

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

In the Matter of)	
)	
)	ORDER TO CEASE AND DESIST,
)	ORDER FOR RESTITUTION,
FIRST BANK OF DELAWARE)	AND ORDER TO PAY
WILMINGTON, DELAWARE)	
)	
(INSURED STATE NONMEMBER BANK))	FDIC-07-256b
)	FDIC-07-257k

FIRST BANK OF DELAWARE, Wilmington, Delaware (Bank), having received a NOTICE OF CHARGES FOR AN ORDER TO CEASE AND DESIST AND FOR RESTITUTION; NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTIES; FINDINGS OF FACT AND CONCLUSIONS OF LAW; ORDER TO PAY; AND NOTICE OF HEARING issued by the Federal Deposit Insurance Corporation (FDIC) on June 10, 2008 detailing the violations of law and/or regulations and unsafe or unsound banking practices alleged to have been committed by the Bank, and having been advised of its right to a hearing with respect to the foregoing under sections 8(b) and 8(i)(2) of the Federal Deposit Insurance Act (Act), 12 U.S.C. §§ 1818(b) and (i)(2), and the FDIC Rules of Practice and Procedure, 12 C.F.R. Part 308, and having waived those rights, entered into a STIPULATION AND CONSENT TO THE ISSUANCE OF AN ORDER TO CEASE AND DESIST,

ORDER FOR RESTITUTION, AND ORDER TO PAY (CONSENT AGREEMENT) with a representative of the Legal Division of the FDIC, dated October 3, 2008, whereby, solely for the purpose of this proceeding and without admitting or denying the alleged violations of law and/or regulations and unsafe or unsound banking practices, the Bank consented to the issuance of an ORDER TO CEASE AND DESIST, ORDER FOR RESTITUTION, AND ORDER TO PAY (ORDER) by the FDIC.

The FDIC considered the matter and determined that it has reason to believe that the Bank committed violations of law and/or regulations and engaged in unsafe or unsound banking practices, including, but not limited to, violations of section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1) (Section 5) and operating the Bank without effective oversight and supervision of the Bank's consumer lending programs.

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 section 3(u) of the Act, 12 U.S.C. § 1813(u), and its successors and assigns, cease and desist from the following violations of law and/or

regulations and from engaging in the following unsafe or unsound banking practices:

(a) operating in violation of Section 5;

(b) operating the Bank's National Consumer Products Division (NCP Division) without effective oversight by the Bank's board of directors (Board) and supervision by senior management of the lending programs offered, marketed, administered, processed, serviced and/or collected by third-parties pursuant to arrangements or agreements with the Bank including, but not limited to, those third-party arrangements and agreements identified in Exhibit "A" of the CONSENT AGREEMENT (all collectively referred to in this ORDER as "third-party lending programs"); and any vendor, servicer or third party providing one or more of these functions or services material to the Bank's third-party lending programs (all collectively referred to in this ORDER as "third-party provider");

(c) operating the Bank's NCP Division with an inadequate system of internal controls, management information system, and internal audit system with regard to the size of the NCP Division and the nature, scope and risks of the third-party lending programs and third-party providers, in contravention of

the Standards for Safety and Soundness contained in Appendix A to Part 364, 12 C.F.R. Part 364;

(d) operating the Bank's NCP Division with an inadequate compliance management system to ensure compliance with Section 5 and other federal consumer protection laws and regulations; and

(e) operating the Bank with inadequate capital planning in relation to the risk considerations and/or factors prescribed by the *Interagency Expanded Guidance for Subprime Lending Programs* (FIL-9-2001, issued January 31, 2001) and the FDIC's *Credit Card Activities Manual*, Chapter XIV.

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

I. TERMINATION OF THIRD-PARTY LENDING PROGRAMS AND RELATIONSHIPS WITH THIRD-PARTY PROVIDERS

Within sixty (60) days of the effective date of this ORDER, the Bank shall develop and submit to the Regional Director of the FDIC's New York Regional Office (Regional Director), for her non-objection in accordance with paragraph XIII.A of this ORDER, a comprehensive plan, with timelines, for the termination of all relationships with third-party providers and the termination of

all third-party lending programs or any agreements or arrangements with third-party providers that exhibit the characteristics of a "Rent-a-BIN" or "Rent-a-ICA" arrangement, as referred to in the FDIC's *Credit Card Activities Manual*, except for those third-party lending programs and third-party providers specifically identified in Exhibit "B" of the Consent Agreement. The plan shall provide for these terminations within one hundred and twenty (120) days of the effective date of this ORDER. Upon termination of each third-party lending program and/or the relationship with a third-party provider, the Bank shall provide written notification to the Regional Director apprising her of the date the third-party lending program or the relationship with the third-party provider was terminated.

II. NCP DIVISION PLANS

A. Consultant:

1. Within thirty (30) days of the effective date of this ORDER, the Bank shall retain an independent third-party consultant (Consultant) acceptable to the Regional Director with appropriate expertise and qualifications to assist the Bank with the preparation of a comprehensive strategic plan and an operating plan for the Bank's NCP Division (NCP Division Plans) as well as the assessment of management and staff needs within the NCP Division required by Article III and the Capital Plan

required by Article IV of this ORDER.

2. The Bank shall provide the Regional Director with a copy of the proposed engagement letter or contract with the Consultant for her review and non-objection. The contract or engagement letter, at a minimum, should include:

- a. a description of the work to be performed under the contract or engagement letter;
 - b. the responsibilities of the Consultant;
 - c. identification of the professional standards covering the work to be performed;
 - d. identification of the specific procedures to be used when carrying out the work to be performed;
 - e. the qualifications of the employee(s) who are to perform the work;
 - f. the time frame for completion of the work;
- and
- g. a provision for unrestricted access by the FDIC to the Consultant's staff, work papers and other materials prepared in the course of the Consultant's engagement.

B. Strategic Plan:

Within ninety (90) days of the effective date of this ORDER, the Bank shall, with the assistance of the Consultant, develop and submit to the Regional Director, for her non-objection in accordance with paragraph XIII.A of this ORDER, a comprehensive

strategic plan (Strategic Plan) covering an operating period of at least three (3) years. The Strategic Plan shall include, at a minimum:

1. a full and complete description of each and every consumer loan product (Consumer Product) and/or consumer lending activity the Bank will offer or in which the Bank will engage, either within the NCP Division or any other area or division of the Bank;

2. a full and complete list of each third party the Bank plans to utilize in connection with any Consumer Product or consumer lending activity, either within the NCP Division or any other area or division of the Bank;

3. a full and complete description of the function or service each third party will provide in connection with any Consumer Product or consumer lending activity, either within the NCP Division or any other area or division of the Bank; and

4. the planned volume and growth of each of these Consumer Products and/or consumer lending activities either within the NCP Division or any other area or division of the Bank.

C. Operating Plan:

Within ninety (90) days of the effective date of this ORDER, the Bank shall, with the assistance of the Consultant, develop and submit to the Regional Director for her non-objection in accordance with paragraph XIII.A of this ORDER, specific operating policies and procedures (Operating Plan) that appropriately take into account the nature, scope, and risk of each Consumer Product and each consumer lending activity whether offered or engaged in within the NCP Division or any other area or division of the Bank as well as the size of such divisions or areas of the Bank and address the following areas:

1. Internal Control System: The Bank's Internal Control System shall, at a minimum, include policies, procedures and processes that provide for:

a. an organizational structure for the day-to-day operation and oversight of the Bank's Consumer Products and consumer lending activities with (i) clear lines of authority and identification of reporting lines; (ii) clear assignment of responsibility along the lines of authority for assessing and monitoring the compliance of each Consumer Product and each consumer lending activity with all applicable federal consumer protection laws, including Section 5, and all implementing rules and regulations, regulatory guidance, and statements of policy

as well as all applicable policies and procedures of the Bank including, but not limited to, those specific areas of non-compliance noted in the FDIC's Report of Examination dated April 25, 2007 (ROE) and/or the FDIC's Compliance Report of Examination as of April 6, 2006 (Compliance Report); and (iii) clear assignment of responsibility for reporting to the Board the results of the assessment and monitoring activity performed under this subparagraph, including specification of information and data to be reported to the Board on a periodic, but not less than quarterly, basis;

b. initial and periodic, but not less than quarterly, written reports to the Board assessing the strategic, legal, reputational, transactional, compliance, regulatory, accounting and credit risk associated with each Consumer Product and each consumer lending activity; and

c. an adequate number of staff to ensure full and complete compliance with subparagraphs (a) and (b) above.

2. Management Information System: The Bank's management information system (MIS) shall, at a minimum, include policies, procedures and processes that provide for:

a. new or enhanced systems to allow the Bank to appropriately monitor each Consumer Product and each consumer

lending activity for compliance with all applicable federal consumer protection laws and implementing rules and regulations, regulatory guidance, and statements of policy as well as all applicable policies and procedures of the Bank;

b. new or enhanced systems to allow the Bank to access, collect and analyze such data, documentation or other information necessary for effective monitoring of each Consumer Product and each consumer lending activity;

c. new or enhanced systems to allow the Bank to access, collect, and analyze such data, documentation or other information necessary to calculate fee rebates due in the event a loan is prepaid;

d. new or enhanced systems to allow the Bank to access, collect, and analyze such data, documentation or other information necessary to determine whether installment loan products and similar products (ILPs) comply with the guidance set forth in the *FDIC's Supervisory Policy on Predatory Lending* (FIL-6-2007, issued January 22, 2007) including the ability to determine whether a lending transaction represents a fair exchange of value for the borrower and whether the pricing of the loan appropriately reflects the borrower's risk of repayment

and whether it is customary and reasonable under the circumstances; and

e. an adequate number of staff to ensure full and complete compliance with subparagraphs (a) through (d) above.

3. Internal Audit System: The Bank's Internal Audit System shall, at a minimum, include policies, procedures and processes that ensure:

a. adequate monitoring of the Internal Control System through a comprehensive internal audit function;

b. an audit staff comprised of a sufficient number of qualified persons;

c. the independence and objectivity of the internal auditor, the audit staff, and the audit committee;

d. adequate testing and review of MIS for the Bank's NCP Division and/or any other area or division of the Bank offering a Consumer Product or engaging in a consumer lending activity;

e. adequate testing and review of Consumer Products and consumer lending activities such that the scope and testing are adequate to (i) detect substantive deficiencies in the operation of the Bank's Consumer Products and consumer

lending activities; and (ii) determine the level of compliance of the Bank's NCP Division and/or any other area or division of the Bank offering Consumer Products and/or engaging in consumer lending activities with all applicable federal consumer protection laws and all implementing rules and regulations, regulatory guidance, and statements of policy as well as all applicable policies and procedures of the Bank;

f. adequate documentation of tests and findings of any corrective actions;

g. verification and review of management actions to address material weaknesses;

h. tracking of deficiencies and exceptions noted in audit reports with periodic, but not less than quarterly, status reports to the Board with each deficiency and material exception identified, the source of the deficiency or exception and date noted, responsibility for correction assigned, and the date corrective action was taken in the report;

i. review of the effectiveness of the NCP Division's Internal Audit Systems and/or the Internal Audit Systems of any other area or division of the Bank offering

Consumer Products or engaging in consumer lending activities by the Bank's Audit Committee or Board; and

j. an annual audit schedule for the NCP Division and/or any other area or division of the Bank offering Consumer Products or engaging in consumer lending activities approved by the Board with any planned changes to or deviations from the approved audit schedule, its scope, or content requiring the prior written approval of the Board or its Audit Committee appropriately reflected in the minutes of the meeting wherein the change or deviation was approved.

4. Compliance Management System (CMS): The Bank's CMS shall, at a minimum, include policies, procedures and processes that ensure that all Consumer Products and consumer lending activities comply with all applicable federal consumer protection laws, including Section 5, and all implementing rules and regulations, regulatory guidance, and statements of policy and provide for:

a. Bank review, approval (prior to first use and subsequent re-reviews as may be required by, among other things, regulatory guidance and changes in laws and/or regulations), and maintenance of copies of (i) all marketing and solicitation materials, including direct mail or Internet

solicitations, promotional materials, advertising, telemarketing scripts, (ii) other materials provided to consumers and accountholders generated in connection with the administration and servicing of the Consumer Products and consumer lending activities, including accountholder agreements, privacy policies, forms of accountholder statement, and (iii) changes or amendments with respect to the materials described in (i) and (ii);

b. timely and regular notification to the Bank by any third-party provider of all regulatory agencies' inquiries, customer complaint correspondence, and/or legal action received from any third party with respect to the Consumer Products and consumer lending activities (other than routine requests such as to cease and desist collection contact);

c. (i) Bank review and approval of all materials related to customer service and collection activities, including compliance with the guidance set forth in FDIC FIL-52-2006 (issued June 21, 2006), (ii) monitoring of customer service and/or collection calls on a regular basis, (iii) Bank review of service level reports, and (iv) procedures for promptly addressing and resolving customer complaints regarding the

Consumer Products and consumer lending activities, regardless of the source;

d. Bank review of periodic, but not less than quarterly, quality assurance reports, reports on collection results, collector evaluation results, and a summary of disciplinary action reports for each call center;

e. Bank review of all third-party lending program's and third-party providers' credit, fraud, and risk management materials, including policy manuals and practices, to determine compliance with all applicable consumer protection laws;

f. Bank review and approval of all materials in connection with any Consumer Products and consumer lending activities, including arrangements for Consumer Products between third-party providers and any other vendor or party providing material services to the third-party provider; and monitoring periodically, but not less than quarterly, reviews, including the review of quality assurance reports and on-site audits, of all such material service providers;

g. periodic, but not less than quarterly, review by the Bank of all account services materials, including

materials related to customer chargeback and dispute processing, mail forwarding, returned mail and copy requests;

h. Bank review and regular monitoring of all third-party providers' materials relating to suspense item research, general ledger reconciliation and settlement, including daily settlement reports and preparation of monthly settlement reports;

i. Bank review of all materials related to the financial performance of Consumer Products and consumer lending activities and monthly performance monitoring of assets relating to the Consumer Products and consumer lending activities as a whole and by vintage and campaign, including new accounts established, receivables growth or decline, charge-offs, credit risk scores (such as Fair Isaac & Co. (FICO) scores), sources of revenue (annual percentage rates (APRs) and fees), number of accounts receiving credit line increases and decreases, and APR increases or reductions;

j. Bank monitoring of the performance of marketing and solicitation programs for new accounts and enhancement products, including numbers of accounts offered, the products in each campaign and response rate, and production and review of trend analysis;

k. mandatory regular compliance reviews by the Bank, including all policies and procedures, and internal compliance audits and on-site visits to service facilities of all third-party providers;

l. Bank review of all business and strategic plans relating to agreements with third-party providers;

m. Bank maintenance of records of all approved consumer materials, complaints and responses, solicitation materials, administration materials, and service provider agreements, relating to the Bank's Consumer Products and consumer lending activities;

n. Bank maintenance of files documenting the service level standards for those services provided by third-party providers and their service providers, including due diligence reports, monitoring and audit results, and financial materials;

o. Bank scheduling and conducting regular meetings with its third-party providers, for which written minutes will be taken and maintained;

p. Bank monitoring of third-party membership programs, if any;

q. periodic, but not less than quarterly, Bank monitoring of the use and security of confidential and nonpublic personal information;

r. an effective training program that includes regular, specific, comprehensive training in applicable federal consumer protection laws, including Section 5, and all implementing rules and regulations, regulatory guidance and statements of policy, for appropriate Bank personnel; and

s. an appropriate number of compliance personnel with sufficient experience in, and knowledge of, Consumer Products and consumer lending activities and consumer compliance laws and regulations to administer the CMS.

5. Account Management: The Bank's policies, procedures and systems shall ensure compliance with the guidance set forth in the *Account Management and Loss Allowance Guidance for Credit Card Lending* (FIL-2-2003, issued January 8, 2003), and, at a minimum, shall include the following:

a. requirements that minimum payments will preclude negative amortization and will amortize the current balance over a reasonable period of time, consistent with the unsecured nature of the underlying debt and the consumer's documented creditworthiness;

b. establishment of policies and procedures that provide for reasonable control over and timely repayment of amounts that exceed established credit limits; and

c. to the extent that the Bank utilizes any third parties pursuant to contract or otherwise to provide any services for account management and/or account servicing, the Bank shall ensure that all such third parties comply with the requirements of subparagraphs (a) and (b) above.

6. Predatory Lending: The Bank's policies, procedures and systems shall ensure that its ILPs comply with the guidance set forth in the *FDIC's Supervisory Policy on Predatory Lending* (FIL-6-2007, issued January 22, 2007).

III. ASSESSMENT OF MANAGEMENT AND STAFF

A. NCP Division Consultant:

1. Within thirty (30) days of the effective date of this ORDER, the Consultant shall analyze and assess the Bank's management and staffing needs within the NCP Division. The analysis and assessment shall be summarized in a written report to the Board (NCP Division Report), with a copy simultaneously delivered to the Regional Director. At a minimum, the NCP Division Report shall:

a. identify the type and number of Senior

Executive Officers (as that term is defined in 12 C.F.R. § 303.101(b)) and other officer positions needed to appropriately manage and supervise the affairs of the NCP Division, detailing any vacancies and additional needs with appropriate consideration to the size of the NCP Division and the nature, scope and risks of (i) each Consumer Product and/or consumer lending activity; (ii) each third party utilized by the Bank in connection with any Consumer Product and/or consumer lending activity; and (iii) the Bank's remaining third-party providers and make such modifications as are sufficient to retain personnel with adequate experience to oversee the NCP Division;

b. identify the type and number of staff positions needed to implement the plans, policies, procedures and processes required by this ORDER, detailing any vacancies and additional needs;

c. identify the authorities, responsibilities, and accountabilities attributable to each position, as well as the appropriateness of the authorities, responsibilities, and accountabilities, giving due consideration to the relevant knowledge, skills, abilities, and experience of the incumbent, if any, and the existing or proposed compensation; and

d. present a clear and concise description of the

relevant knowledge, skills, abilities, and experience necessary for each position, including delegations of authority and performance objectives.

B. NCP Division Management Plan:

1. Within sixty (60) days of receipt of the NCP Division Report, the Bank will develop a written plan of action (NCP Management Plan) in response to each recommendation contained in the NCP Division Report and a time frame for completing each action. A copy of the NCP Management Plan and any subsequent modification thereto shall be subject to review, comment and non-objection by the Regional Director to ensure that the NCP Management Plan and any subsequent modification comply with the requirements of this ORDER.

2. The NCP Management Plan shall be adopted by the Board and implemented by the Bank in accordance with paragraph XIII.A of this ORDER.

C. Bank Policies and Procedures to Evaluate Performance:

Within sixty (60) days of the effective date of this ORDER, the Board shall establish policies and procedures to periodically analyze and assess the performance of management and staff in the performance of their present duties and anticipated duties (Performance Plan). The Performance Plan shall be submitted to

the Regional Director for her review and comment and/or non-objection. At a minimum, the Performance Plan shall:

1. establish policies and procedures to evaluate the current and past performance of management and staff members of the Bank, indicating whether the individuals are competent and qualified to perform present and anticipated duties, adhere to applicable laws and all implementing rules and regulations, regulatory guidance, statements of policy, the Bank's established plans, policies, procedures and processes and operate the Bank in a safe and sound manner;

2. establish policies and procedures to recruit and retain qualified directors, Senior Executive Officers and personnel consistent with the Performance Plan's analysis and assessment of the Bank's management and staffing needs;

3. establish policies and procedures to provide for any additional training and development needs not specifically identified and required by this ORDER, as well as policies and procedures to provide such training and development to the appropriate personnel; and

4. establish policies and procedures that provide for periodic, but not less than annual, review and update of the

Performance Plan.

D. Board and Management Changes:

While this ORDER is in effect, the Bank shall notify the Regional Director in writing of any changes in any of its Senior Executive Officers or Board members. Such notification shall include a description of the background and experience of the proposed officer or Board member and must be provided thirty (30) days prior to the individual(s) assuming the new position(s).

IV. CAPITAL PLAN

Within ninety (90) days of the effective date of this ORDER, the Bank shall, with the assistance of the Consultant retained pursuant to Article II of this ORDER, develop and submit a written capital plan (Capital Plan) to the Regional Director for her non-objection in accordance with paragraph XIII.A of this ORDER. The Capital Plan shall require, at a minimum:

A. specific plans for the maintenance of capital in an amount adequate and appropriate for the Bank taking into consideration its Strategic Plan and consistent with the risk considerations and/or factors prescribed by the *Interagency Expanded Guidance for Subprime Lending Programs* (FIL-9-2001,

issued January 31, 2001) and the FDIC's *Credit Card Activities Manual*, Chapter XIV, Credit Card Issuing Rent-a-BINs;

B. projections for asset growth and capital levels based upon a detailed analysis of the Bank's current and projected assets, liabilities, earnings, fixed assets, and the risks associated with its off-balance sheet activities including, but not limited to, any "Rent-a-BIN", "Rent-a-ICA" or similar activities;

C. projections of the sources and timing of additional capital to meet the Bank's current and future needs;

D. the primary source(s) from which the Bank will obtain capital to meet the Bank's needs;

E. a contingency plan that identifies alternative sources should the primary source(s) under paragraph (D) above be unavailable; and

F. a dividend policy that permits the declaration of a dividend only when the Bank is in compliance with its approved Capital Plan.

V. REVIEW AND UPDATING OF PLANS

A. The Bank shall review and update the Operating and Capital Plans required by Articles II and IV of this ORDER on a quarterly basis, or more frequently if specifically required herein or requested by the Regional Director. Copies of these reviews and updates shall be submitted to the Regional Director for her review and non-objection in accordance with paragraph XIII.A immediately following their completion.

B. The Strategic Plan required by Article II of this ORDER shall be revised and submitted to the Regional Director for her review and non-objection in accordance with paragraph XIII.A of this ORDER forty-five (45) days after the end of each calendar year for which this ORDER is in effect.

VI. AFFIRMATIVE RELIEF

A. Corrective Measures:

Within ninety (90) days of the effective date of this ORDER, the Bank shall take all action necessary to eliminate and/or correct all violations and/or deficiencies noted in the ROE or the Compliance Report, including Section 5, and other federal consumer protection laws and regulations along with all contraventions of the federal banking agency policies and guidelines. In addition, the Bank shall take all necessary

steps to ensure future compliance with all applicable laws and regulations, including Section 5, and all other applicable federal consumer protection laws and all implementing rules and regulations, regulatory guidance, and statements of policy.

B. Compliance:

Within ninety (90) days of the effective date of this ORDER, the Bank 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). At a minimum, the Bank shall not make, directly or indirectly, any misrepresentation, expressly or by implication, about any material term of an offer or extension of credit including, but not limited to, the amount of available credit or the relationship between an offer or extension of credit and a debt repayment plan or the repayment of existing debt, in connection with the advertising, marketing, offering, soliciting, extending, billing or servicing of credit.

C. Disclosures:

The Bank shall, directly or indirectly, disclose as clearly and prominently as, and on the same page as, any representation about credit limits or available credit in any credit card

solicitation:

1. a description of:

a. all initial fees (Initial Fees), as defined below;

b. all other fees imposed for the issuance or availability of a credit card, or imposed based on account activity or inactivity, other than: (i) any fee imposed for an extension of credit in the form of cash; (ii) any fee imposed for a late payment; or (iii) any fee imposed in connection with an extension of credit in excess of the amount of credit authorized to be extended with respect to such account; or (iv) any fee imposed in connection with foreign country transactions or foreign currency exchange;

c. the amount and timing of all such fees; and

d. all other restrictions imposed for the issuance or availability of credit;

2. if the aggregate amount of the Initial Fees or other restrictions that affect initial available credit is material, the amount of credit available upon activation after application of the Initial Fees and other restrictions, *provided*

that if the solicitation offers a credit limit of "up to" a certain amount, the amount of available credit after application of Initial Fees and restrictions shall be expressed as an example of a typical offer of credit;

3. if the effect of the fees described in subparagraph 1.b or the restrictions described in subparagraph 1.d on available credit is material, a description of the effect of such fees or restrictions on available credit.

4. "Initial Fees" shall mean any annual, activation, account opening, membership, periodic, or other fee imposed for the issuance or availability of a credit card at the time the account is opened; *provided* that "Initial Fees" shall not include: (i) any fee imposed for an extension of credit in the form of cash; (ii) any fee imposed for a late payment; or (iii) any fee imposed in connection with an extension of credit in excess of the amount of credit authorized to be extended with respect to such account.

VII. ORDER FOR RESTITUTION AND OTHER RELIEF

IT IS FURTHERED ORDERED that:

A. The Bank shall establish and maintain an account in the amount of \$700,000 to ensure the availability of restitution

with respect to categories of consumers, specified by the FDIC, who activated Tribute Little Rock, Imagine Little Rock, Purpose Advantage, and Embrace credit card accounts.

B. Any application of the account shall be made through a cash payment to or at the direction of the FDIC for the purpose of making restitution to consumers.

C. The FDIC may require the account to be applied under the following circumstances:

1. If CompuCredit Corporation, Atlanta, Georgia (CompuCredit) is required by a judgment, order or other agreement with the FDIC or the Federal Trade Commission (FTC), including an order or agreement issued or made pursuant to a settlement arrangement, to pay restitution (Required Restitution) to any consumers who activated Tribute Little Rock, Imagine Little Rock, Purpose Advantage, or Embrace credit card accounts, and CompuCredit defaults, in whole or in part, on its obligation to make the Required Restitution, the FDIC may require the account to be applied to the extent of such default.

2. If the FDIC and/or the FTC are unable to obtain a judgment, order or agreement requiring CompuCredit to pay restitution to any consumers who activated Tribute Little Rock, Imagine Little Rock, Purpose Advantage, and Embrace credit cards, because of a reason other than the merits of their claims

and despite making reasonable efforts to do so, the FDIC may require the account to be applied in full.

III. RESTITUTION PLAN FOR CONTINENTAL FINANCE CARD (CFC) PROGRAM

A. The Bank shall prepare a comprehensive restitution plan (CFC Restitution Plan) for consumers who, during the period from March 2006 to the effective date of this ORDER, applied in response to a communication that solicited applications for a CFC credit card and were approved (CFC Eligible Consumers). The CFC Restitution Plan shall require that the following fees charged to the accounts of CFC Eligible Consumers be credited to the consumer's account, and any resulting credit balance shall be refunded to the consumer in cash:

1. the \$89 participation fee charged to those consumers who cancelled their accounts during the first two (2) billing cycles after the account was opened; and

2. for those consumers who accessed the Bank's website and made their first payment to their CFC credit card account online, the first \$4 online payment fee.

B. The Bank shall hire a consultant, acceptable to the Regional Director, who may be a certified public accountant (CFC Consultant), who shall review and verify that the Bank accurately identified the CFC Eligible Consumers and correctly

credited the accounts of, and made cash refunds, as appropriate, to CFC Eligible Consumers.

C. The CFC Consultant shall prepare a detailed written report of the processes and procedures by which the Bank determined the restitution amounts described above in paragraphs VIII.A.1 and VIII.A.2. The report shall also include the following: (1) total number of CFC Eligible Consumers, (2) number of CFC Eligible Consumers who received credits and cash refunds, (3) total amount of credits made under the CFC Restitution Plan, and (4) total amount of cash refunds made under the CFC Restitution Plan.

D. Within one hundred and twenty (120) days of the effective date of this Order, the Bank shall implement the CFC Restitution Plan.

E. The report described above in paragraph VIII.C. shall be submitted to the Regional Director for her review and comment and non-objection in accordance with paragraph XIII.A of this ORDER within sixty (60) days after the Bank has completed implementation of the CFC Restitution Plan.

F. The Bank shall retain all records pertaining to the CFC Restitution Plan including, but not limited to: documentation of the processes and procedures used to determine

the CFC Eligible Consumers, the names, contact and account information of the CFC Eligible Consumers, any mailing records, and documentation that the appropriate credits and cash refunds were made.

IX. DIRECTORS' COMPLIANCE COMMITTEE

Within thirty (30) days of the effective date of this ORDER, the Board shall establish a Directors' Compliance Committee (Committee) reporting to the Board and responsible for overseeing the affirmative action required by this ORDER. The Committee shall be comprised of at least three (3) independent directors who shall not be employed in any capacity by the Bank other than as a director. The Committee shall monitor compliance with this ORDER and within ninety (90) days of the effective date of this ORDER, and every sixty (60) days thereafter during the life of this ORDER, shall submit to the Board for consideration at its next regularly scheduled meeting a written report detailing the Bank's compliance with this ORDER, including compliance with the enhanced independent audit program. The Committee's report shall be incorporated into the minutes of the corresponding Board meeting. Nothing herein shall diminish the responsibility of the entire Board to ensure compliance with the provisions of this ORDER.

X. PROGRESS REPORTS

The Bank shall furnish a written progress report to the Regional Director ninety (90) 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. Such reports may be discontinued when the corrections required by this ORDER have been accomplished and the Regional Director has released the Bank in writing from making further reports. Nothing in this Article X shall relieve the Bank from compliance with any other reporting requirements or provisions of this ORDER. All progress reports and other written responses to this ORDER shall be reviewed by the Board and made a part of the minutes of the corresponding Board meeting.

XI. ORDER TO PAY

IT IS FURTHER ORDERED THAT, by reason of the alleged 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 the Bank, the gravity of the conduct by the Bank, the history of previous conduct by Bank, and such other matters as justice may require, pursuant to section 8(i)(2) of the Act, 12 U.S.C. § 1818(i)(2),

a civil money penalty of THREE HUNDRED AND FOUR THOUSAND DOLLARS (\$304,000) is assessed against the Bank. The Bank shall pay the civil money penalty to the Treasury of the United States. The Bank shall pay such civil money penalty itself, and is prohibited from seeking or accepting indemnification for such payment from any third party.

XII. NOTICE TO SHAREHOLDERS

Within sixty (60) days of the effective date of this ORDER, the Bank shall send to its shareholders or otherwise furnish a description of this ORDER. The 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, Division of Supervision and Consumer Protection, Accounting and Securities Disclosure Section, 550 17th Street, N.W., Washington, D.C. 20429 for review at least 20 days prior to dissemination to shareholders. Any changes requested to be made by the FDIC shall be made prior to dissemination of the description, communication, notice or statement.

XIII. MISCELLANEOUS

A. 1. Whenever a provision of this ORDER shall require the Bank to submit a proposed plan, policy, procedure or system; or an enhancement, revision or addition to a plan, policy, procedure, system; or other matter to the Regional Director for her review, comment and/or non-objection, the Bank shall make such submission to the Regional Director at 20 Exchange Place, New York, New York 10005.

2. The Regional Director shall provide comments to the Bank within thirty (30) days of receipt of the proposed plan, policy, procedure or system; or enhancement, revision or addition to the plan, policy, procedure or system; or other matter submitted for her review, comment and/or non-objection.

3. Within thirty (30) days of receipt of comments from the Regional Director, the Bank shall make such modifications as may be necessary to address the Regional Director's comments. If the Bank fails to make such modifications, or otherwise fails to address the Regional Director's comments within such thirty (30) day period, the Bank shall provide to the Regional Director a comprehensive written explanation, developed with its Consultant, of its rationale. Within thirty (30) days of receipt of the Bank's response, the Regional Director shall either (i) provide her non-objection to

the revisions proposed by the Bank; or (ii) provide comments as to her rationale for rejecting the proposed revisions, or such revisions which remain objectionable, and shall direct the Bank to implement the plan, policy, procedure, system, revision, or enhancement as finally approved.

4. The Bank's actions shall be appropriately recorded in the Board meeting minutes. Thereafter, the Bank and its directors, officers and employees shall fully implement and follow the plan, policy, procedure or other matter as adopted and shall ensure full and complete compliance with these plans, policies, procedures or other matters both internally and by any third party utilized by the Bank. It shall remain the responsibility of the Board to fully implement the plans, policies, procedures or other matters as adopted within the specified time frames.

5. If, after a reasonable period of time for implementation, the Bank has not complied with subparagraphs 1-4 above, the Regional Director may provide written notice of her objection(s) to the Bank and require the submission of a plan (Exit Plan) to discontinue its offering of the specified Consumer Product(s) or consumer lending activity. Within thirty (30) days of its receipt of the Regional Director's written

notice, the Bank shall develop and submit its Exit Plan to the Regional Director for her review and non-objection. The Exit Plan shall, at a minimum, provide for the discontinuation of the specified Consumer Product(s) or consumer lending activity within sixty (60) days of the Bank's receipt of the Regional Director's written notice.

6. The Bank shall not acquire any portfolios of consumer credit card accounts from any other insured depository institution or other entity until such time as the Bank has submitted, and the Regional Director has non-objected to, the plans, policies and procedures required under paragraphs I through IV of this Order.

B. The Bank shall use good faith reasonable efforts to cooperate with the FDIC in its pursuit of claims related to Tribute Little Rock, Imagine Little Rock, Purpose Advantage, and Embrace credit card products, including, upon reasonable prior notice and at reasonable times and places, in making its documents and records relating to the claims available to the FDIC (subject to any privilege or other protection available under applicable law) without subpoena and, upon reasonable prior notice and at reasonable times and places, in making its personnel (including officers, directors and employees)

available for interview and/or testimony by deposition or before any authorized tribunal without subpoena. The cooperation shall not require the Bank to waive any applicable privileges. The FDIC may use the documents and testimony in claims related to the Tribute Little Rock, Imagine Little Rock, Purpose Advantage, and Embrace credit card products, including any action brought by the FTC. Prior to their use in a proceeding, the documents and testimony will be kept confidential. Their use in a proceeding will be subject to confidentiality orders issued by the tribunal in which they will be used. The FDIC agrees to provide notice to the Bank if any third party other than the FTC attempts to obtain the documents or testimony.

C. Except for an action to enforce compliance with this ORDER and except for any claims against the CompuCredit Parties, as hereinafter defined, the FDIC shall not commence any action under section 8 of the Act, 12 U.S.C. § 1818, Section 5, or any other statute or regulation, against the Bank, or any of its directors, officers, employees, and agents, or any of the Bank's affiliates, their successors or assigns, or any of their respective directors, officers, employees, and agents (collectively, the Bank Parties), arising out of or related to the Tribute Little Rock, Imagine Little Rock, Purpose Advantage,

and Embrace credit card programs or relating in any manner to the ROE and/or the Compliance Report and related investigations, in each case to the effective date of this ORDER. The CompuCredit Parties shall mean CompuCredit, its officers, directors, employees, subsidiaries, successors and assigns, and any party having a contract with CompuCredit or providing services to or for the benefit of CompuCredit, with the exception of any of the Bank Parties.

D. 1. Except as limited by the CONSENT AGREEMENT and paragraph XIII.C above, 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 any of the Bank Parties or any of the Bank's current or former institution-affiliated parties, or any of their respective directors, officers, employees, and agents.

2. The FDIC expressly reserves all rights against the CompuCredit Parties. Nothing in this ORDER or in the CONSENT AGREEMENT shall require the FDIC or any other party to reduce, compromise, or otherwise limit any claims against the CompuCredit Parties.

3. Nothing in this ORDER or in the CONSENT AGREEMENT shall require the FDIC or any other party to reduce, compromise, or otherwise limit any claims because of any contractual or other commitments of the Bank to indemnify, defend, or hold harmless any of the CompuCredit Parties.

E. Nothing herein shall prevent the FDIC from conducting on-site reviews and/or examinations of the Bank, its affiliates, agents, service providers, and any other institution-affiliated parties of the Bank at any time to monitor compliance with this ORDER.

F. This ORDER shall be effective on the date of issuance.

G. The provisions of this ORDER shall be binding on the Bank, its affiliates, their successors and assigns, and any of their respective directors, officers, employees, and agents, and any of the Bank's current or former institution-affiliated parties, and any of their respective directors, officers, employees, and agents.

H. 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, suspended or terminated in writing by the FDIC.

Pursuant to delegated authority.

Dated at Washington, D.C., this 9TH day of October,

2008.

Christopher J. Spoth
Senior Deputy Director
Division of Supervision and
Consumer Protection