



## EXHIBIT A

Testimony of Jane Azia, Director of Non Depository Institutions and Consumer Protection  
New York State Banking Department

May 14, 2009

### UDMSA and Article 12-C Banking Law

CATEGORY	ARTICLE 12-C BANKING LAW	UNIFORM DEBT MANAGEMENT SERVICES ACT (UDMSA)	BANKING DEPARTMENT COMMENTS/RECOMMENDATIONS
Doing Business Without a License Prohibited	Only a type B not-for-profit in this state or similar not-for-profit from outside this state (BL 579)	Requires not-for-profit status and IRS 501(c)3 designation (579-c)	Neither Article 12-C nor UDMSA address the issue of for-profit debt management service companies.  <b>Recommendation:</b> Tax status should have no bearing on the regulation of services provided.
Application for License	Application required to be in writing, under oath and in the form prescribed by the Superintendent (BL 580)	Application for registration must be in a form prescribed by the Superintendent (580)	Application standards are relatively the same between Article 12-C and UDMSA. Under Article 12-C and associated regulations, the superintendent has the authority to ask for such information as he or she may determine necessary to make a decision.  <b>Recommendation:</b> The application process should be for a license (Article 12-C) and not a mere registration (UDMSA).
Condition for Issuance of	If the Superintendent shall find that the	Superintendent may issue a temporary	Under Article 12-C, an applicant must

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License	financial responsibility, experience, character and general fitness of the applicant ...such as to command the confidence of the community and warrant the belief that the business will be operated honestly, fairly and efficiently (BL 581 (1))	certificate of registration (581)	wait until a decision is made for a permanent license; while UDMSA allows for a temporary license.  <b>Recommendation:</b> It would be in the best interest of the public not to grant a temporary license in order to protect consumers from companies that would fail to meet licensing standards.
Procedures Where Application Denied	Failure of a licensee to agree to provide budgeting, educational and/or counseling services acceptable to the superintendent shall be basis for denial of license (BL 581 (2))	Superintendent may deny a registration if a) application information is materially erroneous or incomplete, b) officer/director has been convicted of a crime or suffered civil judgment, c) applicant or officers have defaulted on payment of money collected for others; d) applicant does not warrant the belief that the business will be operated in compliance with this article (581)  Board of directors is not independent of the applicant's employees and agents is grounds to deny a registration	Both Article 12-C and the UDMSA have good detailed points for grounds for denial.  <b>Recommendation:</b> The points from both should be combined.
License Provisions	License shall be prominently posted in each place of business of the licensee...Each licensee, within 90-days of the close of licensee's fiscal year, shall submit an independently audited financial statements to the superintendent. (BL 581)	Audit for past two years at time of application (580-A(7))  Audit for fiscal year prior to renewal (581-A(2)c)	<b>Article 12-C requires the posting of a license for public display and requires a timely submission of audited financial statements in relation to the fiscal year-end.</b>  <b>Recommendation:</b> The license provisions of Article 12-C should continue.
Changes in Officers or Directors	Licensee shall promptly notify the superintendent of each new officer or director (BL 582)	Only at the time of renewal of registration (587-B (2))	<b>Article 12-C requires the timely notification of changes in management, which is at time of management change as opposed to time of renewal.</b>  <b>Recommendation:</b> The provisions of Article 12-C should continue.

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Changes in Control	It shall be unlawful except with the prior approval of the superintendent for a change of control (BL 583-a)	Not addressed.	Changes in control are not addressed by UDMSA.  <b>Recommendation:</b> The provisions of Article 12-C should continue.
Grounds for Suspension or Revocation	The superintendent may revoke any license if he shall find: a) violations; b) a fact or condition that existed at time of application that warranted a denial; c) conviction of a crime for fraudulent or dishonest acts (BL 584)	Suspension, revocation if insolvent, fact or condition that existed at time of application to deny the application, violations, failure to respond within a reasonable time or in an appropriate manner to communications with the superintendent. (587-A)	Both Article 12-C and the UDMSA have good detailed points for grounds for suspension/revocation.  <b>Recommendation:</b> The points from both should be combined.
Contracts with Debtors; Fees	Form of written contract shall be submitted to the Department, and contain the following elements: 1) complete listing of debtor's obligations; 2) the total fees agreed to for such services; 3) commencement and termination dates; 4) proforma statement of the total fees...expressed as a % of the total obligations; 5) settlement terms in case of cancellation; 6) notice that the debtor may cancel the contract until midnight of the third business day; and 7) terms under which the payments may be made by the debtor. (BL 584-a)	A provider may not impose a fee until the provider and individual has signed agreement.  A provider (budget planner) may not charge a fee exceeding \$50 for consultation – setup; monthly service fee not to exceed \$10 times the number of creditors but not more than \$50.  Debt settlement companies may charge the lesser of \$400 and 4% of the debt in the plan at inception and a monthly fee not to exceed \$10 times number of creditors not more than \$50  Compensation for services in connection with settling a debt may not exceed 30% of the debt savings amount or to the extent it has not been credited against an earlier settlement fee (584-b)	The UDMSA places fee amounts in statute. Fee structure may be handled by regulation. Currently, Part 402.14 requires the superintendent to approve fee structure changes. Current practice is for fees to follow industry standards of \$75 set-up fee and monthly fee up to a maximum of \$50.  <b>Recommendation:</b> Article 12-C prescribes elements of the contract which should be continued and improved by disclosures recommended by the UDMSA.
Additional Consumer Disclosures	Not addressed	UDMSA requires separate written disclosure before execution of an agreement covering such points as: plans are not suitable for all individuals and consumer should ask the provider about other debt settlement ways including	<b>Recommendation:</b> Article 12-C should be modified for additional consumer disclosure prior to the execution of the agreement.  In addition, the debtor should be required

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		bankruptcy; credit rating and scores may be adversely affected; nonpayment of debt may result in increased finance charges or collection proceedings; provider may receive compensation from creditors; and reduction in debt may result in taxable income. (583-c (4) – (7))	to sign the disclosure form; with copies retained by both the provider and the debtor.
Prohibited Activities	1. No person (etc) may make representation of being licensed without a license; 2) No licensee shall advertise...in any manner that may be false or deceptive; 3) Nonlicensed entity may not use the term of budget planner or licensed budget planner;4)No licensee may commingle monies received from debtors; 5) Licensees shall make payments to creditors in a timely manner; 6) Licensee shall not purchase any debtor obligation; 7) No licensee shall operate for parties not covered by the contract; 8) Contracts must be fully completed at time of execution; 9) No payment of bonus or other consideration for referrals; 10) No licensee shall disclose or threaten to disclose information concerning the existing debt; 11)No licensee shall use communication which simulates a legal or judicial process; 11) No licensee or director, manager, or any immediate family member of such shall have an interest in the payments; and 12) No disclosure of debtor information except as required by subpoena, etc. (584-B)	a) misappropriate money held in trust; b) settle debt for more than 50%; c) take power of attorney to settle debt; d) offer a gift, bonus, etc for executing an agreement; e) receive a bonus, etc for a referral; f) structure a plan of negative amortization; g) make certain representations, i.e. will furnish money to pay bills or prevent attachments or prevent attachments or provide legal advice/services (585-c)	Both Article 12-C and UDMSA have certain restrictions that are consistent.  <b>Recommendation:</b> The points from both should be combined.
Superintendent Authorized to Examine	The superintendent may at any time and as often as he may determine investigate and examine the books (585)	Superintendent may investigate and examine (586-A).	<b>Recommendation:</b> The provisions of Article 12-C should continue.
Licensee's Books and Records; Reports	The licensee shall keep and use in its business such books and records as will enable the superintendent to determine if	A provider shall maintain records for each individual for whom it provides debt management services for five years (585-	Retention requirements in Article 12-C are one year longer than UDMSA.

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	the licensee is complying with Article 12-C for a period of six years (586)	b (3))	<b>Recommendation:</b> The provisions of Article 12-C should continue.
Authority of Superintendent	The superintendent is hereby authorized to make such general rules and regulations (587)	Not addressed	<b>Recommendation:</b> The provisions of Article 12-C should continue.

### UDMSA and Superintendent's Regulations

CATEGORY	SUPERINTENDENT'S REGULATIONS	UNIFORM DEBT MANAGEMENT SERVICES ACT (UDMSA)	COMMENTS
Licensing Requirement	Detailed application procedures (402.2)	Not addressed	<b>Recommendation:</b> The provisions of Part 402 should continue.
Services to be Provided	1) initial assessment of the potential debtor's financial situation; 2) provide adequate budgeting, educational and counseling services; and shall promptly transmit funds to debtor creditors (402.3)	Provider to provide individual with reasonable education about management of personal finance; prepared financial analysis; and prepare a plan for the individual (583-c (2))	Part 402 and UDMSA are consistent in services to be provided are to include preparing a financial analysis and plan with the requirement for financial educational services.  <b>Recommendation:</b> For-profit companies should be required to provide educational services.
Surety Bond/Pledged Assets	\$250,000 or such larger or smaller amount as the superintendent may require (402.5 & 6)	\$50,000 or other larger or smaller amount as the superintendent may determine (582)  The superintendent or an individual may obtain satisfaction out of the surety bond (582)  The Superintendent shall adopt dollar amounts to reflect inflation (586-c (6))	Part 402 has a higher bond/pledged assets standard, which should continue.  <b>Recommendation:</b> Currently under Part 402, the bonds are written for the Superintendent to make claim, inclusive of nonpayment and unreasonable fees. Debtors should no be able to make claim will make it difficult to determine the adequacy of the bond, and will call into question whether the bonding company would write the bond in such a manner. Inflationary adjustment is not necessary as currently the superintendent sets the level of bonding required.

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Reports of Changes in Directors, by-laws, certificates of Incorporation	The superintendent is to be notified within 10-days of the change and superintendent may prohibit a director if they fail to meet the standards of B.L. 581 (402.8)	Only at the time of renewal of registration (581 (b)(2))	<b>Recommendation:</b> The provisions of Part 402 should continue.
Debtors contact with Licensees and Department	Every licensee must establish either a toll-free number or a phone number that may be called collect for the purposes of enabling debtors to make inquiries of or complaints regarding the licensee. Every debtor must be informed of the Department's toll-free number (402.9)	A provider shall maintain a toll-free communication system staffed at a level that reasonably permits during ordinary business hours (582-c)	Part 402 has a higher standard of communication for the clients as the licensee must not only provide a toll-free/collect call number; but must also provide information on how the client may contact the Department.  <b>Recommendation:</b> The provisions of Part 402 should continue
Rights of Debtors to Rescind Contract	Debtor may rescind the contract until midnight of the third business day (402.10)	An individual may cancel an agreement before midnight of the third business day (583-c)	Part 402 and UDMSA are consistent with third business day rescind period.  <b>Recommendation:</b> The provisions of Part 402 should continue
Term and termination; assignment	Payment period shall not exceed 60 months, and every contract must state that the debtor may terminate the contract without any fee or penalty upon 10-days written notice (402.11)	Payment period is not addressed.  Individual may cancel the agreement within 30-days after the individual assents to it (583-c) Termination at any time by written notice (583-b(4a))	Part 402 has a higher standard for term and termination: max of 60 months and termination with 10 days written notice without fees or penalties..  <b>Recommendation:</b> The provisions of Part 402 should continue
Unfair or deceptive acts or practices	No licensee shall seek to avoid compliance with this Part by any device, subterfuge or pretense (402.12)	Prohibited from employing an unfair act or practice (585-c(p))	Part 402 and UDMSA consistent.  <b>Recommendation:</b> The provisions of Part 402 should continue
Reports to be filed by Superintendent	a) Annually submit # of clients nationwide and NY debtors; # of new clients and new NY debtors in preceding calendar year; schedule of fees charged; and agreement utilized; b) quarterly, submit the highest daily amount of debtor funds and c) annually, submit independently audited financial statements. (402.13)	Not addressed	Reports are not addressed by UDMSA.  <b>Recommendation:</b> The provisions of Part 402 should continue

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Changes in Licensee's Fee Structure	Licensee must notify the superintendent 30-days prior to implementation. The licensee may implement the modified fee structure unless the superintendent disapproves in writing (402.14)	<p>A provider may not impose a fee until the provider and individual has signed agreement</p> <p>A provider (budget planner) may not charge a fee exceeding \$50 for consultation – setup; monthly service fee not to exceed \$10 times the number of creditors but not more than \$50</p> <p>Debt settlement companies may charge the lesser of \$400 and 4% of the debt in the plan at inception and a monthly fee not to exceed \$10 times number of creditors not more than \$50</p> <p>Compensation for services in connection with settling a debt may not exceed 30% of the debt savings amount or to the extent it has not been credited against an earlier settlement fee (584-b)</p>	<p>USDMSA sets fees as per statute.</p> <p>Part 402 addresses fee structure by requiring notification to the superintendent and allows the superintendent an opportunity to approve or disapprove fees.</p> <p><b>Recommendation:</b> The provisions of Part 402 should continue.</p>
No Commingling of Licensee Funds	Accounts must be maintained in institutions located in this State; and be titled "Budget Planner as Agent for the Benefit of Debtors." (402.15)	Provider may not co-mingle funds. (584-a)	<p>Part 402 and UDMSA are consistent about no commingling of debtor and licensee funds.</p> <p><b>Recommendation:</b> While both are consistent on this issue, neither statute /regulation addresses the situation where the consumer opens an account controlled by the consumer but which the licensee may have access through a power of attorney for the purposes of sweeping fees. This should be addressed.</p>
Licensee's privacy Policy	Licensees shall comply with the privacy provisions contained in Title V of the Gramm-Leach-Bliley Act. (402.16)	Not addressed	<p>Licensee's privacy Policy is not addressed by UDMSA.</p> <p><b>Recommendation:</b> The provisions of Part 402 should continue</p>
Office Display	Signage disclosing licensee name and	Not addressed	Office Display is not addressed by

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	address; licensed by NYS Banking Department; consumer complaints may be directed to NYS Banking Department (phone, address, and electronic submission) (402.17)		UDMSA.  <b>Recommendation:</b> The provisions of Part 402 should continue
Change of Location	A licensee seeking to change the location of one of its offices must give written notice to the superintendent at least 30-days prior to such change.(402.18)	Not addressed.	Change of Location is not addressed by UDMSA.  <b>Recommendation:</b> The provisions of Part 402 should continue
Reports of arrests, convictions	Within 10-days a written report should be made to the superintendent of any arrest, indictment or conviction. (402.19)	Not addressed	Reports of arrests, convictions is not addressed by UDMSA.  <b>Recommendation:</b> The provisions of Part 402 continue
Reports of Misconduct	Every licensee shall submit a report to the superintendent immediately upon the discovery of any of the events listed in Part 300 of this Title. (402.20)	If the provider discovers or has a reasonable suspicion of embezzlement or other unlawful appropriation of money held in trust...the superintendent shall be notified (584-a(7))	Reports of Misconduct are not addressed by UDMSA.  <b>Recommendation:</b> The provisions of Part 402 should continue
Books and Records	Every licensee shall keep its books and records in a manner which will allow the superintendent to determine whether the licensee is complying with Article 12-C. Records to be retained for six years. Records inclusive of rejected debtor applications, cancelled debtor applications, correspondence file, written debtor complaints, current business plan describing in detail budgeting, educational and counseling services, and appropriate ledgers. (402.21)	Provider shall maintain records for each individual for whom debt management services for five years after the final payment.  A provider shall provide an accounting upon cancellation or termination of agreement; before cancellation or termination at least once each month and within five days after a request by an individual.  (585-b)	Part 402 which has a higher standard for books and records, should be retained and length of retention.  <b>Recommendation:</b> The provisions of Part 402 continue. However, Part 402 should be modified for accounting upon cancellation, termination or within five days of individual request.
Licensee's Return of Unused Debtor Funds	The licensee must demonstrate a "good faith effort" to locate and refund any monies to the debtor. (402.22)	Not addressed.	Licensee's Return of Unused Debtor Funds/Fees is not addressed by UDMSA.  <b>Recommendation:</b> The provisions of Part 402 should continue.