

**STATE OF NEBRASKA**  
**Department of Banking & Finance**

|                                     |   |                    |
|-------------------------------------|---|--------------------|
| IN THE MATTER OF:                   | ) |                    |
|                                     | ) | FINDINGS OF FACT   |
| N.I.S., Inc.,                       | ) | CONCLUSIONS OF LAW |
| d/b/a Paycheck Advance,             | ) | AND                |
| 3116 South 24 <sup>th</sup> Street, | ) | CONSENT AGREEMENT  |
| Omaha, Nebraska                     | ) |                    |

THIS MATTER comes before the Nebraska Department of Banking and Finance (“DEPARTMENT”), by and through its Director, pursuant to its authority under the Delayed Deposit Services Licensing Act, Neb. Rev. Stat. §§ 45-901 to 45-929 (Reissue 2004; Cum. Supp. 2006) (“the Act”). Pursuant to Neb. Rev. Stat. § 45-920 (Reissue 2004), the DEPARTMENT has examined the books, accounts, and records of N.I.S., Inc., d/b/a Paycheck Advance, 3116 South 24<sup>th</sup> Street, Omaha, Douglas County, Nebraska (“NIS”). As a result of such examination, and being duly advised and informed in the matter, the Director and NIS enter into the following Findings of Fact, Conclusions of Law, and Consent Agreement.

**FINDINGS OF FACT**

1. NIS holds a delayed deposit services business license under the Act. License #1803 was originally granted September 29, 1994, and has been renewed annually on May 1<sup>st</sup> since that time pursuant to Neb. Rev. Stat. § 45-910 (Cum. Supp. 2006). At the time of the examination, NIS was authorized by the DEPARTMENT to operate seven branches in Omaha, Douglas County, Nebraska, in addition to the main office location.

2. On November 30, 2005, the DEPARTMENT commenced an examination of NIS pursuant to Neb. Rev. Stat. § 45-920 (Reissue 2004). This examination included an on-site visitation of NIS's eight Omaha, Douglas County, Nebraska locations.

3. The November 30, 2005 Report of Examination ("Report") was forwarded to NIS on January 17, 2006. The Report noted a number of violations of the Act. NIS submitted a response to the Report, which was received by the DEPARTMENT on January 26, 2006.

4. The three previous regular examinations of NIS conducted December 19, 2002 ("2002 Exam"), October 29, 2003 ("2003 Exam"), and October 18, 2004 ("2004 Exam") also revealed a number of violations of the Act. The findings of the 2002 Exam resulted in a Consent Agreement between NIS and the DEPARTMENT, effective July 24, 2003. As part of the July 2003 Consent Agreement, NIS agreed to adopt written policies prohibiting the holding of more than two checks from one maker; the holding of a check or checks in an aggregate face amount of more than five hundred dollars from one maker; and the holding of checks for more than thirty-one days. NIS was to review these policies with all current employees and upon hiring of any new employees. NIS agreed that any violation of the policies, whether intentional or not, will be considered violations of the Act. The findings of the 2003 Exam resulted in a Consent Agreement between NIS and the DEPARTMENT, effective April 26, 2004. The findings of the 2004 Exam resulted in a Consent Agreement between NIS and the DEPARTMENT, effective May 27, 2005. Repeat violations of the Act will be noted below.

5. References in this Consent Agreement to customers of NIS will be by way of initials, in order to protect the privacy of such customers. NIS knows or should know the

identity of these customers. If NIS is unable to ascertain the identity of these customers, the DEPARTMENT will provide a list of these customers upon receipt of a written request.

6. The Report noted that a partial review of NIS's collection inventory records revealed twenty-six customer account histories that did not have the most current payment information in the customer's collection file and the remaining balances listed on the inventory report did not match the balances recorded in the customer's files. A similar citation for one customer was noted in the 2004 Exam.

7. In its January 26, 2006 response to the Report, NIS addressed the customers' accounts, in part, by stating that:

As part of our weekly duties, the Omaha managers and myself attempt to bring all the collection payment receipts to our collections department at least twice a week. Some of the missing receipts were in possession of the managers and in the other cases the bookkeepers had filed the receipts in their local file instead of sending them to the collection department. We have reviewed with the bookkeepers the proper procedure so all the receipts are being forwarded to the collections department. The managers will also work on their timeliness in getting receipts to the collection department. . . . In addition, a secondary review of the system may be made to determine whether another process should be considered. Perhaps a weekly mailing of receipts to the collection department would ensure their prompt arrival.

8. NIS's inaccurate and misleading customer records for twenty-six customer accounts represents twenty-six separate violations of Neb. Rev. Stat. § 45-908(1) (Reissue 2004).

9. The Report revealed that NIS held checks for customers HK, CM, ES, and JV for more than thirty-one days.

10. The 2002 Exam, 2003 Exam, and 2004 Exam also noted violations of NIS holding checks for more than thirty-one days.

11. In its January 26, 2006 response to the Report, NIS addressed the holding of checks referenced in Finding of Fact #9, stating that:

This is in response to checks that are held for extended periods of time (29, 30 & 31 days). These checks should be deposited on or before the 31<sup>st</sup> day. We have developed a 31 day calendar that we send out to all the stores each month. When a customer comes in to write a check, the calendar shows the 31<sup>st</sup> day from the day they came in. It also accounts for all holidays and weekends. Our computer also doesn't allow us to do a transaction over 31 days. If a customer requests to pick up their checks on the 31<sup>st</sup> day, we only allow them to pick up if it is done by 12:00 pm. If they fail to come in by 12:00pm (sic), we deposit the check on that day's bank business. Also if the 31<sup>st</sup> day falls on a weekend or holiday, we deposit the check on the business day before the weekend or holiday. We go to these lengths to make our process as convenient as possible for those customers who only get paid once a month.

12. NIS's holding of checks from HK, CM, ES, and JV in excess of thirty-one days represents four separate violations of Neb. Rev. Stat. § 45-919(1)(c) (Cum. Supp. 2006).

13. The DEPARTMENT could conclude that the actions of NIS, when considered in conjunction with the 2002 Exam, the July 2003 Consent Agreement, the 2003 Exam, the April 2004 Consent Agreement, the 2004 Exam, and the May 2005 Consent Agreement, warrant the commencement of administrative proceedings to determine whether the DEPARTMENT should suspend or revoke NIS's delayed deposit services business license pursuant to Neb. Rev. Stat. § 45-922 (Cum. Supp. 2006), or whether it should impose an administrative fine in an amount up to five thousand dollars per violation, plus investigation costs, pursuant to Neb. Rev. Stat. § 45-925 (Cum. Supp. 2006).

14. The DEPARTMENT incurred a minimum of five hundred dollars in investigation costs in this matter.

### CONCLUSIONS OF LAW

1. Neb. Rev. Stat. § 45-908 (Reissue 2004) provides that in order to issue a delayed deposit services business license, the Director must determine that the character and general fitness of the applicant and its officers, directors, and shareholders are such as to warrant a belief that the business will be operated honestly, fairly, efficiently, and in accordance with the Act. To operate efficiently, a licensee must ensure that transactions with customers are conducted accurately and that the records concerning those transactions are accurately kept.

2. Neb. Rev. Stat. § 45-919 (Cum. Supp. 2006) sets forth acts which are prohibited to a licensee. These acts include (c) holding checks for more than thirty-one days.

3. Neb. Rev. Stat. § 45-922 (Cum. Supp. 2006) provides that if the Director finds, after notice and opportunity for hearing, that a delayed deposit services business licensee or any of its officers or directors has knowingly violated the Act, or a fact or condition exists which, if it had existed at the time of the original application for such license, would have warranted the Director in refusing to grant the license, the Director may suspend or revoke the license.

4. Neb. Rev. Stat. § 45-925 (Cum. Supp. 2006) provides that if the Director finds, after notice and opportunity for hearing, that any person has violated the Act, the Director may order such person to pay an administrative fine of not more than five thousand dollars for each separate violation and the costs of an investigation.

5. The facts listed in the above Findings of Fact constitute a sufficient basis for the Director to have determined that NIS has violated the Act, and that an administrative fine in an amount of not more than five thousand dollars for each separate violation plus costs of investigation should be imposed in accordance with Neb. Rev. Stat. § 45-925 (Cum. Supp. 2006) and that NIS's license may be suspended or revoked in accordance with Neb. Rev. Stat. § 45-922 (Cum. Supp. 2006).

6. Under the Act's statutory framework, the Director has the legal and equitable authority to fashion significant remedies.

7. It is in the best interest of NIS, and it is in the best interest of the public, for NIS and the DEPARTMENT to resolve the issues included herein.

### **CONSENT AGREEMENT**

The DEPARTMENT and NIS agree as follows:

Stipulations: In connection with this Consent Agreement, NIS and the Director stipulate to the following:

1. The DEPARTMENT has jurisdiction as to all matters herein.
2. This Consent Agreement shall resolve all matters raised by the DEPARTMENT's November 30, 2005 examination of NIS. Should future circumstances warrant, the facts from this matter may be considered in a future administrative action by the DEPARTMENT.
3. This Consent Agreement shall be in lieu of all other proceedings available to the DEPARTMENT, except as specifically referenced in this Consent Agreement.

NIS further represents as follows:

1. NIS is aware of its right to a hearing on these matters at which it may be represented by counsel, present evidence, and cross examine witnesses. The right to such a hearing, and any related appeal, is irrevocably waived.

2. NIS is acting free from any duress or coercion of any kind or nature.

3. This Consent Agreement is executed to avoid further proceedings and constitutes an admission of violations of the Act solely for the purpose of this Consent Agreement and for no other purpose.

IT IS, THEREFORE AGREED as follows:

1. Within ten (10) days after the effective date of this Consent Agreement, NIS shall pay a fine of one hundred dollars (\$100.00) for each of the twenty-six repeat violations of Neb. Rev. Stat. § 45-908(1) (Reissue 2004) where a customer's record was inaccurate and misleading.

2. Within ten (10) days after the effective date of this Consent Agreement, NIS shall pay a fine of one thousand dollars (\$1,000.00) for each of the four repeat violations of Neb. Rev. Stat. § 45-919(1)(c) (Cum. Supp. 2006), where checks were held for more than thirty-one days.

3. Within ten (10) days after the effective date of this Consent Agreement, NIS shall pay the DEPARTMENT's investigation costs in this matter in the amount of five hundred dollars (\$500.00).

4. The total amount of the fine, six thousand six hundred dollars (\$6,600.00), plus the total amount of investigation costs, five hundred dollars (\$500.00), shall be payable in one check or money order in the amount of seven thousand one hundred dollars (\$7,100.00) to the DEPARTMENT.

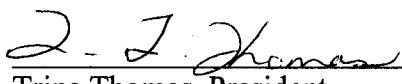
5. In the event NIS fails to comply with any of the provisions of this Consent Agreement, the DEPARTMENT may commence such action regarding NIS as it deems necessary and appropriate in the public interest.

6. If, at any time, the DEPARTMENT determines NIS has committed any other violations of the Act, the DEPARTMENT may take any action available to it under the Act.

7. The effective date of this Consent Agreement will be the date of the Director's signature.

DATED this 3<sup>rd</sup> day of Aug., 2006.

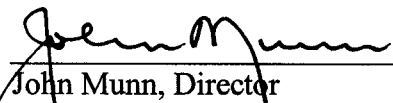
**N.I.S., Inc. d/b/a Paycheck Advance**

By:   
Trina Thomas, President

3116 South 24<sup>th</sup> Street  
Omaha, Nebraska 68108  
(402) 341-0100

DATED this 7<sup>th</sup> day of August, 2006.

**STATE OF NEBRASKA  
DEPARTMENT OF BANKING AND FINANCE**

By:   
John Munn, Director

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