subsection (1) (b), failing to disclose any material particular of a credit card arrangement transaction to a person entitled to the information. The statute is designed to discourage misrepresentation, which implies that it intends to reach those parties connected with credit card arrangements who are responsible for making representations. That line of inquiry leads to Comdata, the entity primarily responsible for making accurate and complete representations concerning the credit card arrangement.

According to the Standard Customer Agreement, sections 1 and 2, Comdata transmits the terms of the transaction to the trucking companies and drivers and sets the credit limits on the cards. According to the Card Program Agreement, sections 2.5 (a) and (b), Comdata is responsible for development of the program and for customer service. According to the Comdata MasterCard Corporate Card Agreement sec 8, and the Standard Customer Agreement, sec 16, Comdata handles all communications with trucking companies and drivers. According to the Card Program Agreement, section 2.5 (e), Comdata is responsible for the program's accounting. All the other parties to the arrangement rely on Comdata's accounting. Thus, Comdata is the entity primarily responsible for making accurate and complete representations concerning the credit card arrangement. The other parties rely on those representations. If the statute could not reach the party responsible for making representations, then MCL 493.106 would be meaningless, and one does not interpret a statute in such a way as to render it meaningless.

## Control

MCL 493.103 (4) requires licensees to submit financial statements and to maintain a certain level of net worth. MCL 493.109 requires licensees to keep records and make them available for examinations and audits. The statute is thus designed to protect the financial integrity of credit card arrangements, which implies that it intends to reach those parties connected with credit card arrangements who keep the records and have financial control.

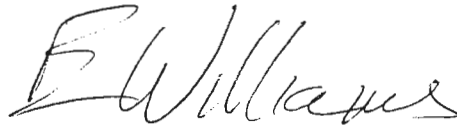
According to the Card Program Agreement, Comdata keeps the financial records and assumes financial risk. Comdata or its parent secures the program up to at least \$5 billion. Regions Bank, the titular issuing bank, is left with no discernable risk. Comdata is the real issuer; it receives revenues due to the issuer, pays costs for which the issuing bank is responsible, exercises all the powers of an issuing bank, and stands financially responsible. If the statute could not reach the party in control, then the financial regulatory aims of the statute would be nullified, and one does not interpret a statute in such a way as to nullify it.

**Conclusion**

In short, Comdata is responsible for "making" or "negotiating" the Comdata MasterCard program and should secure a license. Failing to secure a license, Comdata violated MCL 493.102 (1).

**EXCEPTIONS**

Any Exceptions to this Proposal for Decision should be filed in writing with the Department of Insurance and Financial Services, Division of Insurance, Attention: Dawn Kobus, P.O. Box 30220, Lansing, Michigan 48909, within twenty-one (21) days of the issuance of this Proposal for Decision. An opposing party may file a response within fourteen (14) days after Exceptions are filed.



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**Erick Williams**  
**Administrative Law Judge**