

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

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In the Matter of	)	ORDER TO
	)	CEASE AND DESIST
	)	
AMERICAN EXPRESS CENTURION BANK	)	Docket FDIC-09-251b
SALT LAKE CITY, UTAH	)	
	)	
(INSURED STATE NONMEMBER BANK)	)	
	)	
_____	)	

American Express Centurion Bank, Salt Lake City, Utah (“Bank”), having been advised of its right to a NOTICE OF CHARGES AND OF HEARING detailing the violations of laws alleged to have been committed by the Bank and of its right to a hearing on the alleged charges under 12 U.S.C. § 1818(b)(1) 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 June 5, 2009, whereby, solely for the purpose of this proceeding and without admitting or denying the alleged charges of violations of law, 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 violations of laws. Specifically, the FDIC determined that the Bank was operating in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1) (“Section 5”) by engaging in unfair practices. The Bank caused consumers harm by failing to provide timely notice of credit line reductions before consumers used Bank-issued convenience checks that were then dishonored. Consumers believed that their credit limit was the amount shown on their last billing statement. The Bank’s practice caused bounced check fees and may have caused other damage to consumer credit records that could not be reasonably avoided and was not outweighed by countervailing benefits to consumers or to competition.

The Bank has agreed to make restitution within 30 days of the effective date of this ORDER to all consumers whose convenience checks were declined due to a change in the consumer’s risk score or credit limit in the years 2008 and 2009 (“Eligible Consumers”). All Eligible Consumers are being reimbursed \$160 per dishonored check. The aggregate amount of such restitution by the Bank and its affiliated thrift is estimated to exceed \$3,000,000. The Bank has also agreed to retain all records pertaining to the restitution made 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 appropriate restitution was made.

The Bank has agreed to notify all Eligible Consumers regarding the procedure to claim additional reimbursement in the event that any Eligible Consumer incurred fees in excess of \$160 in connection with any declined convenience check. The Bank has further agreed to provide its primary Federal regulator with a copy of such procedure for review prior to

implementation.

The Bank has agreed to provide a written document to all Eligible Consumers for their use in facilitating the removal of their names from any “bad check” list or registry on which their names were placed because of a declined convenience check. The Bank has further agreed to provide its primary Federal regulator with a copy of such document for review prior to issuance.

The FDIC, therefore, accepts the CONSENT AGREEMENT and issues the following:

**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), and its successors and assigns, cease and desist from the following violations of laws:

Operating in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1) (“Section 5”) by engaging in unfair practices as described above.

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

1. Upon the effective date of this ORDER, the Bank shall correct all violations of Section 5. In addition, the Bank shall ensure its future compliance with all applicable consumer protection laws and implementing regulations (“Consumer Laws”). 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”).

2. Upon the effective date of this ORDER, the Bank shall implement satisfactory procedures for reviewing credit limits, consistent with safe and sound banking practices, prior to marketing and issuing convenience checks to its customers. Such procedures shall be

satisfactory to the Regional Director.

3. Upon the effective date of this ORDER, the Bank shall disclose to its customers, together with the convenience check offer, their established credit limit as determined in paragraph 2 above, in a clear and conspicuous manner, any time the Bank markets and issues convenience checks. Such disclosure shall be satisfactory to the Regional Director.

4. Before offering any new convenience checks, the Bank must implement procedures it has proposed whereby a customer can contact the Bank to obtain preauthorization to use a convenience check for a specific dollar amount within a specified period of time. Such procedures shall be satisfactory to the Regional Director.

5. By the 30<sup>th</sup> day of each month following the effective date of this ORDER, the Bank shall furnish written progress reports to the Regional Director which detail the form and manner of any actions taken to secure compliance with this ORDER and the results thereof. The Bank may discontinue submitting such reports when the corrections required by this ORDER have been accomplished and the Regional Director has expressly released the Bank in writing from making any further reports.

The provisions of 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, any of the Bank's current or former institution-affiliated parties, including third-parties and/or agents, for violations of any laws, for engaging in unsafe or unsound banking practices, for engaging in unfair or deceptive practices, or for making false or misleading representations.

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 provisions of this ORDER shall have been modified, terminated, suspended, or set aside by the FDIC.

Pursuant to delegated authority.

Dated at Washington, D.C., this 30<sup>th</sup> day of June, 2009.

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/s/  
Sandra L. Thompson  
Director  
Division of Supervision and Consumer Protection