

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

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IN THE MATTER OF	)	
	)	
BANK OF AGRICULTURE AND COMMERCE	)	ORDER TO CEASE AND DESIST
STOCKTON, CALIFORNIA	)	
	)	FDIC-08-408b
(STATE NONMEMBER BANK)	)	
_____	)	

Bank of Agriculture and Commerce, Stockton, California (“Bank”), having been advised of its right to a NOTICE OF CHARGES AND OF HEARING detailing the alleged unsafe or unsound banking practices, relating to its alleged failure to supervise its third party relationships involving Social Security and other benefit payment programs, and of its right to a hearing on the charges under section 8(b) of the Federal Deposit Insurance Act (“Act”), 12 U.S.C. § 1818(b), and having waived those rights, entered into a STIPULATION AND CONSENT TO THE ISSUANCE OF AN ORDER TO CEASE AND DESIST (“CONSENT AGREEMENT”) with counsel for the Federal Deposit Insurance Corporation (“FDIC”), dated February 18, 2009, whereby, solely for the purpose of this proceeding and without admitting or denying the charges of unsafe or unsound banking practices, alleged to have created an abnormal risk of harm to the Bank, the Bank consented to the issuance of an ORDER TO CEASE AND DESIST (“ORDER”) by the FDIC.

The FDIC considered the matter and determined that it had reason to believe that the Bank had engaged in unsafe or unsound banking practices. The FDIC, therefore, accepted the CONSENT AGREEMENT and issued the following:

SUPERVISORY FINDINGS

The FDIC finds, and the Bank neither admits nor denies, without any adjudication on the merits, the following:

1. From on or about June, 1999, and until the present, the Bank maintained a relationship with Petz Enterprises, Inc. ("PEI"), a California corporation, to provide electronic deposits for consumers receiving benefit payments (such as Social Security payments and other benefit payments) through a direct deposit program established by PEI through the Bank, as follows:

(a) PEI maintained contractual relationships with check cashers, payday lenders and retail merchants that involved soliciting consumers receiving Social Security and other benefit payments and having those individuals agree to deposit their benefit payments with the Bank through PEI's program.

(b) The Bank maintained a relationship with PEI. The Social Security and other benefit payments belonging to the consumers were co-mingled and deposited at the Bank in a master account in the name of PEI. For this service and the Bank's processing of the Social Security and other benefit payments, the Bank received a payment of \$0.90 per ACH credit, that for a period of time was changed to a flat payment of \$10,000 per month.

(c) With the assistance of the Bank, PEI caused a check for the full benefit amount to be drawn on the Bank and to be delivered to the check cashers, payday lenders and retail merchants made payable to the consumers in the amount of their benefit payment, less fees to PEI in the amount of \$3.00 pursuant to the terms of the direct deposit program.

(d) Consumers returned to the check cashers, payday lenders and retail merchants to obtain their benefit payments and cash the payment check.

2. Many of the check cashers, payday lenders and retail merchants associated with PEI's direct deposit program with the Bank, also provided short term loans and financing to the Social Security and other benefit recipients.

(a) These customers repaid the loans with their benefits payments at the time they cashed their benefits payment check.

(b) The amount due on the short term loans and financing often amounted to the whole, or a significant portion of the consumer's benefit payments. These loans therefore left the Social Security and other benefit recipient needing additional short term loans or financing.

(c) Neither PEI nor the Bank monitored these short term lending practices related to the consumers in PEI's direct deposit benefit program run through the Bank.

3. The Bank has provided inadequate oversight of the direct deposit program and has failed to oversee the practices of PEI, its third party service provider.

(a) Although the Bank had at least a nine year relationship with PEI, the Bank failed to understand PEI's benefits direct deposit program that the Bank facilitated.

(b) The Bank did not take steps to monitor its relationship with its third party, PEI. The Bank therefore was unaware of the types of businesses involved in PEI's program. The Bank failed to assure PEI established the proper safeguards related to the activities of the check cashers, payday lenders and retail merchants.

(c) The Bank did not have adequate policies in place to evaluate the risks associated with its third party relationships, such as PEI, before forming a relationship.

(d) The Bank did not sufficiently monitor PEI's account to assure compliance with Bank policies and state and federal regulations exposing itself to reputational and legal risk.

(e) The Bank did not conduct adequate due diligence of PEI before entering into and during the course of the relationship.

4. In connection with its handling of its third party relationship with PEI and the benefit payments and other deposits, the Bank has engaged in unsafe or unsound practices including, but not limited to:

- (a) failing to appropriately manage third party risk;
- (b) operating with a lack of sufficient internal controls;
- (c) operating with insufficient due diligence; and
- (d) operating with management whose insufficient policies and practices are detrimental to the Bank and to consumers.

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED, that the Bank, its institution-affiliated parties, as that term is defined in 12 U.S.C. § 1813(u), successors, and assigns, cease and desist from the following unsafe or unsound banking practices:

- (a) failing to appropriately manage third party risk;
- (b) operating inconsistently with the FDIC's Guidance for Managing Third

Party Risk found in Financial Institution Letter-44-2008;

- (c) operating the Bank without effective risk management policies and procedures in relation to the Bank's relationship with PEI;
- (d) operating with an ineffective compliance program given the magnitude and complexity of the Bank's third party relationships;
- (e) operating with ineffective policies and procedures given the magnitude and complexity of the Bank's third party relationships;
- (f) failing to assure that proper training is provided to third parties, and employees of third parties;
- (g) operating with management whose policies and practices are detrimental to the Bank and to consumers; and
- (h) failing to establish an effective process to monitor compliance with federal and state laws, regulations, and policies.

IT IS FURTHER ORDERED, that the Bank, its institution-affiliated parties, successors, and assigns, in order to remedy the aforementioned unsafe or unsound policies and practices, take affirmative action as follows:

1. The Bank shall have and retain qualified management. Each member of management shall have qualifications and experience commensurate with his or her duties and responsibilities at the Bank. Each member of management shall be provided appropriate written authority from the Bank's Board of Directors to implement the provisions of this ORDER.

2. Within 30 days from the effective date of this ORDER, the Bank's Board of Directors shall provide adequate and effective oversight over the Bank's compliance program, especially focusing on monitoring the activities of third parties.

3. Within 60 days from the effective date of this ORDER, the Bank shall establish and implement an effective compliance program, acceptable to the Regional Director of the FDIC's San Francisco Regional Office ("Regional Director"). At a minimum, the compliance program should address the Bank's compliance with federal and state consumer protection laws, regulations, and policies, and the appropriate assessment, measuring, monitoring, and controlling of third party risk.

4. (a) Within 60 days from the effective date of this ORDER, the Bank shall develop, adopt and implement a training program, acceptable to the Regional Director, related to federal and state consumer protection laws, regulations, and policies, particularly those related to managing third party risk for all Bank personnel, including senior management and the directorate, commensurate with their individual job functions and duties.

(b) At a minimum, the program shall include provisions for training in applicable federal and state consumer protection laws, regulations, and policies to all third parties providing banking related services.

5. Within 60 days from the effective date of this ORDER, the Bank shall develop and implement compliance policies and procedures related to federal and state consumer protection laws, regulations, and policies, acceptable to the Regional Director. At a minimum,

the policies shall:

(a) Require the adoption of a comprehensive consumer protection program which will be reviewed and approved annually by the Bank's Board of Directors; and

(b) Require the development of internal monitoring procedures to ensure ongoing review to determine that:

(i) The Bank's actual practices reflect the compliance policies and procedures;

(ii) All federal and state consumer protection laws, regulations, and policies are being followed; and

(iii) The risk posed by the Bank's use of third parties in administering its benefit payments and other payment deposit programs is appropriately assessed, measured, monitored, and controlled.

6. (a) Within 30 days from the effective date of this ORDER, the Bank shall develop, adopt and implement a plan acceptable to the Regional Director to unwind its benefit payment deposit account business with PEI ("Plan").

(b) This Plan shall assure no harm to those consumers receiving benefit payments and no disruption to their receipt of their benefits as a result of the closing of the direct deposit account and, if need be, the Plan will provide for the Bank to make alternative arrangements for the receipt of their benefit payments upon the Bank's unwinding of its benefit payment deposit account business with PEI.

(c) This Plan shall establish a dedicated toll-free telephone number to assist consumers. The availability of hours should also take into account all time differences.

(d) This Plan shall also include arrangements to provide consumers with financial education literature regarding the rights of Social Security and other benefit payment beneficiaries.

7. Within 90 days from the effective date of this ORDER, the Bank shall have an external audit to ensure compliance with federal and state consumer protection laws, regulations, and policies with respect to third party risk. The scope of the external audit shall be submitted to and approved by the Regional Director prior to engagement of the external auditor. Further, the audit will, at a minimum:

- (a) Define a comprehensive scope, which at a minimum shall address the deficiencies and compliance risks in the Bank's benefit payments deposit business;
- (b) Identify the number of transactions sampled by category or product type;
- (c) Identify deficiencies;
- (d) Provide descriptions of or suggestions for corrective actions and time frames for correction; and
- (e) Establish follow-up procedures to verify that corrective actions were implemented and effective.

Audit findings, deficiencies, and recommendations must be documented in a written report and provided to the Bank's Board of Directors within 10 days after completion of the external audit.

8. Within 30 days of receipt of the external auditors written report, the Bank's Board of Directors shall take action to address the external audit's findings, correct any deficiencies noted, and implement any recommendations or explain in a writing signed by all members of the Bank's Board of Directors why a particular recommendation has not been implemented.

9. Within 30 days after the end of each quarter following the effective date of this ORDER, the Bank shall furnish written progress reports to the Regional Director detailing the form and manner of any actions taken to secure compliance with this ORDER and the results thereof.

10. Following the effective date of this ORDER, the Bank:

(a) shall send to its shareholders a description of this ORDER:

- (i) in conjunction with the Bank's next shareholder communication; or
- (ii) in conjunction with its notice or proxy statement preceding the

Bank's next shareholder meeting.

(b) The description shall fully describe the ORDER in all material respects.

The description and any accompanying communication, notice, or statement shall be sent to the FDIC Registration and Disclosure Section, 550 17th Street, N.W., Washington, D.C. 20429 for review at least 20 days prior to dissemination to shareholders.

(c) Any changes requested to be made by the FDIC shall be made prior to dissemination of the description, communication, notice, or statement.

This ORDER will become effective upon its issuance by the FDIC. The provisions of this ORDER shall remain effective and enforceable except to the extent that, and until such time as, any provision of this ORDER shall have been modified, terminated, suspended, or set aside by the FDIC.

Pursuant to delegated authority.

Dated this 19th day of February, 2009.

Stan Ivie
Regional Director
Division of Supervision and Consumer Protection
San Francisco Regional Office