

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

IN THE MATTER OF:	)	
	)	
N.I.S., Inc.,	)	
d/b/a Paycheck Advance,	)	
3116 South 24 <sup>th</sup> Street,	)	FINDINGS OF FACT
Omaha, Douglas County, Nebraska;	)	
	)	
N.I.S., Inc.,	)	CONCLUSIONS OF LAW
d/b/a Paycheck Advance,	)	
2012 Cornhusker Road, Suite 300,	)	
Bellevue, Sarpy County, Nebraska;	)	AND
	)	
and	)	
	)	CONSENT AGREEMENT
N.I.S., Inc.,	)	
d/b/a Paycheck Advance,	)	
2110 East Court Street,	)	
Beatrice, Gage County, 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. 2008; Supp. 2009) (“the Act”). Pursuant to Neb. Rev. Stat. § 45-920 (Cum. Supp. 2008), 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; N.I.S., Inc., d/b/a Paycheck Advance, 2012 Cornhusker Road, Suite 300, Bellevue, Sarpy County, Nebraska; and N.I.S., Inc., d/b/a Paycheck Advance, 2110 East Court Street, Beatrice, Gage County, Nebraska (“N.I.S.”). As a result of such examinations, and being duly advised and informed in these matters, the Director and N.I.S. enter into the following Findings of Fact, Conclusions of Law, and Consent Agreement.

## **FINDINGS OF FACT**

1. N.I.S. holds delayed deposit services business licenses under the Act. License #1803 was originally issued on September 29, 1994, to the Omaha, Douglas County, Nebraska location; license #1936 was originally issued on February 9, 2004, to the Bellevue, Sarpy County, Nebraska location; and license #1916 was originally issued on August 10, 2004, to the Beatrice, Gage County, Nebraska location. The licenses have been renewed annually on May 1<sup>st</sup> since that time, pursuant to Neb. Rev. Stat. § 45-910 (Cum. Supp. 2008).

2. On December 10, 2007, and March 9, 2009, the DEPARTMENT commenced examinations of the N.I.S. Omaha, Douglas County, Nebraska locations, pursuant to Neb. Rev. Stat. § 45-920 (Cum. Supp. 2008).

3. The December 10, 2007 Report of Examination (“Douglas County 2007 Report”) was forwarded to N.I.S. on June 9, 2008. The March 9, 2009 Report of Examination (“Douglas County 2009 Report”) was forwarded to N.I.S. on April 23, 2009. The Reports noted a number of violations of the Act. N.I.S. submitted responses received by the DEPARTMENT on July 2, 2008, for the Douglas County 2007 Report, and on May 18, 2009, for the Douglas County 2009 Report.

4. On December 19, 2007, the DEPARTMENT commenced an examination of the N.I.S. Bellevue, Sarpy County, Nebraska locations, pursuant to Neb. Rev. Stat. § 45-920 (Cum. Supp. 2008).

5. The December 19, 2007 Report of Examination (“Sarpy County 2007 Report”) was forwarded to N.I.S. on July 8, 2008. The Report noted a number of violations of the Act. N.I.S. submitted a response received by the DEPARTMENT on July 28, 2008.

6. On March 20, 2007, the DEPARTMENT commenced an examination of the N.I.S. Beatrice, Gage County, Nebraska location, pursuant to Neb. Rev. Stat. § 45-920 (Cum. Supp. 2008).

7. The March 20, 2007 Report of Examination (“Gage County 2007 Report”) was forwarded to N.I.S. on April 11, 2007. The Report noted a number of violations of the Act. N.I.S. submitted a response received by the DEPARTMENT on May 21, 2007.

8. The DEPARTMENT has reviewed the responses submitted by N.I.S. and has taken them into consideration in determining the appropriate actions to be taken in this matter.

9. The previous regular examinations of the Douglas County, Nebraska location, conducted December 19, 2002 (“2002 Exam”); October 29, 2003 (“2003 Exam”); October 18, 2004 (“2004 Exam”); November 30, 2005 (“2005 Exam”); and August 8, 2006 (“2006 Exam”) also noted a number of violations of the Act. These violations were cited in the corresponding Consent Agreements between N.I.S. and the DEPARTMENT with the effective dates of July 24, 2003; April 26, 2004; May, 27, 2005; August 7, 2006; and August 18, 2008 respectively. Repeat violations will be noted below.

10. References in this Consent Agreement to customers of N.I.S. will be by way of initials, in order to protect the privacy of such customers. N.I.S. knows or should know the identity of these customers. If N.I.S. is unable to ascertain the identity of these customers, the DEPARTMENT will provide a list of these customers upon receipt of a written request.

11. The Douglas County 2007 Report noted sixteen (16) instances where customer records were not properly maintained. The Douglas County 2009 Report noted five (5)

instances where N.I.S. failed to properly maintain customer records for RS, SH, LB, DB, and EG.

12. Failure by N.I.S. to properly maintain customer records in twenty-one (21) instances represents twenty-one (21) separate repeat violations of Neb. Rev. Stat. § 45-915.01(2) (Cum. Supp. 2008) as noted in the Douglas County 2006 Exam and corresponding Consent Agreement.

13. The Douglas County 2007 Report noted five (5) instances where N.I.S. failed to disclose the annual percentage rate (“APR”) to customers DF, TB, LM (2), and TD.

14. Failure by N.I.S. to disclose the APR to customers in five (5) instances represents five (5) repeat violations of Neb. Rev. Stat. § 45-917(1)(a) (Cum. Supp. 2008) as noted in the Douglas County 2006 Exam and corresponding Consent Agreement.

15. The Sarpy County 2007 Report noted seven (7) instances where checks for customers WK, JP (2), JW (2), and SW (2) were held longer than statutorily allowed. The Douglas County 2007 Report noted two (2) instances where checks for customer PC were held longer than statutorily allowed.

16. The holding of checks by N.I.S. longer than statutorily allowed represents seven (7) separate violations of Neb. Rev. Stat. § 45-919(1)(c) (Cum. Supp. 2008) for its Sarpy County office and two (2) separate repeat violations of Neb. Rev. Stat. § 45-919(1)(c) (Cum. Supp. 2008) for its Douglas County office as noted in the last five regular examinations and corresponding Consent Agreements.

17. The Douglas County 2009 Report noted one (1) instance where N.I.S. failed to maintain a Same Day Transaction Verification Form (“SDTVF”) for customer PZ.

18. Failure of N.I.S. to maintain a SDTVF in one (1) instance at its Douglas County, Nebraska location, represents a violation of Neb. Rev. Stat. § 45-919(1)(g) (Cum. Supp. 2008) and Neb. Rev. Stat. § 45-915.01(2) (Cum. Supp. 2008).

19. The Douglas County 2007 Report noted twenty-nine (29) instances where N.I.S. failed to obtain completed SDTVFs for customers. The Douglas County 2009 Report noted ten (10) instances where N.I.S. failed to obtain completed SDTVFs for customers.

20. Failure of N.I.S. to obtain completed SDTVFs in thirty-nine (39) instances at its Douglas County, Nebraska locations, represents thirty-nine (39) separate violations of Neb. Rev. Stat. § 45-919(1)(g) (Cum. Supp. 2008) and Neb. Rev. Stat. § 45-915.01(2) (Cum. Supp. 2008).

21. The Gage County 2007 Report noted three (3) instances for customer BN where the amounts submitted for the automated clearing house (“ACH”) transactions were different than the amounts stated in the customer’s partial payment agreement. The Douglas County 2007 Report noted five (5) instances where the ACH transactions for customers WB (incorrect ACH amount), TD (split ACH payment), LJ (split ACH payment), KR (ACH submitted twice), and TP (split ACH payment) were done incorrectly.

22. Failure of N.I.S. to correctly complete the customer ACH transactions in eight (8) instances at its Gage County and Douglas County locations represents eight (8) separate violations of DEPARTMENT Delayed Deposit Services Interpretive Opinion #6 and National Automated Clearing House Association (“NACHA”) Rules.

23. The DEPARTMENT could conclude that the actions of N.I.S. warrant the commencement of administrative proceedings to determine 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. 2008).

24. The DEPARTMENT incurred a minimum of one thousand two hundred fifty 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.

2. Neb. Rev. Stat. § 45-915.01(2) (Cum. Supp. 2008) provides that a licensee shall, at a minimum, include in its books and records copies of all application materials relating to makers, disclosure agreements, checks, payment receipts, and proofs of compliance required by Section 45-919.

3. Neb. Rev. Stat. § 45-917(1)(a) (Cum. Supp. 2008) provides that every licensee shall, at the time any delayed deposit services transaction is made, give to the maker of the check, or if there are two or more makers, to one of them, a notice written in plain English disclosing the fee to be charged for the transaction.

4. Neb. Rev. Stat. § 45-919(1)(c) (Cum. Supp. 2008) provides that no licensee shall hold or agree to hold a check for more than thirty-four days.

5. Neb. Rev. Stat. § 45-919(1)(g) (Cum. Supp. 2008) sets forth acts which are prohibited to a licensee. These acts include entering into another delayed deposit transaction with the same maker on the same business day as the completion of a delayed deposit

transaction unless prior to entering into the transaction the maker and the licensee verify on a form prescribed by the DEPARTMENT that completion of the prior delayed deposit transaction has occurred. The DEPARTMENT has prescribed the SDTVF for this purpose.

6. DEPARTMENT Delayed Deposit Services Interpretative Opinion #6 states that a licensee may collect a check by ACH processing after a check has been presented and returned to the licensee and the licensee follows NACHA processing rules.

7. Neb. Rev. Stat. § 45-925 (Cum. Supp. 2008) 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.

8. The facts listed in the above Findings of Fact constitute a sufficient basis for the Director to have determined that N.I.S. 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. 2008).

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

10. It is in the best interest of N.I.S., and it is in the best interest of the public, for N.I.S. and the DEPARTMENT to resolve the issues included herein.

### **CONSENT AGREEMENT**

The DEPARTMENT and N.I.S. agree as follows:

Stipulations: In connection with this Consent Agreement, N.I.S. 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 December 10, 2007 and March 9, 2009 examinations of the N.I.S. Omaha, Douglas County, Nebraska locations; the DEPARTMENT's December 19, 2007 examination of the N.I.S. Bellevue, Sarpy County, Nebraska location; and the DEPARTMENT's March 20, 2007 examination of the N.I.S. Beatrice, Gage County, Nebraska location. 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.

N.I.S. further represents as follows:

1. N.I.S. 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. N.I.S. 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, N.I.S. shall pay a fine of five thousand dollars (\$3,000.00) for failing to properly maintain customer records at its Douglas County, Nebraska locations, in repeat violation of Neb. Rev. Stat. § 45-915.01(2) (Cum. Supp. 2008).



2. Within ten (10) days after the effective date of this Consent Agreement, N.I.S. shall pay a fine of two hundred fifty dollars (\$250.00) for each of the five (5) instances where it failed to disclose the APR to its customers at its Douglas County, Nebraska location, in repeat violation of Neb. Rev. Stat. § 45-917(1)(a) (Cum. Supp. 2008).

3. Within ten (10) days after the effective date of this Consent Agreement, N.I.S. shall pay a fine of one hundred dollars (\$100.00) for each of the seven (7) instances where it held customer checks longer than statutorily allowed at its Sarpy County, Nebraska locations, in violation of Neb. Rev. Stat. § 45-919(1)(c) (Cum. Supp. 2008).

4. Within ten (10) days after the effective date of this Consent Agreement, N.I.S. shall pay a fine of five thousand dollars (\$5,000.00) for holding customer checks longer than statutorily allowed at its Douglas County, Nebraska locations, in five repeat violations of Neb. Rev. Stat. § 45-919(1)(c) (Cum. Supp. 2008).

5. Within ten (10) days after the effective date of this Consent Agreement, N.I.S. shall pay a fine of one hundred dollars (\$100.00) for failing to maintain a SDTVF at its Douglas County, Nebraska locations, in violation of Neb. Rev. Stat. § 45-919(1)(g) (Cum. Supp. 2008) and Neb. Rev. Stat. § 45-915.01(2) (Cum. Supp. 2008).

6. Within ten (10) days after the effective date of this Consent Agreement, N.I.S. shall pay a fine of fifty dollars (\$50.00) for each of the thirty-nine (39) instances where it failed to obtain a completed SDTVF at its Douglas County, Nebraska locations in violation of Neb. Rev. Stat. § 45-919(1)(g) (Cum. Supp. 2008) and Neb. Rev. Stat. § 45-915.01(2) (Cum. Supp. 2008).

7. Within ten (10) days after the effective date of this Consent Agreement, N.I.S. shall submit to the DEPARTMENT a copy of the agreement with its financial institution(s)

regarding processing of ACH transactions and provide the DEPARTMENT with a list of the names of all employees who are submitting/processing ACH transactions.

8. Within thirty (30) days after the effective date of this Consent Agreement, N.I.S. shall submit to the DEPARTMENT a plan for the training of said employees regarding proper submission of ACH transactions. This plan shall include copies of any proposed training materials (if in-house training is contemplated) or a copy of the training agenda if external training is proposed.

9. Within ninety (90) days after the effective date of this Consent Agreement, N.I.S. shall certify that all of said employees have been trained in proper submission of ACH transactions. N.I.S. shall train every new employee who may process ACH transactions before that employee is allowed to process any ACH transaction, and shall maintain a record of the training of each such employee for review by the DEPARTMENT.

10. Within ten (10) days after the effective date of this Consent Agreement, N.I.S. shall pay the DEPARTMENT's investigation costs in the amount of one thousand two hundred fifty dollars (\$1,250.00).

11. The total amount of the fine, fourteen thousand dollars (\$12,000.00), plus the total amount of investigation costs, one thousand two hundred fifty dollars (\$1,250.00), shall be payable in one check or money order in the amount of fifteen thousand two hundred fifty dollars (\$13,250.00) to the DEPARTMENT.

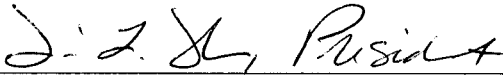
12. In the event N.I.S. fails to comply with any of the provisions of this Consent Agreement, the DEPARTMENT may commence such action regarding N.I.S. as it deems necessary and appropriate in the public interest.

13. If, at any time, the DEPARTMENT determines N.I.S. has committed any other violations of the Act, the DEPARTMENT may take any action available to it under the Act.

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

DATED this 15 day of December, 2009.

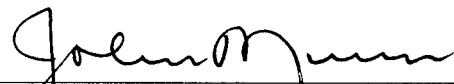
**N.I.S. Inc.**  
**d/b/a Paycheck Advance**

By:   
Trina Thomas, President

3270 Folkways Blvd., Suite 200  
Lincoln, Ne 68504  
(402) 464-7446

DATED this 16<sup>th</sup> day of December, 2009.

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

By:   
John Munn, Director

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