

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

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In the Matter of)	CONSENT ORDER,
)	ORDER FOR
FIRST ELECTRONIC BANK)	RESTITUTION, AND
SANDY, UTAH)	ORDER TO PAY
)	CIVIL MONEY PENALTY
)	
(INSURED STATE NONMEMBER BANK))	FDIC-12-635b
)	FDIC-12-636k
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The Federal Deposit Insurance Corporation (“FDIC”) is the appropriate Federal banking agency under section 3(q) of the Federal Deposit Insurance Act (“FDI Act”), 12 U.S.C. § 1813(q), for First Electronic Bank, Sandy, Utah (“Bank” or “FEB”). The FDIC determined that the Bank has engaged in: a) unsafe or unsound banking practices; b) deceptive and unfair acts and practices in or affecting commerce, in violation of section 5 of the Federal Trade Commission Act (“Section 5”), 15 U.S.C. § 45(a)(1), by failing to adequately inform consumers of promotion plan requirements concerning deferred interest charges assessed on open-end credit accounts; and c) other violations of law, including the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. §§ 1681 *et seq.*, and its implementing Regulation V, 12 C.F.R. § 1022, the Equal Credit Opportunity Act (“ECOA”), 15 U.S.C. §§ 1691 *et seq.*, and its implementing Regulation B, 12 C.F.R. § 1002, the Truth in Lending Act (“TILA”) as amended by the Credit CARD Act of 2009 (“CARD Act”), 15 U.S.C. §§ 1601 *et seq.*, and its implementing Regulation Z (“Regulation Z”), 12 C.F.R. § 1026, and the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§ 7001 *et seq.* (“E-Sign”).

The Bank, by and through its duly elected and acting Board of Directors (“Board”), has executed a STIPULATION AND CONSENT TO THE ISSUANCE OF A CONSENT ORDER, ORDER FOR RESTITUTION, AND ORDER TO PAY CIVIL MONEY PENALTY (“CONSENT AGREEMENT”), dated May 6, 2013, that is accepted by the FDIC. With the CONSENT AGREEMENT, the Bank has consented, without admitting or denying any charges of unsafe or unsound banking practices or violations of law or regulation, to the issuance of this CONSENT ORDER, ORDER FOR RESTITUTION, AND ORDER TO PAY CIVIL MONEY PENALTY (collectively “ORDER”) by the FDIC.

Having determined that the requirements for issuance of an order under sections 8(b) and 8(i)(2) of the FDI Act, 12 U.S.C. §§ 1818(b) and 1818(i)(2), have been satisfied, the FDIC hereby issues the following:

I. CONSENT ORDER

IT IS HEREBY ORDERED that the Bank, its institution-affiliated parties, as that term is defined in 12 U.S.C. § 1813(u), and its successors and assigns, cease and desist from engaging in unsafe or unsound banking practices and violations of law and/or regulations, as more fully set forth in the Compliance Report of Examination dated August 1, 2011 (“Compliance ROE”), and operating in violation of Section 5 by engaging in the deceptive and unfair practices described below.

IT IS FURTHER ORDERED that the Bank, its institution-affiliated parties, and its successors and assigns, shall take the following affirmative action:

Correct Violations of Law

1. Within 30 days of the effective date of this ORDER, the Bank shall correct all violations of law, as more fully set forth in the Compliance ROE and as described below, and

implement procedures to prevent their recurrence. The Bank's actions as required by this paragraph shall be satisfactory to the Regional Director of the FDIC's San Francisco Regional Office ("Regional Director") as determined at subsequent examinations and/or visitations.

Deceptive Acts and Practices

2. The Bank shall take all action necessary to eliminate all violations of Section 5 and maintain future compliance with Section 5. Specifically, the Bank shall:

- (a) Ensure cut-off times for promotion plan payments comply with Regulation Z;
- (b) Enhance e-bill disclosures and the account summary provided with e-bill alerts to include clear and conspicuous information concerning the promotion plan expiration date, which shall be defined for purposes of this ORDER as the date the promotion plan balance is due as reflected on e-bill disclosures or paper periodic statements ("Promotion Plan Expiration Date"), if the Promotion Plan Expiration Date differs from the statement due date, that all minimum payments must be made; and how payments are applied (such notice hereafter referred to as the "PPN Alert");
- (c) Ensure that all paper periodic statements clearly and conspicuously display a PPN Alert; and
- (d) Refrain from making statements that imply that the FDIC agrees with or supports the bank's practices.

Board and Senior Management Oversight

3. The Board of Directors ("Board") shall immediately fulfill its fiduciary responsibility to participate fully in the oversight of the Bank's Compliance Management System ("CMS") as described in paragraph 8 below, and shall be responsible for the approval of sound

policies and objectives and effectively supervise all the Bank's compliance-related activities, consistent with the role and expertise commonly expected for directors of banks of comparable size and complexity and offering comparable banking products and services.

4. The Board and senior management shall immediately evaluate the effectiveness of the Bank's credit card processing system and shall:

(a) Ensure that the credit card processing system and all processing systems (including those provided by third parties) are easily accessible by appropriate Bank personnel; and

(b) Ensure, through the implementation of policies, procedures, monitoring, and training, compliance with all applicable consumer protection laws and implementing rules and regulations, regulatory guidance and statements of policy ("Consumer Protection Laws").

Compliance Officer

5. Within 90 days from the effective date of this ORDER, the Board shall employ a qualified compliance officer ("Compliance Officer") who possesses the requisite knowledge and experience to administer an effective CMS. The Board shall provide the Compliance Officer with sufficient authority and resources to effectively manage the Bank's CMS. The Compliance Officer will report directly to the Board and provide a monthly presentation to the Board regarding the enhancements made to the Bank's Compliance Program, as described in paragraph 8 below, and compliance with each provision of this ORDER. The Board shall provide the Compliance Officer with sufficient authority to correct identified deficiencies and violations of Consumer Protection Laws. The Board shall submit the name and qualifications of the proposed Compliance Officer to the Regional Director for review and non-objection prior to employing the proposed Compliance Officer.

Compliance Committee

6. Within 15 days from the effective date of this ORDER, the Board shall establish a compliance committee comprised of at least the outside directors, who are not officers of the Bank, any affiliate of the Bank, and at least one member of senior management, plus the Compliance Officer (“Compliance Committee”).

(a) The Compliance Committee shall meet monthly, [separate from any regular meeting of the Board](#), and, at a minimum, the following areas shall be reviewed and approved: minutes of the Compliance Committee, Compliance Officer reports, Compliance Program audit reports, Compliance Program policies, and progress reports concerning compliance with this ORDER.

(b) The Compliance Committee shall report its discussions to the Board at each regularly scheduled Board meeting, and the Board minutes shall document the review and approval of all items before the Board, including the names of any dissenting directors. Nothing shall diminish the responsibility of the entire Board to ensure compliance with the provisions of this ORDER.

(c) The Board, in conjunction with the Compliance Committee, shall allocate resources that are commensurate with the level of complexity of the Bank’s operations to ensure the establishment and implementation of an adequate CMS, as described in the FDIC’s Compliance Examination Manual, Section II-2.1 to 2.4, and shall include specific procedures to ensure the Bank’s compliance with all Consumer Protection Laws. The allocated resources shall be sufficient to ensure the Bank’s timely compliance with this ORDER.

(d) The Board, in conjunction with the Compliance Committee, shall oversee the following actions:

- (i) Ensure that the Bank has appropriate oversight of all processing systems, including systems provided by any third parties, to maintain compliance with all Consumer Protection Laws;
- (ii) Ensure that the Bank has a qualified Compliance Officer who possesses the requisite knowledge and experience to administer an effective CMS;
- (iii) Ensure that all marketing and solicitation materials, including direct mail or internet solicitations, promotional materials, advertising, telemarketing scripts, and including those marketing and solicitation materials prepared by third parties, are reviewed and approved prior to their use, and comply with all Consumer Protection Laws;
- (iv) Ensure that the duties and responsibilities of the Compliance Officer are clearly defined and provide the Compliance Officer access to both the Board and the Compliance Committee;
- (v) Ensure that the Compliance Officer has and retains sufficient authority and independence to implement policies related to Consumer Protection Laws and to institute corrective action as needed. This authority shall include the ability to oversee activities of all third parties, across departmental lines within the Bank, have access to all areas of the Bank's operations, and effectuate corrective action upon discovering deficiencies;
- (vi) Ensure that the Compliance Officer and all individuals with compliance oversight responsibilities receive ongoing training, sufficient time, and adequate resources to effectively oversee, coordinate, and implement the Bank's CMS;
- (vii) Require the Compliance Officer to provide to the Compliance Committee monthly written reports, including, but not limited to, reports related to the enactment and/or promulgation of new Consumer Protection Laws and changes to existing Consumer

Protection Laws, training performed, monitoring and compliance audits performed, corrective action taken, and compliance with this ORDER;

(viii) Ensure proper and timely follow-up and resolution to audit and examination findings indicating the need for corrective action(s); and

(ix) Develop and implement an internal monitoring system of employees' performance to ensure that compliance policies, procedures, and regulatory requirements are adequately followed and employees are held accountable for following adopted policies, procedures, and regulatory requirements.

Compliance Program

7. Within 30 days from the effective date of this ORDER, the Bank shall retain an independent third party ("Compliance Program Consultant"), acceptable to the Regional Director, to provide a detailed written assessment ("Compliance Program Assessment") of the Bank's current compliance program to the Board. The Compliance Program Consultant shall provide the Compliance Program Assessment within 60 days of being retained by the Bank. The Board shall conduct a full and complete review of the Compliance Program Assessment within 15 days of receipt. This review shall be recorded in the Board minutes. The Compliance Program Consultant shall assist in the development, revision, review, and implementation of the Bank's Compliance Program, detailed in paragraph 8 below.

8. Within 90 days from the effective date of this ORDER, the Board and senior management shall review, revise, develop, and/or implement, as necessary, a sound risk-based CMS, including a comprehensive written compliance program ("Compliance Program") to ensure that all activities related to the credit card processing system implemented by the Bank comply with Section 5 and otherwise to ensure compliance with all Consumer Protection Laws.

The written Compliance Program shall be an organized document that guides the Bank's compliance activities and shall be a source document that serves as a training and reference tool for all Bank employees and management. At a minimum, the written Compliance Program shall provide for and include:

(a) Comprehensive written policies and procedures, including detailed operating procedures and controls designed to prevent violations of Consumer Protection Laws and prevent associated risks of harm to consumers, particularly with regard to third-party oversight and Section 5;

(b) An effective training program that address compliance with Consumer Protection Laws and includes regular, specific, comprehensive training of the Board, senior management, Bank staff, third-party staff, and all individuals having responsibilities that relate to Consumer Protection Laws. The training shall be commensurate with individual job functions and duties for appropriate Bank personnel, and shall incorporate training for high-risk compliance areas, including third-party oversight and Section 5;

(c) An enhanced, well-documented and proactive internal CMS monitoring process, incorporated into the daily work of Bank personnel, that is designed to detect and promptly correct compliance weaknesses within the Bank and third parties, particularly weaknesses that impact consumer accounts;

(d) An effective consumer complaint monitoring process, including the maintenance of adequate records of all written, oral, or electronic complaints or inquiries, formal or informal, received by the Bank and all third parties, and the resolution of the complaints and inquiries; and

(e) Effective independent audit coverage of the Compliance Program and the Bank's compliance with all Consumer Protection Laws and internal policies and procedures.

9. Prior to implementation, the Board shall review the written Compliance Program and/or any subsequent modification thereto. Once the Board determines that the Compliance Program and/or any subsequent modification thereto is acceptable, the Board shall approve it and record the approval in the Board minutes. The actions required by this paragraph shall be completed within 90 days of the effective date of this ORDER.

10. The Bank shall implement and comply with the written Compliance Program and/or any subsequent modification thereto upon approval of the Compliance Program by the Board. Thereafter, the Board will ensure that the Compliance Program is fully implemented.

11. Within 90 days from the effective date of this ORDER, the Bank shall perform a full review of all compliance policies and procedures and ensure compliance with all Consumer Protection Laws, particularly with regard to third-party oversight and Section 5.

12. Within 90 days from the effective date of this ORDER, the Bank shall perform a full review of the Bank's training program to ensure compliance with all Consumer Protection Laws.

13. Within 90 days from the effective date of this ORDER, the Bank shall perform a full review of all compliance monitoring procedures, including those areas identified as weak in the Compliance ROE, to ensure compliance with all Consumer Protection Laws. Monitoring procedures should include reviews of activities provided by third parties to ensure regulatory compliance, and reviews of both the Bank's and third parties' complaint processing procedures.

Audit

14. Within 30 days from the effective date of this ORDER, the Bank shall schedule independent audits to be conducted at least annually to ensure compliance with all Consumer Protection Laws. The audits shall be conducted by qualified personnel with experience in conducting independent audits of compliance programs of banks of comparable complexity. The audits identified on the schedule will assess the Bank's CMS and Compliance Program, and at a minimum, shall include the following:

- (a) Define a comprehensive scope to include appropriate aspects of each law or regulation based on a risk analysis;
- (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 timeframes for correction; and
- (e) Establish follow-up procedures to verify that corrective actions are implemented and effective.

15. Audit findings, deficiencies, and recommendations must be documented in a written report and provided to the Bank's Audit Committee within 15 days after completion of the independent audit. In addition, the audit report should be thoroughly reviewed by the Bank's Board and fully documented in the Board's minutes.

16. Within 30 days from receipt of the independent auditor's written report, the Board shall take action to address the audit's findings and develop and implement a plan to:

- (a) Correct any deficiencies noted; and

(b) Implement any recommendations or explain in a written document acceptable to the Regional Director and signed by all Board members why a particular recommendation is not being implemented.

Oversight of Third-Party Agreements and Services

17. Within 30 days from the effective date of this ORDER, the Bank shall develop and implement a third-party oversight program based on the principles set forth in FDIC Financial Institution Letter (“FIL”) 44-2008. The program shall, at a minimum, include the following:

- (a) Procedures for effective monitoring, training, record-keeping, and audit over its third-parties;
- (b) Procedures for effective training and monitoring of Fry’s Electronics, Inc. (“Fry’s”) retail store personnel offering credit card accounts on behalf of the Bank;
- (c) Prior review and approval of all periodic statements, disclosures, and marketing material related to Bank products or services that are provided through any third party or retail stores;
- (d) Reviews of all aspects of the Bank’s agreements with third parties and the services performed for the Bank pursuant to these agreements (“Third-Party Agreements”);
- (e) Access by Bank employees to all systems necessary to perform their duties, including monitoring, training, and fulfilling regulatory requests;
- (f) Monitoring of Third-Party Agreements to ensure that they are formalized, enforceable, and contain the specific expectations, obligations, and consequences, for both the Bank and the third party; and

(g) Procedures for promptly addressing and resolving consumer complaints and inquiries, regardless of the source.

18. The Bank's Compliance Committee shall, on a quarterly basis, submit a written report to the Board and senior management addressing whether third parties are in compliance with Third-Party Agreements. The written report shall include potential violations, deficiencies, consumer complaints and inquiries, or other concerns. The Board shall be responsible for ensuring that corrective actions are taken to address the findings of the written report and for assuring that a sound annual review of compliance-related Third-Party Agreements is performed.

19. The Board shall immediately enforce its Vendor Management Policy, including the requirement that all critical technology vendors and third parties, including Fry's, have and comply with service level agreements, which shall provide for sufficient data integrity, capacity, and availability to support the Bank's historic and/or anticipated peak transaction volume.

20. The Board shall require that all critical technology vendors and third-party service providers have obtained validation from an independent third party that they can provide technology services that maintain adequate confidentiality, integrity, and availability to financial institutions in conformity with Appendix B to Part 364 of the FDIC's Rules and Regulations, 12 C.F.R. Part 364, Appendix B. In addition, all critical vendors shall provide to the Board evidence of an adequate business continuity plan with documented comprehensive testing. If a vendor cannot or will not provide independent validation, the Board shall contract with a third-party service provider that can provide a demonstrated track record of being able to provide technology services with adequate confidentiality, data integrity, and accessibility to financial institutions. Further, the Bank shall not contract with any critical vendor or third-party service provider that does not have independent validation that they can provide technology services that

maintain adequate confidentiality, integrity, and availability to financial institutions or cannot provide to the Board evidence of an adequate business continuity plan with documented comprehensive testing.

21. The Board shall ensure that the Bank conducts documented analyses of new third-party service providers and vendors and adequately monitors existing third-party service providers and vendors as to their financial condition and third-party audits in accordance with the Bank's Vendor Management Policy which shall be acceptable to the Regional Director and will be assessed at subsequent examinations and/or visitations.

22. The Board shall ensure ongoing compliance with FIL 89-2004, dated July 29, 2004, entitled "FFIEC IT Examination Handbook, Guidance on Management and Outsourcing Technology Services"; and FIL 44-2008 entitled "Guidance for Managing Third Party Risk."

Management

23. The Bank shall have and retain qualified management. Each member of management shall have the qualifications and experience commensurate with his or her duties and responsibilities within the Bank. The Board shall provide each member of management the appropriate written authority to implement the provisions of this ORDER.

24. The qualifications of individual members of management shall be assessed on each individual's ability to:

- (a) Comply with the requirements of the ORDER;
- (b) Operate the Bank in a safe and sound manner; and,
- (c) Ensure the Bank's compliance with all applicable laws, rules, and regulations.

25. Within 60 days from the effective date of this ORDER, the Board shall develop and submit to the Regional Director for approval a written Management Plan (“Management Plan”) that assesses the adequacy of management resources and the organizational structure to support current and projected operations. The Management Plan shall be subject to continued review and evaluation at subsequent examinations or targeted reviews. The written Management Plan shall:

- (a) Identify the type and number of officer positions needed to manage and supervise the affairs of the Bank, detailing any vacancies or additional needs and giving appropriate consideration to the size and complexity of the Bank;
- (b) Identify the type and number of staff positions needed to carry out the Bank’s strategic plan, detailing any vacancies or additional needs;
- (c) Identify and establish Board and management committees needed to provide guidance and oversight;
- (d) Identify training and development needs, and incorporate a plan to provide such training and development; and
- (e) Provide the Board with specific recommendations regarding the implementation of the Management Plan.

26. Prior to implementation, the Board shall review the written Management Plan and/or any subsequent modification thereto. Once the Board determines that the Management Plan and/or any subsequent modification thereto is acceptable, the Board shall approve it and record the approval in the Board minutes.

27. The Bank shall notify the Regional Director, in writing, of the resignation or termination of any of the Bank’s directors or senior executive officers. Prior to the addition of

any individual to the Board or the employment of any individual as a senior executive officer, the Bank shall comply with the requirements of section 32 of the FDI Act, 12 U.S.C. § 1831(i), and Subpart F of Part 303 of the FDIC Rules and Regulations, 12 C.F.R. §§ 303.100-303.104.

28. The Board shall ensure that complete and accurate minutes of Board and committee meetings are maintained, that minutes adequately address the areas covered in this ORDER, and that management reports are sufficient to provide the Board with timely and adequate information necessary for making business decisions based on fully informed and meaningful deliberation.

29. Within 30 days from the effective date of this ORDER, the Board shall hire an independent third party to conduct a written Board Assessment Study. The Board Assessment Study shall be acceptable to the Regional Director, and will be assessed at subsequent examinations and/or visitations. The independent third party shall submit the Board Assessment Study to the Board within 30 days after being hired by the Board. At a minimum, the Board Assessment Study shall:

(a) Determine the adequacy of the Board by assessing the number, type (independent versus insider), and diversity of directors needed to oversee and supervise the affairs of the Bank commensurate with its size and risk profile to ensure the safe and profitable operation of the Bank, detailing any vacancies or additional needs in achieving an adequate Board;

(b) Analyze the governance of the Board by assessing, among other things, the skill and experience necessary for members of the Board to provide open-minded and impartial decisions and to exercise independent judgment in group deliberations, and proper

reporting lines to ensure Board member obtain the necessary documentation to make informed decisions; and

(c) Assess the adequacy of the Bank's bylaws in terms of ensuring independence in the composition of the Board.

30. Within 30 days after receipt of the Board Assessment Study, the Board shall take all necessary steps to:

(a) correct any deficiencies noted; and

(b) implement any recommendations contained within the Board Assessment Study or explain in a written document acceptable to the Regional Director and signed by all Board members why a particular recommendation is not being implemented.

31. Within 30 days after receipt of the Board Assessment Study, the Board shall develop a Management Succession Plan ("Succession Plan"). The Succession Plan shall:

(a) Identify roles for succession;

(b) Identify and describe the capabilities required to undertake those roles;

and

(c) Identify employees who could potentially fill and perform such roles.

Credit Card Processing

32. Within 180 days from the effective date of this ORDER, management shall have and maintain a stable information technology infrastructure, including a credit card processing system that at a minimum:

(a) Is operational and effective 98.5 percent of the time;

(b) Produces accurate calculations for consumer statements and management reports at an integrity level of 98.5 percent;

- (c) Ensures confidentiality of sensitive consumer information; and
- (d) Provides sufficient geographically separated recovery operations to ensure

uninterrupted operations in the event of a significant disruption to operations.

33. If the requirements of paragraph 32 are not met to the satisfaction of the Regional Director, the Bank shall cease establishing any new credit accounts.

34. If a third-party service provider is used for the credit card processing system, the relationship shall be governed by a Third-Party Agreement between the Bank and the operator of the credit card processing system, which agreement shall memorialize the Bank's expectations with respect to the functionality of the system implemented and be consistent with the provisions of this ORDER regarding oversight of Third-Party Agreements and services detailed in paragraphs 17 through 22 above.

Information Security

35. Within 30 days from the effective date of this ORDER, the Board shall ensure full compliance with safeguarding customer information requirements contained within Appendix B of Part 364 of the FDIC's Rules and Regulations, 12 CFR Part 364.

36. Within 60 days from the effective date of this ORDER, the Board shall ensure that management has updated the Bank's Disaster Recovery and Business Continuity Plan to reflect current operations, has conducted an enterprise-wide test of the plan, and trained applicable personnel.

37. Within 60 days from the effective date of this ORDER, the Bank shall update its strategic plan to incorporate the move of credit card processing from Fry's to the Bank. In addition, the Board shall develop a budget that adequately provides for sufficient IT operational needs of the Bank. The strategic plan should be regularly updated with any significant changes

in the Bank, including those that impact critical functions for credit card processing, core processing network operations, and business continuity. The Bank shall notify the Regional Director, in writing, prior to implementing any such significant changes.

38. Within 30 days from the effective date of this ORDER, the Bank shall develop and implement an IT Committee of the Board. Discussions concerning all IT, operational, and IT-related matters shall be fully documented in Board minutes.

39. Within 180 days from the effective date of this ORDER, the Bank shall correct all deficiencies listed in the June 6, 2011 IT Report of Examination and the June 25, 2012 IT Report of Examination.

II. ORDER FOR RESTITUTION

IT IS FURTHER ORDERED that the Bank provide restitution to consumers as follows:

Reserve Account and Payment Floor

40. Within 10 days from the effective date of the ORDER, the Bank shall reserve or deposit into a segregated deposit account an amount not less than \$1,050,000 (“Payment Floor”) for the purpose of providing restitution as required by the Order for Restitution.

41. The Bank shall make all restitution payments required by the ORDER, regardless of whether the total of such payments exceeds the Payment Floor. If the total of payments is less than the Payment Floor, the excess shall be returned to the Bank’s general funds.

Restitution Plan for Consumers Receiving Electronic Statements

42. Within 60 days from the effective date of this ORDER, the Bank shall prepare and submit a comprehensive Restitution Plan (“Electronic Statement Restitution Plan”), including samples of letters to consumers, to the Regional Director for review, comment and non-objection prior to implementation for the following categories of consumers receiving

electronic statements (hereinafter “Electronic Statement Eligible Consumers”). Electronic Statement Eligible Consumers shall be defined as:

(a) Any consumer with a promotion plan who: 1) received an electronic billing statement reflecting a Promotion Plan Expiration Date that listed a 12:00 a.m. time deadline, and 2) made full payment of the promotion plan balance within 24 hours of the Promotion Plan Expiration Date reflected on the electronic billing statement; or

(b) Any consumer with a promotion plan who: 1) received an email alert notification of electronic statement and account summary, and 2) made at least the minimum payment due by the statement due date for the cycle in which the promotion plan balance was due and made sufficient payments over the next three payment cycles to pay off the promotion plan balance. These consumers include all consumers who received electronic statements until that date in 2010 when the PPN was incorporated into electronic statements.

43. The Electronic Statement Restitution Plan shall, at a minimum, require the Bank to reimburse deferred interest charges, and any interest assessed on such deferred interest charges, incurred by Electronic Statement Eligible Consumers from the date deferred interest charges were assessed to the account for twelve payment cycles after the payment cycle in which the promotion plan expired.

Restitution Plan for Consumers Receiving Paper Statements

44. Within 60 days from the effective date of this ORDER, the Bank shall prepare and submit a comprehensive Restitution Plan (“Paper Statement Restitution Plan”), including samples of letters to consumers, to the Regional Director for review, comment and non-objection prior to implementation for the following categories of consumers receiving paper statements

(“Paper Statement Eligible Consumers”). Paper Statement Eligible Consumers shall be defined as:

(a) Any consumer with a promotion plan who received a paper periodic statement for a cycle starting in March 2010 or later and made sufficient payments to pay off the promotion plan balance by the Promotion Plan Expiration Date, regardless of whether the payments made were sufficient to pay the minimum payment due for that cycle; or

(b) Any consumer with a promotion plan who received a paper periodic statement for a cycle starting in March 2010 or later and made sufficient payments to pay off the sum of the promotion plan balance and the minimum payment due by the statement due date.

45. The Paper Statement Restitution Plan shall, at a minimum, require the Bank to reimburse deferred interest charges, and any interest assessed on such deferred interest charges, incurred by Paper Statement Eligible Consumers from the date deferred interest charges were assessed to the account, for up to twelve payment cycles after the payment cycle in which the promotion plan expired.

46. For consumers with multiple promotion plans that expired on the same day who made sufficient payments to pay off the promotion plan balance by the Promotion Plan Expiration Date for only one of those promotion plans, the Bank shall reimburse deferred interest charges incurred by Paper Statement Eligible Consumers for only the plan that was opened first, based upon date and time.

Payment of Restitution and Recordkeeping

47. Within 90 days of receipt of non-objection from the Regional Director, the Bank shall implement the Paper Statement Restitution Plan and the Electronic Statement Restitution Plan (“Restitution Plans”). Any required cash restitution amount shall be provided to each of the

Paper Statement or Electronic Statement Eligible Consumers (“Eligible Consumers”) either in the form of a certified or bank check; or by crediting the Eligible Consumer’s existing account , only to the extent that there is an outstanding balance on the existing account. Any restitution due an Eligible Consumer exceeding the outstanding balance on an existing account shall be paid in the form of a certified or bank check. If an Eligible Consumer’s account balance was charged-off during the time period from the expiration of the promotion plan(s) eligible for restitution to the effective date of the ORDER, the amount charged-off may be deducted from cash restitution due the Eligible Consumer. Any restitution due an Eligible Consumer exceeding the amount charged-off shall be paid in the form of a certified or bank check. Restitution provided by the Bank shall not limit consumers’ rights in any way.

48. The Bank shall retain for seven years all records pertaining to the Restitution Plans, including but not limited to: documentation of the processes and procedures used to determine the Eligible Consumers; the names, contact, and account information of the Eligible Consumers; any mailing records; and documentation that the appropriate restitution and equitable relief were made.

Mailing Refunds

49. Within 60 days from the effective date of the ORDER, the Bank shall submit to the Regional Director for review a plan for mailing refunds, including the proposed text of letters that shall be sent to Eligible Consumers regarding restitution checks or account credits. Such letters shall include satisfactory language explaining the reason the Bank is sending a restitution check or crediting an account, including that the Bank is sending the check or crediting an account as the result of an enforcement action by the FDIC. The letters shall also include reference to and the web address for any FDIC press release related to the ORDER. The Bank

shall then address any comments of the Regional Director, making such changes as may be required to the proposed letters. The letters, incorporating any changes that may be required in response to comments by the Regional Director, shall be sent by mail to all Eligible Consumers entitled to receive restitution checks and/or credits to their accounts in accordance with the ORDER.

50. When the Bank makes cash restitution by certified or bank check made payable to an Eligible Consumer, the Bank shall send the certified or bank check by United States Postal Service first-class mail, address correction service requested, to the Eligible Consumer's last address as maintained by the Bank's records. The Bank shall make reasonable attempts to obtain a current address for any Eligible Consumer whose notification letter and/or restitution check is returned for any reason, using standard address search methodologies, and shall promptly re-mail all returned letters and/or restitution checks to current addresses, if any. If the certified or bank check for any Eligible Consumer is returned to the Bank after such second mailing by the Bank, or if a current mailing address cannot be identified using standard address search methodologies, the Bank shall retain the restitution amount of such Eligible Consumer for a period of three-hundred and sixty (360) days from the date the restitution check was originally mailed, during which period such amount may be claimed by such Eligible Consumer upon appropriate proof of identity. After such time, these monies will be disposed of in accordance with the appropriate Restitution Plan.

51. The Bank shall not undertake collection efforts in the same mailing as that containing any of the restitution checks and/or notification letters. 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.

Credit Reporting

52. For all credit reporting agencies to which it regularly reports, within 90 days of the effective date of this ORDER, the Bank shall take all appropriate steps, consistent with the provisions of FCRA, to amend and correct all negative incident reports previously made with respect to all Eligible Consumers whose accounts would not have generated a negative incident report but for the imposition of the deferred interest and interest on such deferred interest to be reversed pursuant to the preceding paragraphs. For purposes of this ORDER, amending or correcting negative incident reports may include requesting that each 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.

One Refund

53. Consumers shall receive one refund per promotion plan based upon the Electronic Statement Restitution Plan or the Paper Statement Restitution Plan, whichever provides the greater benefit.

Independent Certified Accounting Firm

54. The Bank shall retain, at its expense, an independent certified accounting firm (“Firm”) to determine compliance with the Restitution Plans. Prior to the engagement of the Firm, and no later than 30 days from the effective date of the Restitution Plans, the Bank shall submit the name and qualifications of the Firm, together with the proposed engagement letter with the Firm and the proposed agreed-upon procedures, to the Regional Director for non-objection. The Firm shall determine compliance in accordance with the attestation standards established by the American Institute of Certified Public Accountants for agreed-upon procedures for engagements.

55. The engagement letter between the Bank and the Firm shall grant 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 the Restitution Order.

56. To be acceptable to the Regional Director, the Firm must be an objective and unaffiliated third party and, at a minimum, comply with the Code of Conduct of the appropriate State Board of Accountancy and meet auditor independence requirements of the Securities and Exchange Commission.

III. ORDER TO PAY CIVIL MONEY PENALTY

57. IT IS FURTHER ORDERED that by reason of the violations of law and/or regulations set forth herein, and after taking into account the appropriateness of the penalty with respect to the size of the financial resources and good faith of the Bank, the gravity of the violations, the history of previous violations by the Bank, and such other matters as justice may require, including the severity of the risks to and losses of consumers, pursuant to 12 U.S.C. § 1818(i)(2), a penalty of \$250,000 is assessed against the Bank. The Bank shall pay such amount to the Treasury of the United States.

58. IT IS FURTHER ORDERED that the Bank is prohibited from seeking or accepting indemnification from any third party for the civil money penalty assessed and paid in this matter.

IV. NOTIFICATION AND REPORTING REQUIREMENTS

Progress Reports and Certifications of Compliance

59. Within 30 days from the end of each calendar quarter following the effective date of this ORDER, the Bank shall provide a written progress report addressing each provision of the ORDER and detailing the form, manner, results and dates of any actions taken to secure

compliance with the provisions of the ORDER to the Regional Director. All progress reports and other written responses to the ORDER shall be reviewed by the Board and made a part of the Board minutes. The progress reports shall be true and accurate and accompanied by a certification of compliance signed by the Chairman of the Board and the Bank President. The certification of compliance shall include the following:

(a) A statement confirming that the Bank is in compliance with all provisions of the ORDER; or

(b) If the Bank is not in compliance with all provisions of the ORDER, the Bank must provide:

(i) A list of the provisions with which the Bank is not yet in compliance, an explanation of why the Bank is not yet in compliance with each specific provision, and a description of the actions the Bank has taken to comply with the provision; and

(ii) A statement as to when the Bank will be in full compliance with the ORDER.

Shareholder Notification

60. The Bank shall either provide a copy of the ORDER to its shareholder or otherwise furnish a description of the ORDER in conjunction with the next Board of Directors meeting of its shareholder, in which case such description shall fully describe the ORDER in all material respects. The description and any accompanying communication, statement, or notice shall be sent to the FDIC, Disclosure and Securities Section, 550 17th Street, N.W., Washington, D.C. 20429, for non-objection or comment prior to dissemination to the Bank's shareholder. Any changes requested to be made by the FDIC shall be made prior to dissemination of the description, communication, notice, or statement. This description shall be disseminated in

conjunction with the Bank's next shareholder communication and in conjunction with its notice or proxy statement preceding the Bank's next shareholder meeting. The terms "next shareholder communication" and "next shareholder meeting" mean the next shareholder communication and next shareholder meeting immediately after the FDIC provides the Bank with either non-objection of or comments about the description.

V. SAVINGS CLAUSE AND EFFECTIVE DATE OF THE ORDER

The provisions of the ORDER shall not bar, estop, or otherwise prevent the FDIC or any other federal or state agency or department from taking any other action against the Bank or any of the Bank's current or former institution-affiliated parties, as that term is defined in section 3(u) of the FDI Act, 12 U.S.C. § 1813(u).

The ORDER shall be effective on the date of issuance.

Calculation of time limitations for compliance with the terms of the ORDER shall be based on calendar days, unless otherwise noted.

The provisions of the ORDER shall be binding on the Bank, its officers, agents, servants, employees, institution-affiliated parties, and any successors and assigns thereof.

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

