In Re: The Entrust Group, Inc. 

ORDER TO CEASE AND DESIST UNLICENSED ACTIVITY AND NOTICE OF RIGHT TO APPEAL

The State of Nevada Department of Business and Industry, Financial Institutions Division (hereinafter "Division") hereby orders The Entrust Group, Inc. (hereafter "Respondent") to cease and desist from any and all activities which are covered under Nevada Revised Statutes (NRS) Chapter 669.

JURISDICTION

1. The business of trust companies in Nevada is governed by Chapter 669 of the Nevada Revised Statutes (NRS) and Chapter 669 of the Nevada Administrative Code (NAC).

2. The Division has primary jurisdiction for the licensing and regulation of persons operating and/or engaging in trust company business. NRS 669.010; NRS 669.029; NRS 669.045; NRS 669.090 et seq.

FINDINGS OF FACT

3. Respondent is a Delaware corporation with its principal place of business in Oakland, California. Respondent's main business address is 555 12th Street, Suite 1250, Oakland, California 94607.
4. The Division received a letter dated April 18, 2014 from a Nevada licensed trust company, notifying that Provident Trust Group, LLC (Provident), also a Nevada licensed trust company, demanded a transfer of Individual Retirement Account (IRA) assets from the Nevada licensed trust company to Respondent. The Nevada licensed trust company believes that Respondent’s certain delegated responsibilities from Provident are deemed inappropriate and inconsistent with applicable federal and state laws and regulations.

5. On July 21, 2014, the Division conducted an on-site examination of Provident. The examination scope included the review of Respondent’s business relationships with Provident. The results of this review disclosed the following:

   a) The Contract for Custodial Services dated July 22, 2013, between Provident and Respondent indicated that Provident is willing to act as a Custodian; provided that the Respondent, acting as the Administrator, performs certain administrative and custodial duties. These delegated duties are also summarized in the Respondent’s Individual Retirement Custodial Account Agreement and include the following:

      i) Executing applications, transfers, stock powers, escrow documents, purchase agreements, notes, deeds, reconveyances, and liens;
      ii) Placing assets or liabilities in Administrator’s name for the benefit of the Depositor to provide administrative feasibility of such transactions;
      iii) Depositing account contributions and income;
      iv) Paying account liabilities and distributions; and
      v) Providing government reporting.

   b) The performance of the above fiduciary duties expressly characterizes a “trust business,” and “fiduciary” as defined by the Nevada statute that includes Administrators who possess and control any account assets, including cash.

   c) Through its website www.theentrustgroup.com, Respondent advertises its services and holds itself out to the public that it is available to act as a fiduciary. It should be noted that Respondent’s list of clients includes a number of Nevada residents.

   d) The Internal Revenue Code states that all IRAs are required to be held by a custodial entity such as bank, credit union, trust company or an entity that is licensed and regulated.
e) IRA Administrators, as the name suggests, are usually responsible for marketing and selling, performing data entry, producing statements and basic reporting; while IRA Custodians are primarily responsible for holding title to assets, investments or property, and establishing custodial depository accounts under the Custodian’s name.

f) When Respondent holds title to IRA custodial assets and the custodial depository accounts are established under the Respondent’s name, the Respondent is no longer an Administrator in the general sense and becomes a trust company that holds the accounts. Thus, Respondent is operating as an unlicensed trust company in Nevada.

6. Respondent is an individual retirement account (IRA) administrator performing fiduciary activities.

7. Respondent has never been licensed as a trust company by the Division.

8. If any Finding of Fact is more properly characterized as a Conclusion of Law, it shall be considered as such.

CONCLUSIONS OF LAW

9. Entities performing trust company business in Nevada are regulated pursuant to NRS Chapter 669. The Nevada Legislature expressly stated its intent at 669.010(1)-(3), which provides:

1. There exists in this State a need, for the protection of the public interest, to regulate companies which are engaged in the trust company business.

2. Such trust companies should be licensed and regulated in such manner as to promote the public advantage and convenience.

3. It is the purpose of this chapter to bring under public supervision those persons who are engaged in or who desire to engage in the business of a trust company, not in connection with banking business, and to insure that there is established in this State an adequate, efficient and competitive trust company service.

10. By its actions referenced hereinaabove, Respondent has engaged in the business of a trust company in Nevada as defined in NRS 669.029, which provides:

“Business of a trust company” or trust company business” means the holding out by a person, by advertising, solicitation or other means, that is available to act as a fiduciary in this state and
undertaking to act as a fiduciary in the regular course of its business.

11. By its actions referenced hereinabove, including, but not limited to, possessing or controlling assets of custodial accounts, Respondent has acted in the capacity of a fiduciary and administrator in Nevada as defined in NRS 669.045, which provides:

1. “Fiduciary” means a trustee, executor, administrator, guardian of an estate, personal representative, conservator, assignee for the benefit of creditors, receiver, depositary or person that receives a deposit money or property from a public administrator under any provision of this chapter or from another fiduciary.

2. As used in this section, “administrator” includes servicers or administrators of individual retirement accounts within the meaning of section 408(a) of the Internal Revenue Code of 1986, 26 U.S.C. 408(a), where the servicer or administrator holds itself out to the public for performance of such services and holds or maintains an ownership interest in the servicing rights of such accounts, or possesses or controls any of the assets of such accounts, including cash.

12. Pursuant to NRS 669.045(2) and 26 U.S. Code §408, all IRAs are required to be held Individual retirement accounts by a custodial entity such as bank, credit union, trust company or an entity that is licensed and regulated. 26 U.S. Code §408 provides:

(a) Individual retirement account – For purposes of this section, the term “individual retirement account” means a trust created or organized in the United States for the exclusive benefit of an individual or his beneficiaries, but only if the written governing instrument creating the trust meets the following requirements:

(2) The trustee is a bank (as defined in subsection (n)) or such other person who demonstrates to the satisfaction of the Secretary that the manner in which such other person will administer the trust will be consistent with the requirements of this section.

(n) Bank
For purposes of subsection (a)(2), the term “bank” means—

(1) any bank (as defined in section 581),
(2) an insured credit union (within the meaning of paragraph (6) or (7) of section 101 of the Federal Credit Union Act), and
(3) a corporation which, under the laws of the State of its incorporation, is subject to supervision and examination by the Commissioner of Banking or
other officer of such State in charge of the administration of the banking laws of such State.

13. By engaging in the business of a trust company in Nevada without a license, Respondent has violated NRS 669.090, which provides:

It is unlawful for any retail trust company to engage in the business of a trust company without complying with the provisions of this chapter and having a license issued by the Commissioner.

14. By using the word “trust” as part of its name, Respondent has violated NRS 669.095(1), which provides as follows:

1. Except as otherwise provided in subsection 2, no person or organization formed and doing business under the laws of this State or any other state may:

(a) Use the word “trust” or any direct derivative of that word as part of its name.
(b) Advertise or use any sign with the word “trust” used as part of its name.

15. The Commissioner has authority to investigate Respondent’s activities pursuant to NRS 669.283(1)-(3), which provides:

1. For the purpose of discovering violations of this title or of securing information required under this chapter, the Commissioner or the Commissioner's duly authorized representatives may at any time investigate the business and examine the books, accounts, papers and records used therein of:

(a) Any Licensee;
(b) Any other person engaged in an activity for which a license is required pursuant to the provisions of this chapter; and
(c) Any person that the Commissioner has reasonable cause to believe is violating or is about to violate any provision of this chapter, whether or not the person claims to be within the authority or beyond the scope of this chapter.

2. For the purpose of examination, the Commissioner or the Commissioner's authorized representatives must have and be given free access to the offices and places of business, files, safes and vaults of such persons.

3. The Commissioner may require the attendance of any person and examine the person under oath regarding:

(a) Any transaction or business regulated pursuant to the provisions of this chapter; or
(b) The subject matter of any audit, examination, investigation or hearing.

16. The Commissioner has authority to issue a cease and desist order and take other action(s) against Respondent pursuant to NRS 669.2846(1)-(2), which provides:

1. Whenever the Commissioner has reasonable cause to believe that any person is violating or is threatening to or intends to violate any provision of this chapter, the Commissioner may, in addition to all actions provided for in this chapter and without prejudice thereto, enter an order requiring the person to desist or to refrain from such violation.

2. The Attorney General or the Commissioner may bring an action to enjoin a person from engaging in or continuing a violation or from doing any act or acts in furtherance thereof. In any such action, an order or judgment may be entered awarding a preliminary or final injunction as may be deemed proper.

17. The Commissioner may impose an administrative fine upon Respondent pursuant to NRS 669.295(1), which provides:

1. In addition to any other remedy or penalty, the Commissioner may impose an administrative fine of not more than $10,000 per violation upon a person who:

(a) Without a license, conducts any business or activity for which a license is required pursuant to the provisions of this chapter; or
(b) Violates any provision of this chapter or any regulation adopted pursuant thereto.

18. Any Conclusion of Law which is more properly characterized as a Finding of Fact shall be considered as such.
ORDER

IT IS HEREBY ORDERED that Respondent The Entrust Group, Inc. shall CEASE AND DESIST from operating and/or engaging in the business of trust company within the State of Nevada unless and until such time Respondent becomes licensed by the Division pursuant to NRS Chapter 669.

IT IS HEREBY FURTHER ORDERED that, pursuant to NRS 669.295, Respondent shall pay an administrative fine in the amount of TEN THOUSAND DOLLARS ($10,000.00) due in full within thirty (30) days of entry of a final order.

DATED this 5th day of December, 2014.

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
FINANCIAL INSTITUTIONS DIVISION

By: _______________________

GEORGE E. BURNS
Commissioner
APPEAL RIGHTS

RESPONDENT HAS THE RIGHT TO REQUEST A HEARING IN THIS MATTER.

Other important rights you have are listed in Nevada Revised Statutes Chapters 669 and 233B and the Nevada Administrative Code Chapter 669. If you wish to request a hearing you must file a request within thirty (30) days after this Order to Cease and Desist was served on the Respondent. Your request for a hearing must be delivered to:

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
FINANCIAL INSTITUTIONS DIVISION
2785 E. Desert Inn Road, Suite 180
Las Vegas, Nevada 89121

DATED this 5th day of December, 2014.

STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
FINANCIAL INSTITUTIONS DIVISION

By: GEORGE E. BURNS
Commissioner
CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Department of Business and Industry, Financial Institutions Division, and that on the 16th day of November 2014, I deposited in the U.S. mail, postage prepaid, via First Class Mail and Certified Return Receipt Requested, a true and correct copy of the foregoing ORDER TO CEASE AND DESIST UNLICENSED ACTIVITIES AND NOTICE OF RIGHT TO APPEAL, addressed as follows:

The Entrust Group, Inc.
555 12th Street, Suite 1250
Oakland, California 94607
Attention: Hubert Bromma
Certified Mail: 7013 1090 0000 1697 7030

Holland & Knight
Attention: John Kern
50 California Street, Suite 2800
San Francisco, CA 94111
Certified Mail: 7013 1090 0000 1697 7023

An Employee of the State of Nevada
Department of Business and Industry
Financial Institutions Division
The Entrust Group, Inc.
Attn: Hubert Bromma
555 12th Street, Ste 1250
Oakland, CA 94607

Signature: [Signature]
Received by (Printed Name): [Name]
Date of Delivery: 11-01-14

Is delivery address different from item 1?  Yes
If YES, enter delivery address below:

Service Type:
- Certified Mail [X]
- Registered
- Insured Mail
- Express Mail
- Return Receipt for Merchandise
- C.O.D.

Restricted Delivery? (Extra Fee): Yes

Article Number: 7013 1090 0600 1697 7030

PS Form 3811, February 2004
Domestic Return Receipt