

STATE OF NEBRASKA
Department of Banking & Finance

IN THE MATTER OF:)	
)	
The Smart Group, L.P.)	FINDINGS OF FACT
d/b/a SmartNote)	CONCLUSIONS OF LAW
9601 Amberglen Boulevard, Suite 140)	AND
Austin, Texas)	CONSENT AGREEMENT
)	

NMLS No. 1367273

THIS MATTER comes before the Nebraska Department of Banking and Finance (“Department”), by and through its Director, pursuant to its authority under the Nebraska Money Transmitters Act, Neb. Rev. Stat. §§ 8-2701 to 8-2747 (Cum. Supp. 2016; LB 185, 2017; LB 186, 2017) (the “Act”). Pursuant to Neb. Rev. Stat. § 8-2744 (Cum. Supp. 2016), the Department has investigated alleged violations of the Act by The Smart Group, L.P., d/b/a SmartNote, 9601 Amberglen Boulevard, Suite 140, Austin, Texas (“Smart Group”). As a result of such investigation, and being duly advised and informed in the matter, the Director and Smart Group enter into the following Findings of Fact, Conclusions of Law, and Consent Agreement (“Consent Agreement”).

FINDINGS OF FACT

1. Smart Group submitted a Money Transmitter License Application to the Department through the Nationwide Mortgage Licensing System (“NMLS”). Smart Group had not previously been licensed by the Department.

2. Smart Group has represented to the Department that it has transacted Nebraska business as a money transmitter since 2005, conducting numerous transactions. Smart Group collected significant fees for those transactions.

3. Smart Group represents that it has ceased acquiring new customers and has acquired no new customers in 2017. Smart Group will continue to service its existing customers.

4. The Department incurred a minimum of One Thousand Dollars (\$1,000.00) in investigation costs in this matter.

CONCLUSIONS OF LAW

1. Neb. Rev. Stat. § 8-2716 (Cum. Supp. 2016) defines money transmission as the business of the sale or issuance of payment instruments or stored value or of receiving money or monetary value for transmission to a location within or outside of the United States by any and all means, including wire, facsimile, or electronic transfer. Notwithstanding any other provision of law, money transmission also includes bill payment services not limited to the right to receive payment of any claim for another but does not include bill payment services in which an agent of a payee receives money or monetary value of behalf of such payee.

2. Neb. Rev. Stat. § 8-2725 (Cum. Supp. 2016) provides that a person shall not engage in money transmission without a license issued pursuant to the Nebraska Money Transmitters Act.

3. Neb. Rev. Stat. § 8-2726 (Cum. Supp. 2016) provides that to qualify for a license under the Nebraska Money Transmitters Act, an applicant at the time of filing for a license, and a licensee at all times after a license is issued, shall satisfy the following requirements: (a) Each applicant or licensee must have a net worth of not less than fifty thousand dollars; (b) The financial condition and responsibility, financial and business experience, and character and

general fitness of the applicant or licensee must reasonably warrant the belief that the applicant's or licensee's business will be conducted honestly, fairly, and in a manner commanding the confidence and trust of the community; (c) Each corporate applicant or licensee must be in good standing in the state of its incorporation; and (d) Each applicant or licensee must be registered or qualified to do business in the state.

4. Neb. Rev. Stat. § 8-2744 (Cum. Supp. 2016) provides that if the Director finds, after notice and hearing in accordance with the Administrative Procedure Act, that any person has violated the Nebraska Money Transmitters Act or any rule, regulation, or order of the Director thereunder, the Director may order such person to pay (a) an administrative fine of not more than five thousand dollars for each separate violation and (b) the costs of investigation.

5. The facts listed in above Findings of Fact Nos. 1 and 2 constitute a sufficient basis for the Director to have determined that Smart Group has violated the Act by engaging in unlicensed activity. Each of Smart Group's individual money transmitter transactions constitute a separate violation of Neb. Rev. Stat. § 8-2725 (Cum. Supp. 2016). As a result, the Director would have cause to deny Smart Group's license application and/or could institute a proceeding to impose an administrative fine in an amount of not more than five thousand dollars for each separate violation, plus costs of investigation, in accordance with Neb. Rev. Stat. § 8-2744 (Cum. Supp. 2016).

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 Smart Group, and it is in the best interest of the public, for Smart Group and the Department to resolve the issues included herein.

STIPULATIONS

In connection with this Consent Agreement, Smart Group and the Director stipulate to the following:

1. The Department has jurisdiction as to all matters herein.
2. Smart Group neither admits nor denies the Findings of Fact and Conclusions of Law set forth above.
3. This Consent Agreement shall resolve all matters raised by the Department's investigation of Smart Group in connection with its application for a license under the Act. Should future circumstances warrant, the facts from this matter may be considered in future administrative action by the Department.
4. This Consent Agreement shall be in lieu of all other proceedings available to the Department, except as specifically referenced in this Consent Agreement.

Smart Group further represents as follows:

1. Smart Group 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. Smart Group 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 Neb. Rev. Stat. § 8-2725 (Cum. Supp. 2016) solely for the purpose of this Consent Agreement and for no other purpose.

CONSENT AGREEMENT

IT IS THEREFORE AGREED as follows:

1. Within ten days after the effective date of this Consent Agreement, Smart Group shall pay a fine of Forty Five Thousand Dollars (\$45,000.00) for its numerous violations of Neb. Rev. Stat. § 8-2725 (Cum. Supp. 2016).

2. Within ten days after the effective date of this Consent Agreement, Smart Group shall pay the Department's investigation costs in this matter in the amount of One Thousand Dollars (\$1,000.00).

3. The total amount of the fine, Forty Five Thousand Dollars (\$45,000.00), plus the total amount of investigation costs, One Thousand Dollars (\$1,000.00), shall be payable in one check or money order in the amount of Forty Six Thousand Dollars (\$46,000.00) to the Department.

4. Smart Group agrees that it will not obtain new customers without first notifying and obtaining prior written approval from the Department.

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

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

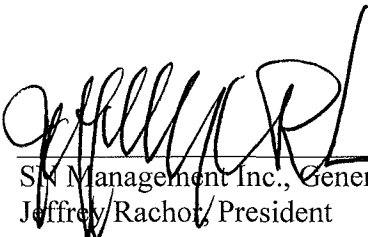
7. Within ten business days after the Department's receipt of Smart Group's full payment of all fines and costs, the Department shall approve Smart Group's Money Transmitter License Application through the NMLS. The license will expire the last day of December 2017, unless sooner suspended, revoked, cancelled, or surrendered.

8. Within thirty (30) business days after the effective date of this Consent Agreement, Smart Group shall update its disclosure record on the NMLS to include this Consent Agreement.

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

DATED this 15th day of December, 2017.

THE SMART GROUP, L.P.

By: 
SM Management Inc., General Partner
Jeffrey Rachot, President

9601 Amberglen Boulevard, Suite 140
Austin, Texas 78729

DATED this 4 day of December, 2017.

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

By: 
Mark Quandahl, Director

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