

STATE OF NEBRASKA
Department of Banking & Finance

IN THE MATTER OF:)	
)	FINDINGS OF FACT
Great Plains Specialty Finance, Inc.,)	CONCLUSIONS OF LAW
d/b/a Check 'n Go,)	AND
9517 Q Street,)	CONSENT AGREEMENT
Omaha, Douglas 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 Great Plains Specialty Finance, Inc., d/b/a Check ‘n Go, 9517 Q Street, Omaha, Douglas County, Nebraska (“CNG”). As a result of such examination, and being duly advised and informed in the matter, the Director and CNG enter into the following Findings of Fact, Conclusions of Law, and Consent Agreement.

FINDINGS OF FACT

1. CNG holds a delayed deposit services business license under the Act. License #1840 was originally issued on December 3, 1997. The license has been renewed annually on May 1st since that time, pursuant to Neb. Rev. Stat. § 45-910 (Cum. Supp. 2008).

2. On December 17, 2007 and February 2, 2009, the DEPARTMENT commenced separate examinations of CNG pursuant to Neb. Rev. Stat. § 45-920 (Cum.

Supp. 2008). These examinations included on-site visitations of CNG's Omaha, Douglas County, Nebraska locations.

3. The December 17, 2007 Report of Examination ("2007 Report") was forwarded to CNG on June 9, 2008. The February 2, 2009 Report of Examination ("2009 Report") was forwarded to CNG on April 3, 2009. The Reports noted a number of violations of the Act. CNG submitted responses received by the DEPARTMENT on July 22, 2008, for the 2007 Report, and on May 6, 2009, for the 2009 Report.

4. The previous regular examinations of CNG were conducted on November 8, 2005, and October 25, 2006; each noted a number of violations of the Act. These violations were also cited in corresponding Consent Agreements with the effective dates of August 9, 2006 and January 8, 2009 respectively. Repeat violations will be noted below.

5. The DEPARTMENT has reviewed the responses submitted by CNG and has taken them into consideration in determining the appropriate actions to be taken in this matter.

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

7. The 2007 Report noted eight instances where CNG failed to properly maintain customer files for AD, TP(2), DD, IQ, BC, NO, and JB and failed to maintain copies of customer checks from July 14, 2006 through February 1, 2007.

8. CNG's failure to properly maintain customer records and maintain copies of customer checks represents numerous violations of Neb. Rev. Stat. § 45-915.01(2) (Cum. Supp. 2008).

9. The 2007 Report noted twenty-eight (28) instances where the records of another business were not kept separate and apart from CNG's delayed deposit services records for customers BC(17), LA(5), and TP(6).

10. CNG's failure to maintain the books, accounts, and records of its delayed deposit services business separate and apart from the books, accounts and records of another business in twenty-eight (28) instances represents twenty-eight (28) separate violations of Neb. Rev. Stat. § 45-916(1) (Cum. Supp. 2008).

11. The 2009 Report noted one (1) instance where CNG held more than two checks for customer JP.

12. CNG's holding of more than two checks for a single maker represents a repeat violation of Neb. Rev. Stat. § 45-919(1)(a) (Cum. Supp. 2008) as noted in both previous examinations and corresponding Consent Agreements.

13. The 2007 Report noted one instance where CNG held checks for customer PK with an aggregate face value greater than \$500.00. The 2009 Report noted one instance where CNG held checks for customer JP with an aggregate face value greater than \$500.00.

14. CNG's holding of checks from a single maker with an aggregate face value greater than \$500.00 in two (2) instances represents two (2) separate repeat violations of Neb. Rev. Stat. § 45-919(1)(b) (Cum. Supp. 2008) as noted in both previous examinations and corresponding Consent Agreements.

15. The 2007 Report noted seventeen (17) instances where CNG held checks for customers longer than statutorily allowed. The 2009 Report noted fifteen (15) instances where checks were held for customers longer than statutorily allowed.

16. CNG's holding of customers' checks longer than statutorily allowed in thirty-two (32) instances represents thirty-two (32) separate repeat violations of Neb. Rev. Stat. § 45-919(1)(c) (Cum. Supp. 2008) as noted in both previous examinations and corresponding Consent Agreements.

17. The 2007 Report noted two (2) instances where CNG failed to maintain Same Day Transaction Verification Forms ("SDTVFs") for customers AN and JT. The 2009 Report noted one instance where CNG failed to maintain a SDTVF for customer AL.

18. CNG's failure to maintain SDTVFs for customers in three (3) instances represents three (3) separate repeat violations of Neb. Rev. Stat. § 45-919(1)(g) (Cum. Supp. 2008) and Neb. Rev. Stat. § 45-915.01(2) (Cum. Supp. 2008) as noted in the 2006 examination and corresponding Consent Agreement.

19. The 2007 Report noted seventy-eight (78) instances where CNG failed to obtain completed SDTVFs for its customers. The 2009 Report noted thirty-two (32) instances where CNG failed to obtain completed SDTVFs for its customers.

20. CNG's failure to obtain completed SDTVFs in one hundred ten (110) instances represents one hundred ten (110) 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 2007 Report noted one hundred thirty-five (135) instances where automated clearing house ("ACH") transactions were processed prior to the date allowed

by DEPARTMENT Delayed Deposit Services Interpretative Opinion #6. The 2009 Report cited numerous instances where the ACH transactions were improperly processed, which also resulted in the violations cited under Finding of Facts #s 11-14, inclusive.

22. CNG's failure to properly conduct ACH transactions represents numerous violations of DEPARTMENT Delayed Deposit Services Interpretative Opinion #6 and National Automated Clearing House Association ("NACHA") Rules.

23. The DEPARTMENT could conclude that the actions of CNG 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 seven hundred fifty dollars (\$750.00) 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. § 45-916(1) (Cum. Supp. 2008) provides that the licensee may operate a delayed deposit services business at a location where any other business is operated or in association or conjunction with any other business if the books, accounts, and records of the delayed deposit services business are kept and maintained separate and apart from the books, accounts, and records of the other business.

4. Neb. Rev. Stat. § 45-919(1)(a) (Cum. Supp. 2008) provides that no licensee shall at any one time hold from any one maker more than two checks.

5. Neb. Rev. Stat. § 45-919(1)(b) (Cum. Supp. 2008) provides that no licensee shall at any one time hold from any one maker a check or checks in an aggregate face amount of more than five hundred dollars.

6. 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.

7. 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.

8. 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.

9. 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.

10. The facts listed in the above Findings of Fact constitute a sufficient basis for the Director to have determined that CNG 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).

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

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

CONSENT AGREEMENT

The DEPARTMENT and CNG agree as follows:

Stipulations: In connection with this Consent Agreement, CNG 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 17, 2007 and February 2, 2009 examinations of CNG's Omaha, Douglas County, Nebraska locations. 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.

CNG further represents as follows:

1. CNG 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. CNG 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, CNG shall pay a fine of five thousand dollars (\$5,000.00) for the numerous times CNG failed to properly maintain customer files in 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, CNG shall pay a fine of fifty dollars (\$50.00) for each of the twenty-eight times CNG failed to maintain the books, accounts, and records of the delayed deposit services business separate and apart from the books, accounts, and records of another business in violation of Neb. Rev. Stat. § 45-916(1) (Cum. Supp. 2008).

3. Within ten (10) days after the effective date of this Consent Agreement, CNG shall pay a fine of five hundred dollars (\$500.00) for holding more than two checks from a single maker in repeat violation of Neb. Rev. Stat. § 45-919(1)(a) (Cum. Supp. 2008).

4. Within ten (10) days after the effective date of this Consent Agreement, CNG shall pay a fine of five hundred dollars (\$500.00) for each of the two (2) instances it held

checks from a single maker with an aggregate face value greater than \$500.00 in repeat violation of Neb. Rev. Stat. § 45-919(1)(b) (Cum. Supp. 2008).

5. Within ten (10) days after the effective date of this Consent Agreement, CNG shall pay a fine of ten thousand dollars (\$10,000.00) for the thirty-two times CNG held customer checks longer than statutorily allowed in repeat violation of Neb. Rev. Stat. § 45-919(1)(c) (Cum. Supp. 2008).

6. Within ten (10) days after the effective date of this Consent Agreement, CNG shall pay a fine of two hundred fifty dollars (\$250.00) for each of the three instances CNG failed to maintain SDTVFs in repeat 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, CNG shall pay a fine of five thousand dollars (\$5,000.00) for the one hundred ten (110) instances CNG failed to obtain a completed SDTVF in violation of Neb. Rev. Stat. § 45-919(1)(g) (Cum. Supp. 2008) and Neb. Rev. Stat. § 45-915.01(2) (Cum. Supp. 2008).

8. Within ten (10) days after the effective date of this Consent Agreement, CNG 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.

9. Within thirty (30) days after the effective date of this Consent Agreement, CNG 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.

10. Within ninety (90) days after the effective date of this Consent Agreement, CNG shall certify that all of said employees have been trained in proper submission of ACH transactions. CNG 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.

11. Within ten (10) days after the effective date of this Consent Agreement, CNG shall pay the DEPARTMENT's investigation costs in the amount of seven hundred fifty dollars (\$750.00).

12. The total amount of the fines, twenty-three thousand six hundred fifty dollars (\$23,650.00), plus the total amount of investigation costs, seven hundred fifty dollars (\$750.00), shall be payable in one check or money order in the amount of twenty-four thousand four hundred dollars (\$24,400.00) to the DEPARTMENT.

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


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

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

DATED this 11 day of November, 2009.

**Great Plains Specialty Finance, Inc.,
d/b/a Check 'N Go**

By: _____



Stephen J. Schaller

7755 Montgomery Road, Suite 400
Cincinnati, OH 45236

DATED this 12th day of November, 2009.

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

By: _____


John Munn, Director

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