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SECRETARY OF BANKING

January 8, 2009

TO ALL ENTITIES ENGAGED IN THE DEBT MANAGEMENT SERVICES BUSINESS OR DEBT SETTLEMENT SERVICES BUSINESS IN PENNSYLVANIA OR WITH PENNSYLVANIA RESIDENTS:

On October 9, 2008, Governor Edward G. Rendell signed into law Act 117 of 2008, House Bill 2294 (P.N. 4525), the Debt Management Services Act (“DMSA”), 63 P.S. § 2401 *et seq.* The DMSA creates, for the first time, a licensing scheme for entities engaged in the debt management services industry in Pennsylvania. The DMSA also prohibits the conduct of the debt settlement services business for a fee in Pennsylvania until such time as the Department has promulgated regulations authorizing such business. **The DMSA is effective on February 6, 2009.**

This letter contains a summary of the DMSA and is therefore not inclusive of all of its provisions, conditions, exceptions and details. It is vitally important for you to familiarize yourself with the DMSA itself and seek guidance from your legal counsel and trade association regarding the effects of this new legislation on your business operations.

Coverage of the DMSA

The DMSA applies to:

- (1) Any debt management services agreement or debt settlement services agreement which is:
 - (i) negotiated, offered or otherwise transacted within this Commonwealth, in whole or in part, whether by the licensee or any other person;
 - (ii) made or executed within this Commonwealth after the effective date of this act; or
 - (iii) notwithstanding the place of execution, entered into with a resident of this Commonwealth.

- (2) Any person who engages in debt management services or debt settlement services in this Commonwealth.

Section 2 of the DMSA defines “debt management services” as the “service of receiving funds periodically from a consumer and then distributing those funds to creditors of the consumer in partial or full payment of the consumer’s personal debts.” The term “debt settlement services” is defined in Section 2 as “an action or negotiation made on behalf of a consumer with that consumer’s creditors for

the purpose of the creditor forgiving part or all of the principal of the debt incurred or credit extended to that consumer.” The term does not include any action taken to convince a creditor to waive any fees or charges.

Debt Management Services Business

Section 3(a) of the DMSA states that no person may advertise, solicit, state or represent that it can offer, obtain or procure debt management services to or for a consumer or provide debt management services to a consumer unless such person is licensed by the Department under the DMSA. Exceptions to the licensing requirements are found in Section 4 of the DMSA.

Licensing Provisions

Pursuant to Section 8(d) of the DMSA, the license period will be from January 1 to December 31 of each year. The Department anticipates having the application form available on its website by February 1, 2009. Completed applications must be submitted to the Department along with all requested supporting documentation, including the applicable license fee, which is as follows:

- 1) The initial licensing fee for domestic or foreign not-for-profit corporations or associations registered as such under 15 Pa.C.S. Pt. II Subpt. C (relating to nonprofit corporations) with the Secretary of the Commonwealth which have annual gross revenues from debt management service fees and charges of less than \$3,000,000 annually is \$500. The annual renewal fee is \$350.
- 2) The initial licensing fee for all other entities is \$2,000. The annual renewal fee is \$1,250.

All license applicants and company officers will be required to pass a criminal record check before receiving a license. Section 10.1 of the DMSA provides that the Department is prohibited from issuing a license to an applicant that offers payday loans as defined in Section 2 of the DMSA.

Transition Provisions

In regard to existing not-for-profit entities that provide debt management services, Section 20 of the DMSA provides that a person who provides debt management services before the effective date of the DMSA, who is not then in violation of 18 Pa.C.S. § 7312 (relating to debt pooling), may continue to provide debt management services provisionally, according to the requirements of the DMSA, provided that such person submits an application for a DMSA license within 45 days of the effective date of the DMSA. For-profit entities wishing to engage in debt management services, and not-for-profit entities that have not been providing debt management services prior to the effective date of the DMSA, must first obtain a license from the Department under the DMSA prior to engaging in the debt management services business in Pennsylvania or with Pennsylvania residents.

Bond and Trust Account

Applicants for a license under the DMSA must establish and maintain a trust account at a Federal Deposit Insurance Corporation-insured depository institution to hold funds received from consumers for whom the licensee is furnishing debt management services. The trust account must be for the benefit of consumers to whom the licensee is furnishing debt management services, and any interest earned from

money held in trust on behalf of a consumer shall be used for the benefit of the consumer. The requirements related to the trust account are found in Section 14(5) of the DMSA.

Applicants for a license under the DMSA are also required to obtain a penal bond in an amount greater than the total amount of Pennsylvania consumer funds that the licensee will hold directly or in trust at any time. The penal bond must be in a form acceptable to the Department and be issued by a surety company authorized to do business in Pennsylvania. The bond will be conditioned on compliance with the DMSA and is subject to forfeiture by the Department and shall run to the Commonwealth for its use. The bond will also be for the use of any person against the licensee for the benefit of any consumer who is injured by a violation of this act or regulation promulgated under the DMSA. The requirements related to the penal bond are found in Section 7 of the DMSA. The Department anticipates that the bond form will be available on the Department's website prior to the effective date of the DMSA.

Permissible Fees

Section 15 of the DMSA restricts the fees that licensees may charge consumers for debt management services. Two of the fees, the "initial consultation fee" and "monthly maintenance fee," are to be increased annually for inflation beginning with the 12-month period following the effective date of the DMSA. The Department will publish these fee increases annually in the *Pennsylvania Bulletin*.

License Renewal

Licensees will need to file a license renewal application annually no later than December 1. The annual renewal can be completed online through the Department's website. Licensees and their credit counselors, supervisors and managers will also be required to complete six hours of continuing education each year once the Department delineates the continuing education requirements by regulation. The Department is required to promulgate this regulation within three years of the effective date of the DMSA, and will be seeking input from the industry regarding the development of these continuing education requirements.

Debt Settlement Services Business

In regard to debt settlement services, Section 3(b) of the DMSA states that no person may advertise, solicit, state or represent that it can offer, obtain or procure debt settlement services to or for a consumer or provide debt settlement services to a consumer for a fee unless such person is licensed by the Department under the DMSA **and** is operating in accordance with regulations promulgated by the Department regarding the conduct of debt settlement services. As such, the provision of debt settlement services for a fee or other consideration is not authorized in Pennsylvania until such time as the Department promulgates regulations authorizing the provision of debt settlement services for a fee or other consideration and begins accepting DMSA license applications for entities engaged in such business. Entities engaged in the debt management services business and licensed under the DMSA may offer debt settlement services incidentally to their customers, provided that no separate fee or other consideration is charged to a customer for debt settlement services.

Consistent with Section 48(1)(ii) of the DMSA, debt settlement services contracted for and/or between a provider of debt settlement services for a fee or other consideration and a Pennsylvania resident before February 6, 2009, may be completed in accordance with the applicable agreement or contract; however, no new debt settlement services agreements may be entered into between a provider of debt settlement

services for a fee or other consideration and a Pennsylvania resident after February 5, 2009, until such time as the Department promulgates regulations regarding the provision of such debt settlement services.

Penalty Provisions

The Department is authorized to suspend, revoke or refuse to renew licenses based upon a number of criteria contained in Section 10 of the DMSA. The Department may also assess a fine of up to \$10,000 for each violation of the DMSA. Finally, violations of the DMSA are also violations of the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1 *et seq.*

Applicability of Other Statutes

DMSA licensees are not required to obtain a license under the Money Transmitter Act, 7 P.S. § 6101 *et seq.*, in order to transmit money pursuant to the terms of a debt management services or debt settlement services agreement, as applicable.

Additionally, Section 49 of the DMSA provides that the Credit Services Act (“CSA”), 73 P.S. § 2181 *et seq.*, is repealed insofar as it is inconsistent with the DMSA. This means that if a DMSA licensee performs any activity under DMSA that could be construed to be an activity regulated under the CSA, the DMSA will control and the CSA will not apply to that activity.

Conclusion

This letter is not intended as and does not constitute legal advice. This letter contains generalizations regarding the DMSA and is therefore not inclusive of all of its provisions, conditions, exceptions and details. It is critically important for you to read the actual DMSA and seek guidance from your legal counsel and trade association regarding the effects of this new legislation on your business operations.

Questions regarding licensure under the DMSA should be addressed to the Licensing Division of the Department’s Bureau of Compliance, Investigation and Licensing (“Bureau”) at (717) 787-3717. Other questions regarding the DMSA should be addressed to the Compliance Division of the Bureau at (717) 772-3889. Inquiries may also be submitted via the Department’s website at www.banking.state.pa.us.

We here at the Department look forward to working with you in order to seamlessly implement this new legislation.

Sincerely,



Steven Kaplan