

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING, BUREAU
OF COMPLIANCE AND LICENSING

v.

JPAY, INC.

PA DEPT OF BANKING

DOCKET No. 11 0197 (ENF-CO)

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking ("Department"), Bureau of Compliance and Licensing has evaluated the business practices of JPay, Inc. ("JPay"), and its officers and employees. Based on the results of its evaluation, the Bureau of Compliance and Licensing ("Bureau") has concluded that JPay has operated in violation of the act of September 2, 1965 (P.L. 490, No. 249), known as the Money Transmitter Act, 7 P.S. §§ 6101-6018 ("MTA"). The parties to the above-captioned matter, in lieu of litigation, hereby stipulate that the following statements are true and correct in the settlement of the above-captioned matter and, intending to be legally bound, hereby agree to the terms of this Consent Agreement and Order ("Order").

BACKGROUND

1. The Department is the Commonwealth of Pennsylvania's administrative agency authorized and empowered to administer and enforce the MTA.
2. The Bureau is primarily responsible for administering and enforcing the MTA for the Department.

3. JPay is a corporation that engages in the business of transferring money electronically from friends and family of inmates ("consumers") to inmates incarcerated at correctional institutions.

4. JPay is incorporated in Delaware with its principal place of business located at 12864 Biscayne Boulevard, Suite 243, Miami, Florida 33161.

5. JPay is not, and has never been, licensed as a money transmitter by the Department.

6. JPay allows consumers to transfer money by using credit and debit cards through its website (www.JPay.com) and consumer service number (1-800-574-JPay); the consumer provides the payment information to JPay which ensures that the money is transmitted to the inmates.

7. Likewise, JPay allows consumers to transfer cash to inmates through cash agent locations that it has contracted with to collect the cash and JPay ensures that the money is transmitted to the inmates.

8. Finally, JPay allows consumers to send money orders to its lockbox; JPay, through an employee, collects the money orders and ensures that the money is transmitted to the inmates.

9. The consumers pay JPay a fee for each transfer through a credit card, debit card or cash transfer via a cash agent location.

10. Although the consumers do not pay a fee for money order transfers, JPay offers this service for free in consideration for its contract with the Pennsylvania Department of Corrections ("Corrections") to be the sole provider of electronic funds services to inmates in Correction's facilities in the Commonwealth.

11. In August 2011, the Bureau ascertained through an investigation that JPay has been transmitting money for Pennsylvania consumers to inmates located in Correction's facilities from December 2004 to the present.

12. Section 2 of the MTA provides that:

No person shall engage in the business of transmitting money by means of a transmittal instrument for a fee or other consideration without first having obtained a license from the Department of Banking nor shall any person engage in such business as an agent except as an agent of a person licensed or exempted under this act.

See 7 P.S. § 6102.

13. A person includes an "individual or organization. . . ." 7 P.S. § 6101.

14. A transmittal instrument is "any check, draft, money order, personal money order or *method for the payment of money or transmittal of credit. . . .*" 7 P.S. § 6101 (emphasis added).

15. JPay is an organization that accepts Pennsylvania consumers' credit, cash and money order payments and transfers them electronically for a fee or other consideration including its contract with Corrections; thus, JPay engages in the "business of transmitting money by means of a transmittal instrument for a fee or other consideration" within the meaning of Section 2 of the MTA.

16. Although JPay attempted to address its unlicensed status by contracting with a licensed money transmitter to assist in transmitting money to the inmates, JPay continued to exercise control over the licensee; thus, JPay does not qualify for the agency exceptions set forth in Section 2 of the MTA.

17. Further, JPay is not a bank, trust company, credit union or similar institution or an agent of a bank, trust company, credit union or similar institution to qualify for the exemptions

set forth in Section 3 of the MTA. *See* 7 P.S. § 6102 (providing that no license is required for an agent of a person exempted from the licensure requirements); *see also* 7 P.S. § 6103 (providing the exemptions to the licensure requirement includes banks, bank and trust companies, credit unions, savings banks and private banks, savings and loan associations and building and loan associations organized under the laws of this Commonwealth or of the United States).

18. JPay has been cooperative with the Bureau by providing information and documents in a timely manner.

19. To date, the Bureau has only received one consumer complaint against JPay since it commenced business in the Commonwealth in 2004.

20. On August 26, 2011, JPay submitted a license application to the Bureau.

VIOLATION

21. By transferring money in the form of credit, cash and money orders for Pennsylvania consumers for a fee or other consideration from December 2004 to the present without a money transmitter license and without qualifying for an agency exemption to licensure, JPay violated Section 2 of the MTA, 7 P.S. § 6102.

AUTHORITY

22. Because JPay has engaged in unlicensed activity in violation of the MTA, the Department has the authority to impose an order against the company and issue a fine of “up to two thousand dollars (\$2,000) for each offense.” *See* 7 P.S. §§ 6113.1, 6114, 6116; *see also* 1 Pa. Code § 35.20.

RELIEF

23. Fine. Within 30 days of the Effective Date of this Order, as defined in Paragraph 31, JPay shall pay the Department a fine in the amount of \$80,000. Payment shall be made by certified check or money order made payable to the "Department of Banking" and shall be mailed or delivered, in person, to the Compliance Division, Bureau of Compliance and Licensing located at 17 N. Second Street, Suite 1300, Harrisburg, PA 17101.

24. Corrective Action. JPay shall ensure that the outstanding consumer complaint is resolved to the satisfaction of the Department. Further, JPay shall provide assurances to the Department that its system will continue to transmit money accurately to avoid the improper transmission of funds to inmates and, to the extent any transmission issues with the system occur, it will investigate those issues immediately and take timely appropriate action. Finally, should JPay make any changes to its business plan it must notify the Department's Bureau of Licensing immediately and provide the Bureau of Licensing with the new business plan and any information that it may request regarding those change(s).

25. License. Upon the Effective Date of this Order, as defined in Paragraph 31, JPay's money transmitter application will be approved by the Department. Should JPay fail to comply with any of the terms set forth in this Order, the Department reserves the right to take enforcement action against JPay or its license including suspension, revocation or refusal to renew.

FURTHER PROVISIONS

26. Consent. JPay hereby knowingly, willingly, voluntarily and irrevocably consents to the entry of this Order pursuant to the Bureau's order authority under the MTA and agrees that it understands all of the terms and conditions contained herein. JPay, by voluntarily entering into

this Order, waives any right to a hearing or appeal concerning the terms, conditions and/or penalties set forth in this Order.

27. Publication. The Department will publish this Order pursuant to its authority in Section 302.A(5) of the Department of Banking Code. 71 P.S. § 733-302.A(5).

28. Entire Agreement. This Order contains the entire agreement between the Department and JPay. There are no other terms, obligations, covenants, representations, statements, conditions, or otherwise, of any kind whatsoever concerning this Order. This Order may be amended in writing by mutual agreement by the Department and JPay.

29. Binding Nature. The Department, JPay, and all officers, owners, directors, employees, heirs and assigns of JPay intend to be and are legally bound by the terms of this Order.

30. Counsel. This Order is entered into by the parties upon full opportunity for legal advice from legal counsel.

31. Effectiveness. JPay hereby stipulates and agrees that the Order shall become effective on the date that the Bureau executes the Order ("Effective Date").

32. Other Enforcement Action.

(a) The Department reserves all of its rights, duties, and authority to enforce all statutes, rules and regulations under its jurisdiction against JPay in the future regarding all matters not resolved by this Order.

(b) JPay acknowledges and agrees that this Order is only binding upon the Department and not any other local, state or federal agency, department or office regarding matters within this Order.

33. Authorization. The parties below are authorized to execute this Order and legally bind their respective parties.

34. Counterparts. This Order may be executed in separate counterparts, by facsimile and by PDF.

35. Titles. The titles used to identify the paragraphs of this document are for the convenience of reference only and do not control the interpretation of this document.

WHEREFORE, in consideration of the foregoing, including the recital paragraphs, the Commonwealth of Pennsylvania, Department of Banking, Bureau of Compliance and Licensing and JPay, Inc., intending to be legally bound, do hereby execute this Consent Agreement and Order.

**FOR THE COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING
BUREAU OF COMPLIANCE AND LICENSING**

Ryan M. Walsh
Acting Chief of Compliance

Date: December 16, 2011

FOR JPAY, INC.

(Officer Signature)

(Print Officer Name)

GENERAL COUNSEL
(Title)

Date: 12/14/11