

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, DC

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In the Matter of	)	CONSENT ORDER,
	)	ORDER FOR RESTITUTION, AND
APPLIED BANK	)	ORDER TO PAY
WILMINGTON, DELAWARE	)	
	)	FDIC-11-070b
(Insured State Nonmember Bank)	)	FDIC-11-081k
	)	
_____	)	

The Federal Deposit Insurance Corporation (FDIC) is the appropriate Federal banking agency for Applied Bank, Wilmington, Delaware (Bank), under section 3(q) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. § 1813(q). The Bank, by and through its duly elected board of directors (Board), has executed a STIPULATION AND CONSENT TO THE ISSUANCE OF A CONSENT ORDER, ORDER FOR RESTITUTION, AND ORDER TO PAY (CONSENT AGREEMENT) dated November 15, 2011, that is accepted by the FDIC. Through the CONSENT AGREEMENT, the Bank has consented, without admitting or denying any charges of violations of law and/or regulations, to the issuance of this CONSENT ORDER, ORDER FOR RESTITUTION, AND ORDER TO PAY (ORDER) by the FDIC.

Having determined that the requirements for issuance of an order under sections 8(b) and 8(i) of the FDI Act, 12 U.S.C. §§ 1818(b) and 1818(i), have been satisfied, the FDIC, therefore, accepts the CONSENT AGREEMENT and issues the following ORDER:

DEFINITIONS

For purposes of this ORDER, the following definitions shall apply:

1. “Bank” shall mean Applied Bank, Wilmington, Delaware, and any of its institution-affiliated parties, as that term is defined in section 3(u) of the FDI Act, 12 U.S.C. § 1813(u).
2. “Credit Card Program” shall mean any unsecured consumer Visa or MasterCard branded product with a Monthly Maintenance Fee (as defined below) offered through and issued by the Bank.
3. “Monthly Maintenance Fee” shall mean any periodic fee imposed each billing cycle for the issuance or availability of a credit card.
4. “Overlimit Fee” shall mean a fee imposed whenever a consumer exceeds his or her credit limit, regardless of cause, and includes overlimit fees assessed when the Monthly Maintenance Fee causes a consumer to exceed his or her credit limit.

IT IS HEREBY ORDERED, that the Bank, its institution-affiliated parties, as that term is defined in section 3(u) of the Act, 12 U.S.C. § 1813(u), and its successors and assigns, cease and desist from operating in violation of section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45(a) (Section 5);

IT IS FURTHER ORDERED that the Bank, its institution-affiliated parties, as that term is defined in section 3(u) of the Act, 12 U.S.C. § 1813(u), and its successors and assigns, shall take affirmative action as follows:

1. Within thirty (30) days from the effective date of this ORDER, the Bank shall eliminate or correct all violations of Section 5, and other federal consumer protection laws and regulations cited in the FDIC’s Compliance Report of Examination

dated August 2, 2010. In addition, the Bank shall take the necessary steps to ensure future compliance with Section 5 and all other applicable federal consumer protection laws, implementing rules and regulations, regulatory guidance, and statements of policy.

2. The Bank shall clearly and prominently disclose, in any credit card solicitation that includes representations about credit limits or available credit, on the same page and in the same manner and format as such representations a description of the following:

- A. the amount and timing of all fees imposed for the issuance or availability of a credit card or imposed based on account activity or inactivity including, but not limited to any Monthly Maintenance Fee; and
- B. to the extent that such fees and other restrictions affect available credit, specify the effect of such fees or restrictions on available credit.

3. Within sixty (60) days from the effective date of this ORDER, the Bank shall establish an independent audit program (Audit Program) with respect to the Credit Card Program and any other credit card programs or other credit products marketed and/or serviced by the Bank to comply with all applicable federal consumer protection laws, including Section 5, and all implementing rules and regulations, regulatory guidance, and statements of policy. The Bank's Board of Directors (Board) shall document its efforts, including the review of and corrective measures made pursuant to findings of each audit, in the minutes of the Bank's Board. The Audit Program shall, at a minimum, require that each audit:

(a) provide for sufficient transactional testing, as appropriate, for all areas of significant compliance risk, including those areas identified in the Compliance Examination Report; and

(b) identify the deficiencies noted, provide descriptions of or suggestions for corrective actions and time frames for correction, and establish follow-up procedures to verify that corrective actions were implemented and effective.

4. The Bank shall comply with the guidance set forth in Financial Institution Letter (FIL) 26-2004, *Unfair or Deceptive Acts or Practices by State-Chartered Banks* (March 11, 2004).

RESTITUTION AND OTHER RELIEF

5. **IT IS FURTHER ORDERED THAT**, within thirty (30) days from the effective date of this ORDER, the Bank shall commence the restitution and other relief described below, and complete such restitution within one hundred twenty (120) days from the effective date of this ORDER.

(a) Restitution shall be made to all Eligible Consumers. For purposes of this ORDER, the term Eligible Consumers means Bank credit cardholders who were assessed an Overlimit Fee solely due to the imposition of a Monthly Maintenance Fee within eight (8) days of the close of the previous billing cycle, including those consumers whose credit card accounts were closed, charged off, or sold to a third party. Eligible Consumers do not include those consumers who, in the same billing cycle that an Overlimit Fee was assessed as a result of the Monthly Maintenance Fee, had other charges to their account that would have caused them to exceed their credit limits and incur an Overlimit Fee regardless of the Monthly Maintenance Fee, or who were delinquent in their payments in the billing cycle immediately preceding the cycle in which the Monthly Maintenance Fee caused the assessment of an Overlimit Fee. A

cardholder who previously received a credit for an Overlimit Fee subject to this ORDER is not eligible for restitution with respect to that particular fee.

(b) For all Eligible Consumers, the Bank shall make restitution as follows:

- (i) Credit all billed and not previously credited Overlimit Fees;
- and
- (ii) Refund in cash any resulting credit balance.

(c) To the extent that this ORDER requires a cash refund to an Eligible Consumer, such restitution shall be made by check as provided in paragraphs 8 and 9 of this ORDER.

(d) For purposes of this ORDER, the maximum restitution required to be made to each Eligible Consumer shall be one Overlimit Fee.

(e) With respect to accounts that were charged off due to nonpayment, the restitution credit required by this ORDER shall reduce the charged off balance of each such account. To the extent that the Bank has legally forgiven any portion of an Eligible Consumer's charged off debt, the Bank is not required to make cash restitution to the extent that the forgiven debt exceeds the restitution otherwise required to be made by this ORDER.

6. The Bank shall not undertake collection efforts in the same mailing as that containing any of the checks or letters described in paragraph 8 of this ORDER. Further, the Bank shall not condition, expressly or by implication, the provision of a credit or cash payment pursuant to this ORDER on the payment of any outstanding debt.

7. (a) For all credit reporting agencies to which it regularly reports, within ninety (90) days of the effective date of this ORDER, the Bank shall take all appropriate steps consistent with the provisions of the Fair Credit Reporting Act, 15 U.S.C. § 1681c (FCRA), to amend and correct all negative incident reports previously made with respect to all Eligible Consumers, as defined above, whose accounts would not have generated a negative incident report but for the imposition of the fees and finance charges to be reversed pursuant to the preceding paragraphs; and

(b) For purposes of this ORDER, amending or correcting negative incident reports may include requesting that each such consumer reporting agency remove the affected trade line or trade lines, or furnishing such agency accurate information regarding the modifications to each account resulting from this ORDER.

Notification to Consumers and Restitution Checks

8. (a) The Bank shall send each Eligible Consumer a letter explaining the reason for the issuance of an account credit and/or restitution check.

(b) Within fifteen (15) days from the effective date of this ORDER, the Bank shall submit to the Regional Director for review and non-objection the proposed text of the letters that will be sent to Eligible Consumers pursuant to this ORDER (Consumer Letters). The Consumer Letters shall include satisfactory language explaining the reason for, and calculation of, restitution to each Eligible Consumer.

(c) The Regional Director shall notify the Bank in writing of any comments or non-objection to the Consumer Letters. The Bank shall incorporate all

comments of the Regional Director, making such changes as may be required to the Consumer Letters.

(d) The Consumer Letters and the restitution checks required by this ORDER shall be mailed no later than one hundred twenty (120) days from the effective date of this ORDER.

(e) All mailings pursuant to this paragraph shall be sent by United States Postal Service first-class mail, address correction service requested. The envelope shall contain no materials other than those reviewed and not objected to by the Regional Director.

(f) If a Consumer Letter is returned for any reason, the Bank shall make reasonable attempts to locate the Eligible Consumer affected. Such attempts shall include, at a minimum, a standard address search using the National Change of Address System.

(g) The Bank shall promptly re-mail all returned Consumer Letters (including, where applicable, restitution checks) to the corrected addresses, if any.

9. Each restitution check shall be made payable to the Eligible Consumer, and the face of each restitution check shall clearly and conspicuously state "Please cash or deposit this check within 180 days or it will no longer be valid." After one hundred eighty-seven (187) days from the date each restitution check was originally mailed, the Bank may void any check that was returned or was not negotiated.

10. (a) Within thirty (30) days from the effective date of this ORDER, the Bank shall retain, in a segregated deposit account, the amount of nine-hundred thousand dollars (\$900,000), the estimated net aggregate restitution amount, pursuant to an escrow

agreement submitted to the Regional Director for review and approval, to allow Eligible Consumers who did not receive their check or failed to negotiate it within the original period to receive restitution. For purposes of this subparagraph, the term *estimated net aggregate restitution amount* means the estimated total of cash payments to be made to Eligible Consumers under this ORDER. As the Bank makes the restitution cash payments required by this ORDER, it may draw down the amounts paid from the funds held in the segregated deposit account, provided however, that nothing in this paragraph shall be construed to reduce the total aggregate amount of restitution cash payments required to be made under this ORDER.

(b) The total amount of any cash payments required by the ORDER and not claimed in accordance with the escrow agreement shall be donated as soon as practicable thereafter by the Bank to a charitable corporation that is tax-exempt under section 501(c)(3) of the Internal Revenue Code (including colleges and/or universities), for financial or credit education or counseling programs or services. Before making any such donation, the Bank shall submit the name of the entity and a description of the financial and/or credit education or counseling programs or services provided by such entity for non-objection by the Regional Director.

11. Within thirty (30) days of the effective date of this ORDER, the Bank shall submit to the Regional Director, for review and approval, an announcement to be posted on the Bank's website (Website), describing this ORDER and the classes of Eligible Consumers. The announcement shall set forth procedures whereby consumers can check their eligibility and provide updated mailing address information, via a toll-free number and via the Website, if they have not received a letter from the Bank

addressing this ORDER within three hundred sixty-five (365) days from the effective date of this ORDER. The Regional Director shall notify the Bank of her or his decision regarding the approval or disapproval within ten (10) days of receipt of the proposed announcement. The Bank shall post the announcement and ORDER on the Website within ten (10) days after receiving approval from the Regional Director and comments, if any, from the Regional Director shall be incorporated into the announcement.

12. The restitution set forth herein is equitable relief pursuant to section 8(b)(6) of the FDI Act, 12 U.S.C. § 1818(b)(6), and is remedial in nature.

CPA Firm

13. (a) Within thirty (30) days from the effective date of this ORDER, the Bank shall hire an independent certified accounting firm (Firm), acceptable to the Regional Director, to examine compliance with this ORDER in accordance with the attestation standards established by the American Institute of Certified Public Accountants.

(b) Prior to the engagement of the Firm, and no later than fifteen (15) days from the effective date of this ORDER, the Bank shall submit the name and qualifications of the Firm, together with the proposed engagement letter with the Firm, to the Regional Director for non-objection.

(c) The engagement letter between the Bank and the Firm shall give the FDIC access to the Firm's staff, work-papers, and materials prepared in the course of the Firm's engagement and preparation of the reports required by this ORDER.

(d) To be acceptable to the Regional Director, the Firm must be

independent and, at a minimum, comply with the Code of Conduct of the appropriate State Board of Accountancy and meet the auditor independence requirements of the Securities and Exchange Commission.

(e) Within fifteen (15) days after submission of the Firm's name, engagement letter, and the Firm's qualifications, the Regional Director shall notify the Bank in writing of the FDIC's objection or non-objection to the Firm.

14. The Firm shall prepare independent examination reports that address the Bank's compliance with the restitution and credit reporting requirements of this ORDER, including the following areas:

(a) the completeness and accuracy of the criteria, data sources, formulas, and calculations established, used and generated to determine the amounts of fees and charges to be reversed to the accounts of Eligible Consumers;

(b) efforts to make requests of consumer reporting agencies; and

(c) efforts to obtain the current addresses of Eligible Consumers whose Consumer Letters and checks were initially returned.

15. Within forty-five (45) days from the effective date of this ORDER, the Bank shall identify the accounts that will receive credits pursuant to paragraph 5, commence the process to apply the credits to those accounts, and submit a report thereof to the Regional Director and the Firm.

16. (a) Within ninety (90) days from the effective date of this ORDER, the Firm shall submit to the Bank and the Regional Director an initial report, in accordance with Paragraph 14, evaluating compliance with this ORDER.

(b) The Firm shall provide an updated report to the Bank and the Regional Director every thirty (30) days until the restitution required by this ORDER is completed, and the Firm has provided the final report specified in subparagraph (c).

(c) Within one-hundred and eighty (180) days from the effective date of this ORDER, the Firm shall submit to the Bank and the Regional Director its final report. Such report shall include a confirmation that: (i) the restitution required by this ORDER has been accurately calculated and made; (ii) all cash refunds required to be paid to Eligible Consumers have either been paid or returned to the Bank after reasonable attempts have been made to locate such Eligible Consumers; and (iii) the notifications to consumer reporting agencies, as required by Paragraph 7, have been made.

Record Retention

17. For three (3) years from the effective date of this ORDER, the Bank shall retain all records pertaining to the restitution required by this ORDER, including, but not limited to: documentation of the processes and procedures used to identify the Eligible Consumers, the names, contact and account information of the Eligible Consumers, mailing records, and any other documentation confirming that the restitution required by this ORDER was made.

ORDER TO PAY

18. **IT IS FURTHER ORDERED THAT** by reason of the violations of law and/or regulations, and after taking into account the appropriateness of the penalty with respect to the financial resources and good faith of the Bank, the gravity of the violations,

the history of previous conduct by the Bank, and such other matters as justice may require, pursuant to section 8(i)(2) of the FDI Act, 12 U.S.C. § 1818(i)(2), a civil money penalty of One Hundred Thousand Dollars (\$ 100,000) is assessed against the Bank. The Bank itself shall pay such amount to the Treasury of the United States, and is prohibited from seeking or accepting indemnification from such payment from any third party.

PROGRESS REPORTS

19. The Bank shall furnish a written progress report to the Regional Director sixty (60) days after the effective date of this ORDER and every ninety (90) days thereafter, detailing the form and manner of all actions taken to secure compliance with this ORDER and the results of such actions. Nothing in this paragraph shall relieve the Bank from compliance with any other reporting requirement or provision of this ORDER.

MISCELLANEOUS

20. This ORDER shall not bar, estop or otherwise prevent the FDIC or any other federal or state agency or department from taking any action against the Bank, or any of the Bank's affiliates, their successors or assigns, or any of their respective directors, officers, employees, and agents, or any of the Bank's current or former institution-affiliated parties, or any of their respective directors, officers, employees, and agents.

21. This ORDER is effective upon issuance.

22. The provisions of this ORDER shall be binding upon the Bank, its successors and assigns, and any of their respective directors, officers, employees, and agents, and any of the Bank's institution-affiliated parties.

23. The provisions of this ORDER shall remain effective and enforceable except to the extent that, and until such time as, any provisions of this ORDER have been modified, suspended, or terminated in writing by the FDIC.

Pursuant to delegated authority.

Dated at Washington, D.C., this 18th day of November, 2011.

/s/

Sylvia H. Plunkett
Senior Deputy Director
Division of Depositor and
Consumer Protection