

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
TOBACCO COMPLIANCE UNIT

---

In the Matter of

CREATIVE CASH FLOW SOLUTIONS, INC.

---

ASSURANCE OF DISCONTINUANCE

Pursuant to New York Executive Law § 63(12), ANDREW M. CUOMO, Attorney General of the State of New York ("Attorney General"), has caused an inquiry to be made into certain business practices of Creative Cash Flow Solutions, Inc. ("CCFS"). As a result of such inquiry, the Attorney General has made the following findings:

1. Creative Cash Flow Solutions, Inc. is a corporation, organized and existing under the laws of the State of New York. CCFS's principal place of business is located at 221 Amityville, New York. Jason Schwartz, residing at 997 Pacific Street, Lindenhurst, New York is its sole Director and President. CCFS is wholly owned by Tina Schwartz Igiessia, a passive investor.

2. CCFS is an independent, privately-held provider of processing services to merchants across the United States. CCFS provides payment processing services used by merchants and is one of the largest providers of electronic payment-processing services.

3. Public Health Law § 1399-ll, entitled "Unlawful Shipment of Cigarettes," makes it unlawful for a person engaged in the business of selling cigarettes to ship or cause to be shipped any cigarettes to any person who is not: (a) a licensed cigarette tax agent or wholesale dealer, or a registered retail dealer; (b) an export warehouse proprietor; or (c) a government officer, employee or agent acting in accordance with his or her official duties.

4. Public Health Law § 1399-ll became effective on or about April 10, 2003 (the

"Implementation Date").

5. Public Health Law § 1399-cc, entitled "Sale of Tobacco Products or Herbal Cigarettes, Rolling Paper or Pipes to Minors Prohibited," provides that tobacco retailers may not sell tobacco products to any person unless the purchaser has demonstrated, through a governmental or educational photographic identification card, that he or she is at least 18 years of age, except that such identification is not required if the purchaser reasonably appears to be at least 25 years of age.

6. Tax Law § 1814, entitled "Cigarette and Tobacco Products Tax," prohibits any person from attempting to "evade or defeat" state cigarette and tobacco products taxes.

7. Penal Law § 260.21, entitled "Unlawfully Dealing with a Child in the Second Degree," prohibits any person from selling tobacco products to children.

8. Penal Law § 115.00, entitled "Criminal Facilitation in the Fourth Degree," prohibits any person, believing it is probable that he or she is rendering aid to a person who intends to commit a crime, from providing such person with means or opportunity to commit such crime, and which in fact aids such person to commit a felony.

9. The Jenkins Act, Section 376 of Title 15 of the United States Code, entitled "Report to State Tobacco Tax Administrator," provides that any person who sells cigarettes in interstate commerce must file certain documents with the tobacco tax administrator of the state into which such cigarettes are sold.

10. Section 1341 of Title 18 of the United States Code, entitled "Frauds and Swindles," prohibits any person from placing any matter in the mails for the purpose of executing a scheme or artifice to obtain money or property by means of false or fraudulent pretenses or

representations.

11. Section 1343 of Title 18 of the United States Code, entitled "Fraud by Wire, Radio or Television," prohibits the transmission of interstate wire communications in furtherance of a scheme to obtain money or property by means of false or fraudulent pretenses or representations.

12. The Contraband Cigarette Trafficking Act, 18 U.S.C. §§ 2341, et seq., prohibits the shipment, receipt, sale, transportation, or distribution of over 10,000 cigarettes that bear no indication of the payment of applicable cigarette excise taxes in the State in which the cigarettes are found, and are found in the possession of a person not authorized to possess the cigarettes. It also prohibits any person "except a tribal government" from selling or distributing over 10,000 cigarettes in a single month without submitting a report to the Attorney General regarding all such sales. 18 U.S.C. § 2343(b)

13. Executive Law § 63 (12) prohibits repeated illegal acts and persistent illegality in carrying on, conducting or transacting business.

14. In 2006, the Attorney General commenced an investigation into whether certain tobacco businesses were engaging in violations of Public Health Law § 1399-ll, Public Health Law § 1399-cc, Tax Law § 1814, Penal Law § 260.21, 15 U.S.C. § 376, 18 U.S.C. § 1341, 18 U.S.C. § 1343 and/or other federal or state laws or regulations; and whether certain other persons were engaged in violations of Public Health Law § 1399-ll, Penal Law § 115.00 and/or other federal or state laws or regulations by aiding and abetting violations of the above-listed federal and state laws.

15. On or about September 19, 2006, the Attorney General caused a Subpoena to be served on CCFS pursuant to Executive Law § 63 (12). Schedule B attached to the Subpoena

identified the documents and sought information about whether CCFS may have facilitated the sales of cigarettes by tobacco businesses in violation of Public Health Law § 1399-ll and Executive Law § 63 (12).

16. CCFS produced certain documents and information in response to the Subpoena, and has cooperated with the Attorney General's investigation.

WHEREAS, CCFS has adopted a formal policy, effective April 2007 that it will not do business with any Internet Cigarette Retailer or Remote Seller; and

WHEREAS, CCFS offers this Assurance of Discontinuance in settlement of any alleged violations of Public Health Law § 1399-ll and Penal Law § 115.00 from the Implementation Date to the Effective Date of this Assurance of Discontinuance; and

WHEREAS, the Attorney General accepts the following assurances pursuant to Executive Law § 63 (15) in lieu of commencing a civil and/or criminal action against CCFS for matters that were the subject of the investigation described in Paragraphs 14, 15 and 16 of this Assurance of Discontinuance;

NOW, THEREFORE, IT IS HEREBY UNDERSTOOD AND AGREED AS FOLLOWS:

A. Definitions:

- A. "Cigarettes" shall have the meaning set forth in N.Y. Tax Law § 470(1).
- B. "Effective Date" shall mean and refer to the date on which this Assurance of Discontinuance is fully and completely executed by the parties hereto.
- C. "Internet Cigarette Retailer" shall mean any business that sells Cigarettes and/or Tobacco Products by way of the internet or online.
- D. "Remote Seller" shall mean any business that sells Cigarettes and/or Tobacco

Products in a non-face-to-face transaction by way of the internet, online, fax or telephone.

- E. "Merchant Agreement" shall mean any agreement, contract or letter to do business between any Internet Cigarette Retailer or Remote Seller and CCFS for services provided by CCFS.
- F. "Tobacco Product" shall have the same meaning set forth in Public Health Law § 1399-aa(5).

**B. General Restrictions**

- 17. CCFS shall at all times comply with Public Health Law § 1399-ll and Penal Law § 115.00.
- 18. Within three months of the Effective Date of this Assurance of Discontinuance, CCFS shall terminate all existing Merchant Agreement with all Internet Cigarette Retailers or Remote Sellers and shall not enter into any new Merchant Agreement with any Internet Cigarette Retailer or Remote Seller.
- 19. Within three months of the Effective Date, CCFS shall no longer provide any electronic funds transfer services to any Internet Cigarette Retailer or Remote Seller.
- 20. CCFS shall at all times maintain a formal policy prohibiting the use of its services for the remote sale/purchase of Cigarettes and/or Tobacco Products and publish such policy on its websites and any other materials.
- 21. CCFS shall revise any and all internal policies to ensure that they are consistent with the terms of this Assurance of Discontinuance and shall train all current and future employees regarding the terms of this Assurance of Discontinuance.

**C. Identification of and Notifications to Internet Cigarette Retailers**

- 22. Within fifteen (15) business days after the Effective Date, CCFS shall correspond in

writing with its general customer base, including any customers engaged in the business of selling Cigarettes and/or Tobacco Products, indicating that CCFS shall no longer provide services to Internet Cigarette Retailers or Remote Sellers within three months of the Effective Date.

23. Within fifteen (15) business days after the Effective Date, CCFS shall provide the Attorney General with a designated contact person to whom the Attorney General or any other governmental authority can provide information relating to: (a) individuals or businesses that are believed to be using CCFS's services to sell Cigarettes or other Tobacco Products ; or (b) any other information relating to this Assurance of Discontinuance.

**D. Access to Information**

24. All communications submitted to the Attorney General pursuant to this Assurance of Discontinuance shall be sent to the attention of:

Dana Biberman, Chief  
Tobacco Compliance Unit  
NYS Attorney General  
120 Broadway  
New York, New York 10271

25. Within thirty (30) business days of receipt of a formal written request, CCFS shall provide the Attorney General with access to any information relating to an Internet Cigarette Retailer or Remote Seller found to have used CCFS' services, as well as access to relevant information relating to CCFS' compliance with the terms of this Assurance of Discontinuance.

26. CCFS shall retain any information relating to its compliance with this Agreement of Discontinuance for a period of not less than three (3) years.

**E. Affidavit of Compliance**

27. Within four (4) months after the Effective Date, a CCFS management official shall file an affidavit with the Attorney General verifying that CCFS is in full compliance with all of the terms of this Assurance of Discontinuance and setting forth the details of all compliance measures undertaken by CCFS pursuant to the terms hereof, with specific reference to the sections of this Assurance of Discontinuance. Such affidavit shall include as attachments sufficient documents reasonably necessary for the Attorney General to determine whether CCFS has complied with this Assurance.

**F. Miscellaneous Provisions**

28. The acceptance of this Assurance of Discontinuance by the Attorney General shall not be deemed or construed as an approval by the Attorney General of any of the activities of CCFS, its officers, directors, employees, assignees and any individual, corporation, subsidiary, or division through which CCFS may now or hereinafter act, or any successors in interest; and none of the parties shall make any representations to the contrary.

29. The acceptance of this Assurance of Discontinuance by CCFS does not constitute a concession that CCFS concurs with the Attorney General's positions or interpretations of the laws described in Paragraphs 3 through 13 of this Assurance of Discontinuance.

30. The acceptance of this Assurance of Discontinuance by CCFS does not constitute an admission of guilt or wrongdoing on the part of CCFS or any admission of any violations of Public Health Law § 1399-ll, Penal Law § 115.00, Executive Law § 63 (12), or any other laws, regulations or administrative pronouncements applicable to the conduct of CCFS' operations.

31. No provision of this Assurance of Discontinuance, or any obligations by CCFS

pursuant to this Assurance of Discontinuance, shall serve as proof of evidence in any legal proceeding, whether commenced or defended by CCFS or any other person, claiming or alleging, in whole or in part, that Public Health Law § 1399-ll is unconstitutional or otherwise unenforceable.

32. This Assurance of Discontinuance constitutes the entire agreement between the Attorney General and CCFS pertaining to the subject matter herein, and represents a voluntary agreement and settlement of the parties' claims and defenses, entered into as a result of arm's length negotiations in which all parties hereto were represented by counsel. The agreements contained herein are made without reliance upon any inducement, statement, promise or representation, other than those expressly contained in this Assurance of Discontinuance.

33. As required by Executive Law § 63 (15), evidence of any violation of this Assurance of Discontinuance shall constitute *prima facie* proof of a violation of the applicable statutes in any civil action or proceeding hereafter commenced by the Attorney General.

34. This Assurance of Discontinuance shall be binding on and apply to CCFS, its officers, directors, employees, affiliates, assignees and any individual, corporation, subsidiary or division through which CCFS may now or hereinafter act, as well as successors in interest.

35. This Assurance of Discontinuance may not be altered, amended, modified or otherwise changed in any respect or particular whatsoever, except in writing duly executed by the parties or their authorized representatives.

36. The individuals executing this Assurance of Discontinuance represent that they have full and complete authority to sign this document and to bind their respective parties to all the terms and conditions set forth herein.

WHEREFORE, the following signatures are affixed hereto effective this 18<sup>th</sup> day of April, 2007.

Dated: Amityville, New York  
March     , 2007

*April 18*

JASON SCHWARTZ.  
President and Director, CCFS

By:



JASON SCHWARTZ  
997 Pacific Street  
Lindenhurst, New York

Dated: New York, New York  
March     , 2007

*April 18*

ANDREW M. CUOMO  
Attorney General of the  
State of New York

By:



DANA BIBERMAN (DB 9878)  
Chief, Tobacco Compliance Unit  
120 Broadway  
New York, New York 10271  
(212) 416-6699