



# *The Commonwealth of Massachusetts*

*Office of the Commissioner of Banks*

*One South Station*

*Boston, Massachusetts 02110*

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STEVEN L. ANTONAKES  
COMMISSIONER OF BANKS

November 9, 2007

Lynn B. Barr, Esq.  
Goodwin Procter LLP  
Exchange Place  
Boston, MA 02109

Dear Ms. Barr:

This letter is in response to your correspondence of September 14, 2007 to the Division of Banks (the "Division") on behalf of your Massachusetts-based client (the "Company") that currently holds four licenses issued by the Division. You inquire, based on the current nature of your client's business, as to the necessity of maintaining these four licenses. On September 25, 2007, the Division received a letter from ACA International which also discussed the necessity of maintaining multiple licenses for the activities described in your letter.

According to your letter, the Company is licensed in the Commonwealth as a debt collector pursuant to G.L. c. 93§24-28; a small loan company pursuant to G.L. c. 140, §§96-114; a motor vehicle sales finance company pursuant to G.L. c. 255B; and a retail installment sales finance company pursuant to G.L. c. 255D. The Company intends to maintain its debt collector license and, because the Company is engaged only in the business of acquiring defaulted debt, seeks the Division's opinion as to the continued necessity of maintaining the other listed licenses. You do not include the name of your client and the Division is not readily aware of the prior circumstances under which your client applied for and received these four licenses. It appears your correspondence may have been prompted in part due to the Division's position adopted in 2006 requiring a debt buyer to obtain a license as a debt collector.

As described in your correspondence, the Company is a consumer receivables asset management company focused on the purchase, management, and liquidation of defaulted consumer accounts receivable, including accounts receivable relating to defaulted motor vehicle and non-motor vehicle retail installment contracts. The Company also performs other services in the receivables market, such as valuation services for financial institutions and debt collection services for third parties.

The Company does not originate or extend credit and does not presently originate any retail installment contracts, loans, or accounts receivables, nor does it rewrite these types of debts or acquire them when they are current. The Company acquires accounts receivables, pursuant to a negotiated accounts receivable purchase agreement, after an account has been originated and charged-off as uncollectible from either the original credit grantor or from another debt buyer. When the Company acquires a debt portfolio, the Company assumes the risk of collectibility; however, the risk of enforceability remains with the original seller. The Company will then analyze the debt portfolio for collectibility and will begin the collection process, in compliance with the Fair Debt Collection Practices Act and Commonwealth's laws and regulations governing debt collection.



As you are aware, the Division issued Opinion 99-094 dated October 8, 1999 pertaining to an entity which purchased defaulted motor vehicle and non-motor vehicle retail installment contracts, installment loans, small loans and credit card debt which debt had been charged-off by the original creditor and any collateral would have been repossessed and sold. The opinion concluded that the entity was purchasing the right to collect the deficiency owed to the original seller, and not the original amount owed on the installment contract and held that a license as a retail installment seller under G.L. c. 255B and 255D would not be required. However, if the company were to purchase the original obligation, the provisions of chapter 255B and 255D would be applicable. The facts of the opinion letter further state that the entity was offering debtors a means of settling the debt that includes issuance of a new unsecured credit card account. The Opinion further concluded that the entity would be required to obtain a small loan license to offer such a credit program in the event that the amount of credit extended is \$6,000.00 or less with an interest rate which exceeded 12% per annum of the loan amount. See full Opinion 99-094.

According to your letter, the Company does not offer a balance transfer credit card settlement program like the one described in Opinion 99-094. You also state that the Company does not originate or extend credit and does not originate any retail installment contracts, loans, or accounts receivables, nor does it rewrite these types of debts or acquire them when they are current. Based on this information, it is the Division's position that the Company does not need to maintain a small loan company license under G. L. c. 140, §§96-114.

Based on the Division's position set forth in Opinion 99-094 and in conjunction with your statement that the Company is purchasing receivables related to defaulted motor vehicle and non-motor vehicle retail installment contracts which accounts which have been charged-off as uncollectible, it is the Division's position that the Company does not need to maintain a retail installment sales finance company license under either chapter 255B or chapter 255D of the Massachusetts General Laws.

On June 16, 2006, the Division issued an Industry Letter relative to the applicability of the debt collector licensing requirements to debt buyers, so called. The following two paragraphs are excerpts from the Division's Industry Letter:

*"Federal courts have concluded that a person purchasing a debt after default and whose principal activity was the collection of debt was a debt collector within the purview of the FDCPA. See, for example, Kimber v. Federal Financial Corp., 668 F. Supp. 1480 which concluded that the defendant corporation, even though it was collecting debts for itself, was a debt collector within the meaning of the FDCPA "because the corporation regularly collects debts and debt collection is its principal purpose, and because the debts the corporation collects were already in default when they were assigned to the corporation and thus the corporation falls within the assignee exception to the definition of creditor." See also In Little v. World Financial Network, Inc. Civil Action No. N-89-346 (D. Conn. July 15, 1990)....*

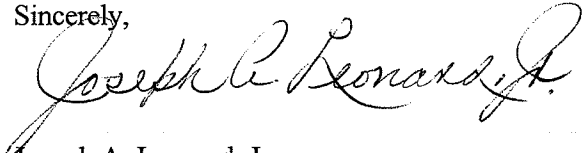
*In summary, the Commonwealth's Debt Collection Law models the FDCPA. Federal courts have ruled that a 'debt buyer' is subject to the FDCPA. The Federal Trade Commission has successfully taken action against 'debt buyers' through its enforcement authority under the FDCPA. Based upon the use of the same language in the Commonwealth's Debt Collection Law and the FDCPA, it is the position of the Division that the Division should follow the interpretations of the FDCPA decided by federal courts and implemented as well as enforced by the Federal Trade Commission. Accordingly, a 'debt buyer' who otherwise meets the definition of a "debt collector", would be subject to the Commonwealth's Debt Collection Law and would now be required to obtain a license from the Division in order to collect debt from a consumer in Massachusetts arising out of a transaction primarily involving personal, family or household purposes."*

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It is the Division's position that the Company should maintain its existing license as a debt collector in the Commonwealth.

The conclusions reached in this letter are based solely on the facts presented. Fact patterns which vary from that presented may result in a different position statement by the Division.

Sincerely,

A handwritten signature in cursive script that reads "Joseph A. Leonard, Jr." The signature is written in black ink and is positioned above the typed name.

Joseph A. Leonard, Jr.  
Deputy Commissioner of Banks  
and General Counsel

cc ACA International

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