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COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING AND SECURITIES PA DEPARTMENT OF BANKING AND SECURITIES

COMMONWEALTH OF PENNSYLVANIA :
DEPARTMENT OF BANKING AND :
SECURITIES, COMPLIANCE OFFICE :

v. :

DOCKET NO. 16 0050 (BNK-CAO)

SMART PAYMENT PLAN, LLC :

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania, acting through the Department of Banking and Securities ("Department"), Compliance Office, evaluated certain business practices of Smart Payment Plan, LLC ("SMART") and its officers, employees and directors. Based on the results of its evaluation, it is the Office's position that SMART violated the act known as the Money Transmitter Act ("MTA"), 7 P.S. § 6101 *et seq.* SMART agrees to enter into this Consent Agreement and Order ("Order") without admitting to any wrongdoing. The parties seek to resolve this matter amicably to save the time and resources that ongoing litigation would require and, to this end, 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 agrees to the terms of this Order.

BACKGROUND

1. The Department is the Commonwealth of Pennsylvania's administrative agency authorized and empowered to administer and enforce the MTA.
2. The Department's Compliance Office is charged with the responsibility of administering and enforcing the MTA and the Department of Banking and Securities Code ("Code) for the Department.

3. Section 202.D. of the Code authorizes the Department to issue orders as necessary and appropriate to administer any statute within the Department's jurisdiction. 71 P.S. § 733-202.D.

4. The Department has authority to impose an order against a person and issue a fine of "up to two thousand dollars (\$2,000) for each offense." *See* 7 P.S. §§ 6113, 6114, 6116; *see also* 1 Pa. Code § 35.20.

5. SMART is incorporated in Florida with its principal place of business at 100 Congress Avenue, Suite 2000, Austin, Texas 78701.

6. SMART also has a location at 999 Vanderbilt Beach Road, Suite 200, Naples, Florida 34108.

7. SMART is a company that acts as a third party custodian that facilitates payments by consumers to their creditor(s) according to a payment schedule approved by the consumer.

8. SMART charges its customers transactional fees for this service in addition to an enrollment fee for membership in the program.

9. SMART is not currently, and has never been, licensed as a money transmitter by the Department.

10. SMART has submitted an application to the Department, on or around June 13, 2016, for licensure as a money transmitter.

VIOLATION

11. 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. 7 P.S. § 6102.

12. A person includes an "individual or organization..." 7 P.S. § 6101.
13. 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.
14. It is the Compliance Office's position that SMART does not meet any of the exemptions to licensure contained in the MTA. *See* 7 P.S. §§ 6103, 6104.
15. It is the Compliance Office's position that SMART engaged in the business of transmitting money by means of a transmittal instrument for a fee when it, *inter alia*, facilitated the transfer of money from consumers to their creditor(s) according to a payment schedule approved by the consumer up to the date of the initial application, in violation of the MTA.

RELIEF

16. Fine. SMART shall pay the Department a fine in the amount of \$144,000 in four equal installments with the first payment due within 30 days of the effective date of this Order. Each subsequent payment shall be due three months after the previous payment until the fine is paid in full. The payments shall be made by certified check or money order made payable to the "Department of Banking and Securities" and shall be mailed or delivered, in person, to the Compliance Office located at 17 N. Second Street, Suite 1300, Harrisburg, PA 17101.

17. License. Upon the effective date of this Order, SMART's money transmitter license application will be approved by the Licensing Office. Should SMART, and its subsidiaries and affiliates, fail to comply with any of the terms set forth in the Order, including failure to pay its fine in a timely manner, the Department reserves the right to take enforcement action against SMART or its affiliates and subsidiaries, including suspension, revocation or refusal to renew a money transmitter license.

18. Corrective Action.

a. SMART, its affiliates or subsidiaries, shall not engage in the business of money transmission without maintaining a money transmitter license.

b. SMART must notify the Department's Licensing Office immediately should SMART make any changes to its business plan. SMART shall provide the Licensing Office with the new business plan and any information that it may request regarding those change(s).

FURTHER PROVISIONS

19. Consent. SMART hereby knowingly, willingly, voluntarily and irrevocably consents to the entry of this Order pursuant to the Department's order authority under the MTA and agrees that it understands all of the terms and conditions contained herein. SMART, 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.

20. 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).

21. Entire Agreement. This Order contains the entire agreement between the Department and SMART. 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 SMART.

22. 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 SMART.

its affiliates and subsidiaries, in the future regarding all matters not resolved by this Order.

b. SMART 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.

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

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

25. 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 Department of Banking and Securities' Compliance Office and SMART, intending to be legally bound, do hereby execute this Consent Agreement and Order.

FOR THE COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF BANKING AND SECURITIES, COMPLIANCE OFFICE

FOR SMART PAYMENT PLAN, LLC.

Redacted

Ryan M. Walsh
Chief, Compliance Office

Date: September 7, 2016

Redacted

(Officer Signature)

Jackson Bigham

(Print Officer Name)

Chief Compliance officer and
(Title)

General Counsel

Date: 9/7/2016

