

February 18, 2014

Writer's Direct Contact  
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JMcGuire@mofocom

Via E-mail

Monica Jackson  
Office of the Executive Secretary, [ExecSec@cfpb.gov](mailto:ExecSec@cfpb.gov)  
Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, DC 20552

Re: Petition to Modify or Set Aside Civil Investigative Demand Issued to  
MoneyMutual, LLC

Dear Ms. Jackson:

Please accept this correspondence as a petition to modify or set aside the Civil Investigative Demand ("CID") issued to MoneyMutual, LLC, a subsidiary of Selling Source, LLC (the "Company"), dated January 17, 2014. This request is made pursuant to 12 U.S.C. 5562(f) and 12 C.F.R. 1080.6(e).

The Company and the Enforcement Attorneys for this Consumer Financial Protection Bureau ("CFPB") CID, Meredith Osborn and Lisa Rosenthal, have been engaged in the meet and confer process concerning this CID over the past two weeks. Correspondence concerning that meet and confer is enclosed. Pursuant to 12 C.F.R. 1080.6(e)(1), counsel for the Company has conferred with counsel for the Bureau pursuant to section 1080.6(c) in a good-faith effort to resolve by agreement the issues raised by the petition and has been unable to reach such an agreement. Those live meet and confer sessions are as follows: (1) an in-person meeting on February 6, 2014, at 2 p.m. between the Enforcement Attorneys, Ms. Osborn and Ms. Rosenthal, and counsel for the Company, Rita Lin, Natalie Naugle, and myself, at the CFPB's Office, 301 Howard St., San Francisco, CA; and (2) by telephone today, February 18, 2014, at 3 p.m. between Ms. Osborn and Ms. Rosenthal and counsel for the Company, Rita Lin.

At this stage, the Company does not anticipate any significant, substantive disagreements, and it believes that the parties are likely going to be able to agree on all issues. There are two outstanding issues, however, to which the parties have not reached agreement yet, and to which the Company seeks to preserve its ability to challenge those aspects of the CID if the

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parties are ultimately unable to reach an agreement. Those two outstanding issues are (1) custodians and (2) keywords for electronically stored information (“ESI”) production. Both of these devices are commonly used in modern discovery and serve to balance the needs of parties requesting information to get it and of parties producing it to reduce the substantial burden of collection and review.

On February 14, 2014, I left a voicemail for Ms. Osborn, and followed up with an email to her and Ms. Rosenthal regarding these issues. I explained that it would not be feasible to resolve those two issues before the current deadline (today, February 18, 2014) to petition to modify or vacate the CID. I noted: “While we have no desire to file such a petition and do not believe it will be necessary, we cannot be in a position where, several weeks from now, we find ourselves unable to reach agreement on custodians or key words and could potentially be viewed as having waived our rights to address those issues.” Accordingly, we requested a short extension of time to continue the meet and confer process in order to avoid filing an unnecessary petition, proposing an extension of the deadline to March 20, 2014. By email today, we again requested the same extension. We heard from the Enforcement Attorneys this afternoon that the CFPB will not be able to provide a response to the Company’s request to extend the deadline to file a petition before that deadline expires.

The Company therefore files this Petition, in an abundance of caution, in order to preserve its rights to challenge the CID. We do not anticipate, however, that the two outstanding issues will ultimately remain in dispute.

### **Document Custodians**

With respect to the CID’s requests for production of documents, the Company intends to collect and review documents for possible production from key custodians who have been identified as having potentially responsive documents. During the meet and confer, we explained that for purposes of collecting and identifying potentially responsive documents, casting a wide net, we conducted in-depth interviews with all employees who were identified as potentially having relevant documents. Based on these interviews, we were able to identify a set of custodians who possess relevant information that will need to be collected and reviewed for possible production. The identification of key employee custodians from which to collect relevant documents is a standard procedure in modern discovery. *See, e.g., Treppel v. Biovail Corp.*, 233 F.R.D. 363, 374 (S.D.N.Y. 2006) (“Even in a case involving exclusively hard copy documents, there is no obligation on the part of a responding party to examine every scrap of paper in its potentially voluminous files in order to comply with its discovery obligations”; rather, “a reasonably comprehensive search strategy” may “include identifying key employees and reviewing any of their files that are likely to be relevant to the claims in the litigation.” (citation omitted)).

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We proposed the following: The Company will provide a list of employees who were identified to be interviewed, their titles, and a brief description of their job responsibilities. The list will identify those individuals we determined do not have responsive documents, with a brief explanation as to why, and those we believe may in fact have responsive documents and from whom we therefore intend to collect. We understand that the final custodian list may be subject to further negotiation once the Enforcement Attorneys have had the opportunity to review and consider the information provided.

In response, the Enforcement Attorneys also requested that, in addition to the list of employees that the Company identified to be interviewed, we would also provide a company organization chart. The Company agreed that it will provide organization charts for MoneyMutual, LLC and affiliates involved in lead generation for Internet lenders if those exist, or will otherwise provide information that will enable the Enforcement Attorneys to evaluate the Company's recommended list of custodians.

While the Company does not foresee any issues with respect to custodian selection, we file this Petition to preserve any objections that may arise down the road if the parties are unable to reach an agreement.

### Keyword Searches

During the in-person meet and confer, the parties discussed the use of keyword search terms to narrow the universe of potentially responsive documents to be reviewed for production. This is a common practice employed in e-discovery to narrow the scope of electronically stored information that must be manually reviewed, and reduce the burden imposed by such a review. See, e.g., *The Sedona Principles: Best Practices Recommendations & Principles for Addressing Electronic Document Production*, Principle 11 (2007) ("A responding party may properly access and identify potentially responsive electronic data and documents by using reasonable selection criteria, such as search terms or samples."); *Treppel*, 233 F.R.D. at 374 (explaining that keyword searching is "even more appropriate in cases involving electronic data, where the number of documents may be exponentially greater" (citation omitted)).

We explained that the use of keyword searches will be necessary to reasonably limit the universe of potentially responsive documents that will require review. Many of the document custodians keep potentially responsive documents in email inboxes or shared drives that are used for a variety of purposes and are not categorized in any way. The vast majority of documents in those inboxes or shared drives are nonresponsive. If the Company were barred from narrowing those down through keyword searching, the Company would have to manually comb through hundreds of thousands of documents to locate the few responsive materials at issue. Based on the Company's current estimates, such a manual

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review of potentially responsive documents would exceed 300,000 documents and would take a team of 15 attorneys more than six months to review.

We proposed the following: Once the document collection process is completed, the Company will then be able to propose a specific set of keywords. At that time, we will develop a set of keywords and test them to ensure that they are not so broad that they are failing to narrow the set appropriately, but also broad enough to capture responsive documents. We would then provide the Enforcement Attorneys the proposed list of keywords for their comment, and test any additional proposed terms against the set of collected documents. Once all parties have reached agreement on a set of keyword search terms, we will use those keywords to identify potentially responsive documents for manual review.

Our understanding from the meet and confer is that the CFPB does not have an official policy on the use of keyword searches, but that the Enforcement Attorneys are willing to consider a set of key terms to be used for this purpose. Ms. Osborn requested that the Company provide some dates for when we will be able to provide the proposed keywords. We anticipate being able to provide those proposed keywords by the first week of March. As explained during the meet and confer, we need to complete the document collection process first in order to specify a set of proposed keywords because we will need to test the use of those keywords against the population of collected documents to assess whether they are overinclusive or underinclusive before finalizing our proposal.

Once again, while the Company does not anticipate that the parties will have any disagreement over this issue, we file this Petition today in order to preserve all rights to challenge the CID if an agreement cannot be reached in the future.

Respectfully submitted,



James R. McGuire

Enclosures

cc: Enforcement Attorneys, Meredith Osborn and Lisa Rosenthal (via email)

Assistant Director of the Office of Enforcement, [Enforcement@cfpb.gov](mailto:Enforcement@cfpb.gov)

# **EXHIBIT 1**

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February 11, 2014

Writer's Direct Contact  
+1 (415) 268.7013  
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Via E-mail

Lisa Rosenthal  
Meredith Osborn  
Consumer Financial Protection Bureau  
1700 G Street NW  
Washington, DC 20552

Re: Civil Investigative Demand Issued to MoneyMutual, LLC

Dear Lisa and Meredith:

Thank you for taking the time to meet and confer with us last week regarding the Civil Investigative Demand (CID) issued to MoneyMutual, LLC, a subsidiary of Selling Source, LLC (the "Company"). We write to memorialize those discussions and set forth in writing our specific requests to modify certain terms of the CID, as outlined below. We are hopeful that we will be able to reach an agreement on these items and look forward to working with you cooperatively on this matter.

**I. THE CID'S DEFINITION OF "COMPANY"**

As we discussed, MoneyMutual, LLC's parent, Selling Source, owns several subsidiaries, one of which is DataX, LLC. As a Selling Source subsidiary, DataX is technically included in the CID's definition of "Company." DataX contracts with Internet Lenders, and therefore certain of the requests in the CID appear to call for production of information and documents related to DataX.

However, as we explained, DataX is not involved in the lead generation business; it does not generate, buy or sell leads to lenders. Rather, DataX is engaged by lenders and other businesses to provide consumer credit reporting services, including ID verification, bank account checks, debit reports, loan history reports and credit scores. Lenders and other businesses may utilize the products and services offered by DataX in their underwriting process. Additionally, DataX does not utilize the "Code of Lender Conduct," as it is inapplicable to DataX's business and the services it provides. It therefore does not appear that DataX or its business is relevant to this

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investigation of “whether lead generators... have engaged or are engaging in unlawful acts or practices in connection with the marketing, selling, or collection of payday loans,” as DataX is not involved in these activities.

- **Proposal:** Given that DataX is not in the lead generation business, does not sell leads to lenders, and does not utilize the Code of Lender Conduct, we propose that, except with regard to Interrogatory 2, DataX be excluded from the definition of “Company” at this stage.

This limitation is particularly relevant to RFP Nos. 2 and 3. There are approximately 175 lenders with whom DataX has contracted during the relevant time period. We believe exclusion of DataX is necessary to avoid the significant burden that would be imposed if the Company is required to collect, review and produce documents and information about a subsidiary that is not engaged in the lead generation business and whose documents and information appear to be irrelevant to the focus of the CID. Without this exclusion, the Company would be required to collect documents from 3-5 additional custodians, which we estimate would require review of approximately 200,000 or more documents (many of which would be completely non-responsive). Assuming a rate of 400 documents per reviewer per day, that would require 500 person-days to complete, or a team of 10 reviewers working for 10 weeks.

If the requests are narrowed to exclude DataX from the definition of “Company” at this time, such a narrowing would be without prejudice to a later request by the CFPB for additional information and documents regarding DataX, subject to further negotiations between the parties as needed.

## II. INTERROGATORIES

### A. General Issues

1. **Proposed Response Date:** As discussed, the Company currently intends to respond to all but one of the interrogatories by February 21, 2014, and if necessary, will provide supplemental responses thereafter if additional responsive information arises.

The only interrogatory the Company currently anticipates it will not be able to respond to by the February 21st deadline is **Interrogatory 17**, which asks the Company to “provide a dissemination schedule, including the dates and times

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of dissemination, number of disseminations, and the media used” for all advertising and promotional material produced in response to document request 5.<sup>1</sup> Because the response to this interrogatory must await production of responsive documents, the Company proposes that it provide a response to Interrogatory 17 with or shortly following its production of the responsive advertising and promotional materials.

## **B. Proposals To Modify Certain Interrogatories**

**1. Interrogatory No. 2:** This interrogatory asks the Company to provide detailed information on the Company’s organizational structure, including “all parents, subsidiaries, unincorporated divisions, joint ventures, and affiliates.” As we explained, during the relevant time period, the Company has or had included approximately 30+ subsidiaries, the majority of which are not involved in the financial-related lead generation business and/or do not contract with Internet Lenders to provide any type of service.

- **Proposal:** The Company will provide the information requested by Interrogatory 2 (a) (legal name and principal place of business) and (e) (the type of business in which it engages) for all entities that fall within the CID’s definition of “Company,” but will only be required to provide the information requested by sub-sections (b), (c), (d), and (f) for those entities engaged in the lead generation business and/or who contract with Internet Lenders to provide services. This limitation would be without prejudice to the CFPB later requesting additional information regarding particular entities for which all of the information called for by Interrogatory 2 was not provided and subject to further negotiations between the parties as needed.

**2. Interrogatory No. 6:** This interrogatory asks the Company to “identify all persons from whom the Company has purchased Leads on behalf of Internet Lenders.” As we explained, the Company does not purchase leads “on behalf of” Internet Lenders. Rather, with regard to leads not generated by the Company itself, third-party lead generators (referred to as “Lead Providers”) are able to post leads to lenders through the PartnerWeekly network, some of which are then purchased by lenders. Accordingly, leads are not purchased “on behalf” of a particular lender.

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<sup>1</sup> During our meeting you confirmed that although Interrogatory 17 refers to advertising and promotional material produced in response to “Document Request 5,” you intended it to reference Document Request 4. We will respond accordingly.



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- Proposal: The Company will identify all Lead Providers who posted leads through the PartnerWeekly network that were purchased by Internet Lenders during the relevant time period.

**3. Interrogatory No. 10:** This interrogatory asks the Company to describe the “Code of Lender Conduct” and “if it has changed over time, [to] describe each version and the period during which it was in effect.”

- Proposal: Rather than “describing” the Code of Lender Conduct, the Company will provide copies of all versions of the Code that have been in use since its adoption, along with a statement of the time period during which each version was in use.

### III. REPORT NO. 1

As we mentioned, there are hundreds of lenders to whom the Company has sold millions of leads during the relevant time period. The Company therefore anticipates that it will take a significant amount of time to collect, analyze and compile the information requested for Report No. 1.

- Proposal: The Company will provide Report No. 1 by April 18, 2014.

### IV. REQUESTS FOR PRODUCTION OF DOCUMENTS (“RFPs”)

#### A. General Issues

**1. Document Custodians:** As we explained, for purposes of collecting and identifying potentially responsive documents, casting a wide net, we conducted in-depth interviews with all employees who we thought might possibly have relevant documents. Based on these interviews, we were able to determine which custodians actually have relevant information that will need to be collected and reviewed for possible production.

- Proposal: We will provide a list of employees who were identified by the Company to be interviewed, their titles and a brief description of their job responsibilities. The list will identify those individuals we determined do not have responsive documents, with a brief explanation as to why, and those we believe may in fact have responsive documents and from whom we therefore intend to collect. We understand that the final custodian list may be subject to further negotiation once you have had the opportunity to review and consider the information provided.

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**2. Keyword Searches:** During our meeting we discussed the use of keyword search terms to narrow the universe of potentially responsive documents to be reviewed for production—a standard practice employed in modern discovery to narrow the scope of electronically stored information that must be manually reviewed, and reduce the burden imposed by such a review.<sup>2</sup> We believe the use of a key word search will be necessary to reasonably limit the universe of potentially responsive documents that will require review, which given our current estimates, will exceed 300,000 documents and would take a team of 15 attorneys more than six months to review.

It is our understanding that the CFPB does not have an official policy on the use of keyword searches, but that you are willing to consider a set of key terms to be used for this purpose.

- Proposal: We cannot propose a specific set of keywords until we complete the document collection process. At that time, we will develop a set of keywords and test them to ensure that they are not so broad that they are failing to narrow the set appropriately, but also broad enough to capture responsive documents. We would then provide you the proposed list of keywords for your comment, and test any additional proposed terms against the set of collected documents. Once all parties have reached agreement on a set of keyword search terms, we will use those keywords to identify potentially responsive documents for manual review.

**3. Notice Required for Production of Information and Documents Regarding Third Parties:** During our meeting we explained that the contracts requested by RFP Nos. 2 and 5 contain confidentiality provisions that require the Company to provide the contracting parties notice before producing any documents related to the contractual relationship. While this will not preclude the Company from identifying those parties in response to Interrogatories 3 and 6, the Company will not be able to produce responsive contracts or other documents until the requisite notice has gone out and the parties have had a reasonable opportunity to respond and advise whether they

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<sup>2</sup> The Sedona Principles: Best Practices Recommendations & Principles for Addressing Electronic Document Production, Principle 11 (2007) (“A responding party may properly access and identify potentially responsive electronic data and documents by using reasonable selection criteria, such as search terms or samples.”); *Treppel v. Biovail Corp.*, 233 F.R.D. 363 (Feb. 6, 2006) (keyword searching is “even more appropriate in cases involving electronic data, where the number of documents may be exponentially greater”).

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intend to pursue legal action to prevent production. Overall, we do not expect this notice requirement to significantly limit or delay the production schedule.

- **Proposal:** The Company is in the process of preparing and distributing a notice that informs the parties of the CID's return date and asks parties who plan to take legal action to prevent disclosure of responsive materials to notify the Company immediately. For all parties that have not stated any such intent to take legal action by February 28, 2014, one week after the CID's stated return date, the Company will move forward with producing responsive documents. If any party states a plan to take legal action, the Company will withhold responsive documents related to that party until such time as their legal challenge is resolved.

**4. Production Format:** We propose a modification to the production format requirements for a small sub-set of the RFPs, specifically RFP Nos. 2, 4, and 5. As we explained, the Company has already completed a non-forensic collection of 1) a significant portion of the contracts called for by RFP Nos. 2 and 5, and 2) the advertising and marketing materials requested by RFP No. 4. Subject to the notice issue set forth above, the Company expects that it would be able to produce these documents on a relatively short timeline if you will agree to accept the non-forensically collected versions without all of the metadata requirements set forth in the CID.

With regard to the contracts, the Company will provide .pdf copies of the final executed versions, and as a result, the metadata would likely be irrelevant. As to the ads and marketing materials, the information about when those materials were disseminated, to the extent such information is available, will be provided via interrogatory, so, again, we expect that the metadata will be largely irrelevant.

You specifically asked about the collection of website materials. It is our understanding that what has been collected includes all the content used to generate the relevant websites (which will be identified in response to Interrogatory 7). You asked whether these documents include screenshots of the websites themselves. They do not, as the Company does not capture or maintain screenshots of its websites. You also asked whether the documents are interactive. They are not. The only way to "recreate the consumer experience" on a relevant websites, would be to visit the site directly. With regard to TV ads, which have also been collected, those will be produced on DVD in their native form, as required by the CID.

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- Proposal: The Company will produce the non-forensically collected contracts, advertising and marketing materials requested by RFP Nos. 2, 4 and 5 without the metadata called for by the CID. After the documents have been produced, if there are individual documents for which the metadata appears to be relevant, the CFPB could identify those items and request metadata for those documents.

**5. Production Schedule:** As noted above, we anticipate having to collect and process a significant amount of ESI for potential review and production in response to the CID. Based on our current estimates, and assuming an agreement on custodians and key search terms, it appears that review will involve almost a quarter of a million electronic documents.

- Proposal: The Company will produce documents on a rolling basis, with a production to be scheduled every two weeks.

Subject to an agreement on the custodian and production format issues addressed above, we anticipate being able to begin rolling productions on or around March 14, 2013. Assuming an agreement on our proposal to exclude DataX from the definition of "Company," and an agreement on custodians and a reasonable keyword search, we expect to be able to complete production in late-April, early-May. If, however, DataX documents must be collected, reviewed and produced, that would delay completion of production by approximately 2-3 months. Additionally, if we are unable to reach agreement on the use of key words to narrow the manual review of ESI, it is possible that production of that material could be even more substantially delayed while the parties await direction from a federal district court on the issue.

**6. Privilege Log**

- Proposal: The Company will produce a privilege log approximately two weeks after the final document production, in compliance with the privilege log requirements set forth in the CID.

**B. Proposals To Modify Certain RFPs**

**1. RFP No. 1:** This RFP asks the company to produce "all documents referred to or used to complete any of the interrogatories[.]" To respond to Interrogatory No. 2, the Company will be required to locate, forensically collect, and review for production articles of incorporation and other

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formation and foundational documents for approximately 30+ companies, most of which are not in the lead generation business and/or do not have any contractual or other direct relationship with lenders.

- Proposal: The Company will produce any documents relied upon for purposes of responding to the Interrogatories, including Interrogatory No. 2, that relate to the centrally relevant companies at issue here that are directly involved in the lending related, lead generation business, including Selling Source, LLC, MoneyMutual, LLC, Partner Weekly, LLC and Leadrev Holding, LLC. The Company understands that this limitation would be subject to further negotiations between the parties and without prejudice to a later request to produce underlying documents related to additional subsidiaries of Selling Source after you have had the opportunity to review the Company's response to Interrogatory No. 2.

2. **RFP Nos. 9 & 10:** RFP No. 9 asks the Company to produce "all documents relating to any complaints or inquiries concerning the Company or any Internet Lenders with whom it does business made by any financial institution, the Better Business Bureau, a consumer-advocacy group, or a federal, state, or local government agency." In contrast, RFP No.10, which requests similar information regarding investigations and other legal proceedings, excludes privileged documents. As we read RFP No. 10, privileged documents would not be deemed responsive and therefore would not need to be produced or included on a privilege log.

- Proposal: We propose that the "non-privileged documents" limitation contained in RFP. No. 10 be extended to RFP No. 9 and that privileged documents related to these two requests be deemed non-responsive, meaning they will not be produced or included on a privilege log. We believe this limitation is necessary to avoid the significant burden that would accompany a requirement that all privileged documents related to these requests be reviewed and logged.

3. **RFP No. 10:** RFP No. 10 technically calls for production of all non-privileged documents related to any legal proceedings involving the Company and its products or services, including publicly filed documents, and all documents produced by the Company in response to other legal inquiries. As we mentioned, the Company is in the process of producing and has produced a substantial number of documents in connection with an investigation being conducted by the New York Department of Financial Services. A significant

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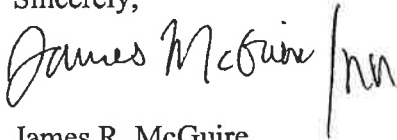
portion of the documents produced there will be duplicative of the documents we expect to produce in this matter, and there is no straightforward way to de-duplicate and produce only those documents not already produced in these proceedings.

- Proposal: The Company will provide a list of all relevant legal proceedings, including venue and case number information to be reviewed by your office. The Company will not plan to produce publicly filed documents. However, should your office determine that it wants to review certain specific publicly filed documents, the Company will locate and produce those.

With regard to the documents produced in the NY DFS investigation, the Company will not produce those documents at this time.

Thank you for agreeing to consider these requests to modify certain terms of the CID. We are hopeful that we will be able to reach an agreement on these issues and move forward with collection and production of the requested information in a timely manner. We look forward to your response. Should you have any questions, or wish to discuss further, please do not hesitate to contact myself, Rita Lin and/or Natalie Naugle.

Sincerely,

A handwritten signature in cursive script that reads "James McGuire" followed by a vertical line and the initials "JRM".

James R. McGuire

# **EXHIBIT 2**

**Lin, Rita F.**

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**From:** Osborn, Meredith (CFPB) <Meredith.Osborn@cfpb.gov>  
**Sent:** Thursday, February 13, 2014 4:34 PM  
**To:** Naugle, Natalie; Rosenthal, Lisa (CFPB)  
**Cc:** McGuire, James R.; Lin, Rita F.  
**Subject:** RE: Money Mutual (Selling Source)

Dear Natalie,

Thank you for this letter. We wanted to provide a few initial responses and ask for some additional information before we make our formal recommendation regarding your proposed modifications.

First, as an initial matter, we would agree to recommend limiting the initial production of information or documents only if it were without prejudice to our ability to compel production of the full scope of materials called for under the CID. This means it would not be necessary for us to issue a second CID for this information. We think this is what you meant by “without prejudice to a later request by the CFPB,” in your letter, but we wanted to clarify this. The final wording in the CID modification letter would reflect this point.

As a second general issue, we would like you to provide a more specific rolling-production schedule that indicates which documents you will produce at each two-week interval and by when you will comply with each RFP. This information will allow us to process the document productions more efficiently and avoid confusion along the way. This schedule should also apply to documents that you propose to produce after having provided notice to third parties.

In terms of your specific requests, our initial thoughts follow:

- I. Definition of Company – we are inclined to have you include Data X information in the report. If you are proposing to exclude Data X for the purposes of the report, please explain.
- II. Interrogatories
  - a. Interrogatory Number 6 – we anticipate recommending that this be modified to read, “leads...that were offered for sale to or purchased by Internet Lenders....”
- III. RFPs
  - a. Document custodians – in addition to the list of employees that the Company identified to be interviewed, we would want to see a company organization chart.
  - b. Keywords – please suggest some dates for when you would provide proposed keywords.
  - c. RFP No. 9 – we welcome suggestions for how to make the privilege log requirement for this request less burdensome. For instance, it may be possible to produce an initial, data-driven privilege log that captures and provides certain fields from an email database (such as sender, recipient, date, and subject line).
  - d. RFP No. 10 – we tentatively agree with the proposal to limit this request to non-publicly filed documents with the exception of initiating documents and dispositive rulings or orders.

These are our initial thoughts, which we wanted to share as soon as possible. Please let us know if you would like to schedule a follow-up call to discuss any of this or other concerns that may have arisen.

Thank you,

Meredith

**Meredith Osborn**  
 Enforcement Attorney  
 Consumer Financial Protection Bureau  
 Direct: 415 645 6615  
 Mobile: 202 285 9021



**consumerfinance.gov**

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**From:** Naugle, Natalie [mailto:NNaugle@mofo.com]  
**Sent:** Tuesday, February 11, 2014 3:41 PM  
**To:** Osborn, Meredith (CFPB); Rosenthal, Lisa (CFPB)  
**Cc:** McGuire, James R.; Lin, Rita F.  
**Subject:** RE: Money Mutual (Selling Source)

Meredith and Lisa,

Attached please find our written request for modifications to the CID based on our meet and confer discussions last week. James is out of the office this afternoon, but asked that I forward this to you ASAP. Please note that we are sending the attached by e-mail only, but please advise if you would like us to send it and/or any future correspondence to anyone else or by any other method.

Please just let us know if you have any questions or wish to discuss any of the issues further. We look forward to your response.

Thank you,

**Natalie Naugle**  
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NNaugle@mofo.com | www.mofo.com

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**From:** McGuire, James R.  
**Sent:** Monday, February 10, 2014 6:37 PM  
**To:** Osborn, Meredith (CFPB); Rosenthal, Lisa (CFPB)  
**Cc:** Lin, Rita F.; Naugle, Natalie  
**Subject:** RE: Money Mutual (Selling Source)

Meredith:

Thank you very much for your prompt response and we share the goal of resolving outstanding issues cooperatively and promptly. Although we had hoped to get you our written request for modifications today, we now expect to provide it tomorrow.

Regards,

James

**James McGuire**  
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JMcGuire@mofo.com | www.mofo.com

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**From:** Osborn, Meredith (CFPB) [mailto:Meredith.Osborn@cfpb.gov]  
**Sent:** Monday, February 10, 2014 10:56 AM  
**To:** McGuire, James R.; Rosenthal, Lisa (CFPB)  
**Cc:** Lin, Rita F.; Naugle, Natalie  
**Subject:** RE: Money Mutual (Selling Source)

Dear James,

Please find attached a letter granting your request for an extension to file a petition to modify or set aside. As we discussed, we hope to resolve any outstanding issues regarding the CID prior to the new deadline. Please let us know if you have any questions and we look forward to receiving your written request for the modifications that we discussed at our meet-and-confer last week.

Thank you,  
Meredith

**Meredith Osborn**

Enforcement Attorney  
Consumer Financial Protection Bureau  
Direct: 415 645 6615  
Mobile: 202 285 9021  
**consumerfinance.gov**

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**From:** McGuire, James R. [<mailto:JMcGuire@mofocom>]  
**Sent:** Thursday, February 06, 2014 4:43 PM  
**To:** Rosenthal, Lisa (CFPB); Osborn, Meredith (CFPB)  
**Cc:** Lin, Rita F.; Naugle, Natalie  
**Subject:** Money Mutual (Selling Source)

Dear Lisa and Meredith:

Per our conversation today, I write to request that the Bureau agree to extend the time in which our client may petition for an order modifying or setting aside the CID pursuant to 12 U.S.C. 5562(f) and 12 C.F.R. 1080.6(e), from February 11, 2014 to and including February 18, 2014. Although we anticipate that the parties will be able to resolve the issues we have discussed, we do not believe that we will have completed the meet-and-confer process before our deadline runs. Accordingly, we make this request out of an abundance of caution to preserve our client's rights.

Thank you again for taking the time to meet with us today, and for your professional courtesy and cooperation in the overall process. We look forward to working with you.

Regards,

James

**James McGuire**

Morrison & Foerster LLP  
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# **EXHIBIT 3**

**Lin, Rita F.**

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**From:** McGuire, James R.  
**Sent:** Friday, February 14, 2014 4:14 PM  
**To:** Osborn, Meredith (CFPB) (Meredith.Osborn@cfpb.gov); Rosenthal, Lisa (CFPB) (Lisa.Rosenthal@cfpb.gov)  
**Cc:** Lin, Rita F.; Naugle, Natalie  
**Subject:** Money Mutual/Selling Source

Dear Meredith and Lisa:

Thank you for the response we received yesterday from Meredith. We hope to respond to that as early as late today. I can tell you that we do not anticipate any significant, substantive disagreement. There is, however, one issue that we need to raise with you, again, which is the preservation of Selling Source's ability to challenge certain aspects of the CID if we are unable to reach agreement on a couple of issues in the future.

More specifically, it appears that the parties are going to be able to agree on all issues, including an agreement to work together to identify custodians and to attempt to reach agreement on the use of key words for searching ESI. Both of these devices are commonly used in modern discovery and serve to balance the needs of parties requesting information to get it, and parties producing it to reduce the substantial burden of collection and review.

It simply is not feasible to resolve those two issues before the current deadline (which you have graciously extend for us once) to move to modify or vacate the CID. While we have no desire to file such a petition and do not believe it will be necessary, we cannot be in a position where, several weeks from now, we find ourselves unable to reach agreement on custodians or key words and could potentially be viewed as having waived our rights to address those issues.

To resolve this issue, and to avoid the filing of an unnecessary petition, we propose that the deadline to petition to vacate or modify the CID on these grounds be extend to March 20, 2014. We understand that extensions of this deadline are, by Bureau regulation, disfavored, but in this instance it seems the most efficient way to proceed.

Have a good weekend.

Regards,

James

**James McGuire**  
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# **EXHIBIT 4**

**Lin, Rita F.**

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**From:** Lin, Rita F.  
**Sent:** Tuesday, February 18, 2014 10:52 AM  
**To:** Meredith.Osborn@cfpb.gov (meredith.osborn@cfpb.gov)  
**Cc:** McGuire, James R.; Naugle, Natalie; lisa.rosenthal@cfpb.gov  
**Subject:** FW: Money Mutual (Selling Source)

Meredith:

Hope you had a good weekend. Thanks for your email. Natalie is traveling, so I have sent this in her stead. Our responses are below in red. Please let us know if you would like to discuss further.

Best,  
Rita

**Rita Lin**  
Litigation Partner  
Morrison & Foerster LLP  
425 Market St. | San Francisco, CA 94105  
P: 415.268.7466 | F: 415.268.7522  
RLin@mofo.com | www.mofo.com

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**From:** Osborn, Meredith (CFPB) [<mailto:Meredith.Osborn@cfpb.gov>]  
**Sent:** Thursday, February 13, 2014 4:34 PM  
**To:** Naugle, Natalie; Rosenthal, Lisa (CFPB)  
**Cc:** McGuire, James R.; Lin, Rita F.  
**Subject:** RE: Money Mutual (Selling Source)

Dear Natalie,

Thank you for this letter. We wanted to provide a few initial responses and ask for some additional information before we make our formal recommendation regarding your proposed modifications.

First, as an initial matter, we would agree to recommend limiting the initial production of information or documents only if it were without prejudice to our ability to compel production of the full scope of materials called for under the CID. This means it would not be necessary for us to issue a second CID for this information. We think this is what you meant by "without prejudice to a later request by the CFPB," in your letter, but we wanted to clarify this. The final wording in the CID modification letter would reflect this point.

Response: This is consistent with our understanding, and would apply to any limitations to the individual requests we agree upon at this time. One issue, which James and Rita separately contacted Meredith about on Friday, however, is the preservation of the status quo while the parties' negotiate search terms and custodians, which we expect will take some additional time. Would it be the CFPB's position that if we do not move to modify or set aside the CID before the current deadline, we would waive any objection to a motion to enforce the subpoena on these issues? Or can we agree that if for some reason we are unable to reach an agreement on a reasonable number of custodians and/or search terms, we would retain our right to assert such objections in opposition to a motion to enforce the subpoena?

If it will be the CFPB's position that any objections on these issues is waived by a failure to move to modify or set aside the CID at this time, we would ask for an additional extension of that deadline to March 20, with regard to these narrow issues of search terms and custodians, to permit us to work to reach some resolution on those topics while preserving our client's rights.

As a second general issue, we would like you to provide a more specific rolling-production schedule that indicates which documents you will produce at each two-week interval and by when you will comply with each RFP. This information will allow us to process the document productions more efficiently and avoid confusion along the way. This schedule should also apply to documents that you propose to produce after having provided notice to third parties.

Response: We expect to produce the ads/marketing materials (RFP 4) and contracts (RFPs 2 & 5), with the exception of any that are the subject of an objection, by March 14<sup>th</sup>, assuming you will agree to production of non-forensically collected versions (i.e. without all of the required metadata). We would also be able to provide the publicly filed initiating documents and dispositive rulings or orders responsive to RFP No. 10 by that date. We also plan to produce documents in response to RFP No. 1 by this date, subject to later supplementation as needed if we supplement any of the Rogs.

Beyond that, we anticipate completing production on the remaining RFPs by early May, assuming DataX will be excluded from the definition of "Company" and we can reach an agreement on custodians and a reasonable keyword search. However, we are unable to provide a detailed schedule as to when we expect to produce with regard to each of the other RFPs, as they will require manual review of individual email and documents collected from a shared drive and we won't know what we're producing in any given two week period until review for that period is complete. As required by the CID, however, our productions will include information in the metadata as to which documents are responsive to which RFPs, which will assist in organizing the materials after production.

In terms of your specific requests, our initial thoughts follow:

- I. Definition of Company – we are inclined to have you include Data X information in the report. If you are proposing to exclude Data X for the purposes of the report, please explain.

Response: To clarify, are you proposing that DataX be included in the definition of "Company" with regard to the Report, but excluded with regard to the other requests? We had proposed excluding them overall, including from the Report, as it calls for information regarding the number of leads sold to lenders and the volume of business done in connection with those sales, but DataX is not engaged in the lead generation business and does not sell leads to lenders. As with the definition of "Company" generally, we are willing to make this request without prejudice to your ability to ask at a later point that DataX be included in the Report, subject to further negotiations between the parties as needed.

- II. Interrogatories
  - a. Interrogatory Number 6 – we anticipate recommending that this be modified to read, "leads...that were offered for sale to or purchased by Internet Lenders..."

Response: Your proposed modification appears to expand the request beyond its original scope – which as we understood it, was aimed at identifying all persons who provided leads that were sold to Lenders. We therefore propose that that this Interrogatory be modified to read as follows: "Identify all Persons from whom the Company has obtained Leads that were purchased by Internet Lenders."

- III. RFPs



- a. Document custodians – in addition to the list of employees that the Company identified to be interviewed, we would want to see a company organization chart.

Response: We will provide organization charts for MoneyMutual, LLC and affiliates involved in lead generation for Internet lenders if those exist, or otherwise provide information that will enable you to evaluate our recommended list of custodians. This RFP is subject to our question about timing/preservation of rights discussed above.

- b. Keywords – please suggest some dates for when you would provide proposed keywords.

Response: We should be able to provide this by the first week of March. Again, this raises our question about timing/preservation of rights discussed above.

- c. RFP No. 9 – we welcome suggestions for how to make the privilege log requirement for this request less burdensome. For instance, it may be possible to produce an initial, data-driven privilege log that captures and provides certain fields from an email database (such as sender, recipient, date, and subject line).

Response: We had proposed including the “non-privileged documents” limitation that is included in RFP 10 here as well, so that privileged documents would not be considered responsive, and therefore would not have to be logged. Your proposal would reduce the burden a bit, but may be confusing unless we can take that approach for the entire privilege log. Also, even with a different format on the privilege log, we would still have to collect and log privileged documents responsive to this request, which we had hoped to avoid. Under our proposal, we would produce any complaints themselves, and any related non-privileged documents, but would not be required to log privileged discussions regarding any such complaints.

- d. RFP No. 10 – we tentatively agree with the proposal to limit this request to non-publicly filed documents with the exception of initiating documents and dispositive rulings or orders.

Response: Your counter-proposal here is agreeable – we will produce initiating documents and dispositive rulings or orders. As we understand it, you are still considering our proposal that we not be required at this time to re-reproduce the document production from the NY DFS matter (which is still in progress, and will overlap with the production here).

These are our initial thoughts, which we wanted to share as soon as possible. Please let us know if you would like to schedule a follow-up call to discuss any of this or other concerns that may have arisen.

Thank you,

Meredith

**Meredith Osborn**

Enforcement Attorney  
Consumer Financial Protection Bureau  
Direct: 415 645 6615  
Mobile: 202 285 9021  
[consumerfinance.gov](http://consumerfinance.gov)

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**From:** Naugle, Natalie [<mailto:NNaugle@mofa.com>]  
**Sent:** Tuesday, February 11, 2014 3:41 PM  
**To:** Osborn, Meredith (CFPB); Rosenthal, Lisa (CFPB)  
**Cc:** McGuire, James R.; Lin, Rita F.  
**Subject:** RE: Money Mutual (Selling Source)

Meredith and Lisa,

Attached please find our written request for modifications to the CID based on our meet and confer discussions last week. James is out of the office this afternoon, but asked that I forward this to you ASAP. Please note that we are sending the attached by e-mail only, but please advise if you would like us to send it and/or any future correspondence to anyone else or by any other method.

Please just let us know if you have any questions or wish to discuss any of the issues further. We look forward to your response.

Thank you,

**Natalie Naugle**

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