

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

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In the Matter of)	CONSENT ORDER,
)	ORDER FOR
CORNERSTONE MARKETING, LLC, as an)	RESTITUTION, AND
institution-affiliated party of)	ORDER TO PAY
FIRST CALIFORNIA BANK)	CIVIL MONEY PENALTY
WESTLAKE VILLAGE, CALIFORNIA)	
)	FDIC-13-050b
)	FDIC-13-051k
)	
(INSURED STATE NONMEMBER BANK))	
)	
_____)	

The Federal Deposit Insurance Corporation (“FDIC”) is the appropriate Federal banking agency for Cornerstone Marketing, LLC (“Cornerstone”), as an institution-affiliated party of First California Bank, Westlake Village, California (“Bank” or “FCB”), under section 3(q) of the Federal Deposit Insurance Act (“FDI Act”), 12 U.S.C. § 1813(q).

The FDIC has determined that Cornerstone has engaged in violations of law and regulation, including engaging in deceptive 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), in the marketing and promotion of the mPower Visa Card (“mPower Card”) to consumers.

Cornerstone, by and through its acting officers, 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 June 10, 2013, that is accepted by the FDIC. With the CONSENT AGREEMENT, Cornerstone has consented, without admitting or denying any 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 Cornerstone and its successors and assigns, cease and desist from engaging in violations of law and/or regulations, including operating in violation of Section 5 by engaging in the deceptive practices described herein.

IT IS FURTHER ORDERED that Cornerstone, and its successors and assigns, shall take the following affirmative action:

CORRECTIONS OF VIOLATIONS OF LAW

1. Within 30 days of the effective date of this ORDER, Cornerstone shall correct the violations of law referenced above and implement procedures to prevent their recurrence. Specifically, Cornerstone shall cease all deceptive acts or practices in the advertising, marketing, offering, soliciting, extending, billing, or servicing of the mPower Card and take all necessary steps to effect and maintain future compliance with Section 5.

NO MISREPRESENTATIONS/OMISSIONS

2. Cornerstone shall not make, or allow to be made, any misleading or deceptive representation, statement, or omission, expressly or by implication, in the marketing materials used to solicit any customer or prospective customer, or in any similar communication, in connection with the mPower Card or any product or service that is or may be offered in

conjunction with the Bank or any “insured depository institution,” as that term is defined in 12 U.S.C. § 1813(c)(2) (collectively “Products and/or Services”).

3. Within 60 days from the effective date of this ORDER, Cornerstone shall take all action necessary to comply with the guidance set forth in *Unfair or Deceptive Acts or Practices by State-Chartered Banks* (FIL-26-2004, issued March 11, 2004) and shall not engage in any violations of Section 5 with respect to any Product or Service. Without limiting the generality of the foregoing, Cornerstone shall not make, and shall cause its service providers not to make, directly or indirectly, any misrepresentation, expressly or by implication, about any material term of an offer related to any Product or Service in connection with the advertising, marketing, offering, soliciting, extending, billing, or servicing of same, including but not limited to misrepresentations and/or omissions as to:

(a) A customer’s ability to build credit history and access credit in the future as a result of using the mPower Card; or

(b) Any and all fees and costs, including claims that there are ways around mPower Card fees.

COMPLIANCE MANAGEMENT SYSTEM

4. Within 90 days from the effective date of this ORDER, Cornerstone shall review, revise, develop, and/or implement, as necessary, a sound risk-based compliance management system (“CMS”), including a comprehensive written compliance program (“Compliance Program”) to ensure that all Products and Services offered by Cornerstone comply with consumer protection and fair lending laws, including Section 5, implementing rules and regulations, and regulatory guidance and statements of policy (collectively “Consumer

Protection Laws”). Without limiting the generality of the foregoing, Cornerstone shall take the following actions:

(a) Hire a qualified compliance officer (“Compliance Officer”) who possesses the requisite knowledge and experience to administer an effective compliance program.

Cornerstone shall clearly define the Compliance Officer’s duties and responsibilities, and grant the Compliance Officer sufficient authority and independence to cross departmental lines, have access to all areas of the company’s operations, and effect corrective action. The Compliance Officer shall be provided with ongoing training, as well as sufficient time and adequate resources to perform the job functions. The Compliance Officer shall report directly to Cornerstone’s senior management and provide a monthly presentation regarding the Compliance Program, Cornerstone’s compliance with Consumer Protection Laws, and compliance with this ORDER, which shall be documented;

(b) Include compliance matters in communications between senior management and company personnel to demonstrate clear and unequivocal expectations regarding compliance with Consumer Protection Laws and compliance with this ORDER; and

(c) Increase the resources dedicated to compliance with Consumer Protection Laws commensurate with the level and complexity of the company’s operations. The Compliance Program shall be administered by sufficient personnel with experience, knowledge, and authority to comply with all the requirements of this ORDER.

5. Within 90 days from the effective date of this ORDER, Cornerstone shall retain an independent third party (“Compliance Program Consultant”), acceptable to the Regional Director, to assist in the development, revision, review, and implementation of Cornerstone’s Compliance Program. The Compliance Program Consultant shall provide a detailed written

report regarding adherence to the Compliance Program to Cornerstone (“Compliance Program Report”) on a monthly basis. Cornerstone shall conduct a full and complete review of the Compliance Program Report within 30 days of receipt. This review shall be documented.

6. Within 90 days from the effective date of the ORDER, Cornerstone shall review, revise, develop, and/or implement its compliance policies and procedures to provide Cornerstone personnel with all the information needed to operate its business in compliance with Consumer Protection Laws. Cornerstone shall ensure the policies and procedures do not conflict with the policies and procedures of the Bank or any other insured depository institution.

7. Cornerstone shall ensure that the Compliance Program includes effective monitoring systems for any Product or Service, including:

(a) Review and approval by Cornerstone and, as applicable, by the Bank or any other insured depository institutions of: (1) all marketing, advertising, and solicitation materials, including direct mail or internet solicitations, promotional materials, telemarketing scripts, and website content; (2) other materials provided to customers or potential customers generated in connection with the marketing, administration, and servicing of such Product or Service, including agreements, privacy policies, and statements; and (3) any material changes or amendments thereto; and maintenance of copies of the above-derived materials by Cornerstone;

(b) Timely and regular notification by Cornerstone to, as applicable, the Bank or any other insured depository institution of any regulatory agency inquiries or legal actions and any legal actions commenced by any customer or potential customer;

(c) Review and approval by Cornerstone and, as applicable, the Bank or other insured depository institutions of all materials related to policies and procedures concerning

customer service, monitoring of customer service calls on a regular basis, and the review of service-level reports;

(d) Monitoring by Cornerstone of the performance of marketing and solicitation programs;

(e) Periodic compliance reviews, including on-site visits, as appropriate, by Cornerstone of partners, vendors, and servicers whose role is material to the Products or Services;

(f) Maintenance of records by Cornerstone of all approved Product or Service materials, complaints and responses, customer solicitation materials, administrative materials, and service provider agreements;

(g) Maintenance of records by Cornerstone documenting its service-level standards and those for such services as are provided by partners, vendors, and servicers whose role is material to the Products and Services, including due diligence reports, monitoring and audit results, and financial materials;

(h) Regular, quarterly meetings between Cornerstone and, as applicable, the Bank or any other insured depository institution and Cornerstone's partners, vendors, and servicers whose role is material to the Products and Services provided by Cornerstone, for which written minutes will be taken and maintained; and

(i) Periodic monitoring of the use of confidential and nonpublic personal information of consumers by partners, vendors, and servicers whose role is material to the Products and Services, and the information security programs of such partners, vendors, and servicers.

8. Cornerstone shall maintain and make available upon request by the Bank or as applicable, any other insured depository institution, any and all records, reports or other materials required by this ORDER.

9. Senior management shall ensure that Cornerstone's Compliance Program provides for the establishment and implementation of an effective training program for appropriate personnel that includes regular, specific, comprehensive training on applicable Consumer Protection Laws for employees having responsibilities that relate to Consumer Protection Laws, including senior management, commensurate with their individual job functions and duties.

10. Cornerstone shall ensure that its Compliance Program includes procedures for:

(a) Promptly notifying the Bank or any other insured depository institution, as applicable, of regulatory agencies' inquiries, customer complaint correspondence from all sources of complaints, including social media and internet-based complaints, or legal action received from any third party, in each case relating to a Product or Service, and

(b) Promptly addressing and resolving consumer inquiries and complaints relating to a Product or Service regardless of the source of the inquiries or complaints.

11. Cornerstone shall ensure that its Compliance Program includes a compliance audit component to ensure an effective and independent review of its internal policies and procedures and compliance with Consumer Protection Laws. The compliance audit shall include procedures and processes that ensure:

(a) Audit practices and procedures are consistent with Generally Accepted Auditing Standards, are independent, and adequate in scope;

(b) Completion of a compliance audit plan each calendar year that is reviewed and approved by senior management;

(c) Annual risk assessments to ensure that compliance audits are performed with reasonable frequency;

(d) Assignment of ratings or expressions of opinion as to the adequacy, effectiveness, and efficiency of the internal control environment and compliance audit findings, deficiencies, and recommendations relating to a Product or Service, as documented in a written report and provided to senior management, with the review of the report documented, together with a report of senior management's actions in response to the audit, including, where applicable, an explanation why a recommendation has not been implemented; and

(e) Provisions for an adequate formal tracking and monitoring system for exceptions identified by compliance audits and regulatory examinations.

12. Within 90 days from the effective date of this ORDER, Cornerstone shall submit the revised Compliance Program, including identification of proposed personnel, to the Regional Director of the FDIC's San Francisco Regional Office ("Regional Director") for review and comment. Within 15 days of the receipt of any comments from the Regional Director, senior management shall revise the Compliance Program, if necessary, to incorporate the Regional Director's comments and thereafter adopt, implement, and fully comply with the revised Compliance Program. The review and approval of the revised Compliance Program shall be documented.

13. Sections 4 through 12 of this ORDER shall be of no force or effect if Cornerstone has ceased marketing, offering or servicing any prepaid card product or service within 90 days of the date of this ORDER.

14. Cornerstone shall ensure that all Products and Services offered pursuant to any arrangement with any insured depository institution are not in conflict with the insured depository institution's compliance management plan and compliance management systems. Any such arrangement shall require that the insured depository institution has ultimate authority to determine the terms, manner and conditions under which any Product or Service will be offered to consumers, and that Cornerstone will make any necessary changes, on a prospective basis, in such terms, manner and conditions as the insured depository institution deems necessary or as a result of regulatory guidance, criticism, or formal or informal enforcement action.

CONDUCT RELIEF

15. Cornerstone shall ensure that all mPower Card customers, including customers receiving federal benefits on mPower Cards through the ACH system, are afforded the appropriate protections provided in Regulation E, 12 C.F.R. § 1005 ("Regulation E"). Without limiting the generality of the foregoing, Cornerstone shall ensure that those customers are provided the disclosures and free, written account histories, given sufficient time to report errors and are not required to provide more information or documentation than is permissible under Regulation E.

II. ORDER FOR RESTITUTION

RESTITUTION ACCOUNT AND PAYMENT FLOOR

16. Within 10 days from the effective date of the ORDER, Cornerstone shall pay an amount not less than \$1,000 ("Payment Floor") to the Bank, or any successor thereto, for the purpose of providing restitution to any mPower cardholder who, between April 8, 2011 and November 30, 2012, was charged a monthly inactivity fee and/or an account registration fee (hereinafter "Eligible Consumers"). Until Cornerstone's restitution obligations under this

ORDER are fully satisfied, Cornerstone shall pay additional funds to the Bank, as necessary, to ensure that it has sufficient funds to satisfy Cornerstone's restitution obligations under this ORDER. Restitution provided by Cornerstone via the Bank shall not limit consumers' rights in any way.

17. Within 30 days from the effective date of this ORDER, Cornerstone shall provide to the Bank all necessary data and information, including each Eligible Consumer's last known mailing address as maintained in Cornerstone's records, for the Bank to fully effect restitution to all Eligible Consumers and for such limited purpose.

III. ORDER TO PAY CIVIL MONEY PENALTY

18. **IT IS FURTHER ORDERED** that by reason of the violations of law and/or regulations, and after taking into account the CONSENT AGREEMENT, the appropriateness of the penalty with respect to the financial resources and good faith of Cornerstone, the gravity of the conduct by Cornerstone, the history of previous conduct by Cornerstone, and such other matters as justice may require, including the severity of the risks to and losses of consumers, pursuant to section 8(i)(2) of the FDI Act, 12 U.S.C. § 1818(i)(2), Cornerstone shall pay a total civil money penalty of \$25,000. Cornerstone shall pay the civil money penalty to the Treasury of the United States, as directed by the FDIC. Cornerstone shall pay such civil money penalty itself, and is prohibited from seeking or accepting indemnification from such payment from any third party.

IV. NOTIFICATION AND REPORTING REQUIREMENTS

PROGRESS REPORTS AND CERTIFICATIONS OF COMPLIANCE

19. Unless Cornerstone has ceased marketing, selling and servicing any prepaid card product within 90 days of this ORDER (in which case it will provide only one such progress

report within 30 days of ceasing to market, sell or service any prepaid card product), within 30 days from the end of each calendar quarter following the effective date of this ORDER, Cornerstone 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. The progress reports shall be true and accurate and accompanied by a certification of compliance signed by an appropriately authorized representative of Cornerstone. The certification of compliance shall include the following:

- (a) A statement confirming that Cornerstone is in compliance with all provisions of the ORDER; or
- (b) If Cornerstone is not in compliance with all provisions of the ORDER, Cornerstone must provide:

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

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

SHAREHOLDER NOTIFICATION

20. Cornerstone shall provide a copy of the ORDER to each of its members.

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 Cornerstone or

