

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

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	)	
In the Matter of	)	
	)	CONSENT ORDER
SUNFIRST BANK	)	
ST. GEORGE, UTAH	)	FDIC-10-845b
	)	
(INSURED STATE NONMEMBER BANK)	)	
	)	
_____	)	

The Federal Deposit Insurance Corporation (“FDIC”), is the appropriate Federal banking agency under section 3(q) of the Federal Deposit Insurance Act (“Act”), 12 U.S.C. § 1813(q), for SunFirst Bank, St. George, Utah (“Bank”).

The Bank, by and through its duly elected and acting Board of Directors (“Board”), has executed a Stipulation to the Issuance of a Consent Order (“Stipulation”), dated November 9, 2010, and accepted by the FDIC. With the Stipulation, the Bank has consented, without admitting or denying any allegations of unsafe or unsound banking practices relating to the enhancement and improvement of the Bank’s Compliance Management System (“CMS”), its Bank Secrecy Act (“BSA”) and anti-money laundering (“AML”) compliance program and the Bank’s oversight of third party relationships, or any violations of law or regulations, to the issuance of this Consent Order (“Order”) by the FDIC.

Having determined that the requirements for issuance of an order under section 8(b) of the Act, 12 U.S.C. § 1818(b), have been satisfied, the FDIC hereby orders that:

## **CONSUMER PROTECTION**

1. As of the effective date of this Order, the Board shall increase its oversight of and participation in the Bank's overall Compliance Management System ("CMS"), with a particular focus on monitoring the activities of third parties. The Board shall assume full responsibility for the approval of sound compliance policies and objectives, and for the supervision of all the Bank's compliance-related activities, consistent with the role and expertise commonly expected for directors of banks of comparable size. The Board shall demonstrate clear and unequivocal expectations regarding compliance with all state and Federal consumer protection laws and regulations.

2. Within 30 days from the effective date of this Order, the Board shall designate a qualified Compliance Officer with delegated authority and resources to implement and enforce the Bank's CMS to ensure compliance in all material respects with consumer protection laws and regulations. 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. In furtherance of this requirement, the Board shall:

(a) Ensure that the duties and responsibilities of the Compliance Officer are clearly defined in a detailed job description and provide for accessibility of the Compliance Officer to both the Board and senior management;

(b) Ensure that the Compliance Officer is actively involved in any and all consumer protection related matters, including third party contracts, new products, advertising, and any other policies, programs or procedures affecting consumer protection, before they occur;

(c) Ensure that the staff and resources dedicated to compliance management are commensurate with the institution's size and structure, geographies covered, products and services offered, and customers and entities served;

(d) Ensure that the Compliance Officer, together with all parties with compliance oversight responsibility, receive the training, resources, and authority necessary to effectively oversee, coordinate, and implement the Bank's CMS;

(e) Require the Compliance Officer to review with the Board and respond appropriately in writing to audit reports relating to all areas of the Bank's CMS; and

(f) Ensure that the Compliance Officer has and retains sufficient authority and independence to implement policies related to consumer laws and regulations and to institute corrective action as needed. This authority shall include the ability to cross departmental lines, have access to all areas of the Bank's operations, and effectuate corrective action upon discovering deficiencies.

3. Within 60 days from the effective date of this Order, the Bank shall complete a full review of all compliance monitoring practices and procedures, and the Board shall adopt or revise compliance monitoring procedures where needed to ensure that the Bank has a CMS that is commensurate with the level of complexity of the Bank's operations. The Bank shall have a written compliance program approved by the Board and recorded in the minutes of the Board, including any subsequent modifications thereto. Day-to-day monitoring shall be structured to interface with periodic consumer compliance audits to provide the most effective use of resources. The Bank's CMS shall be acceptable to the Regional Director as determined at subsequent examinations and/or visitations.

4. Within 60 days from the effective date of this Order, the Board shall review the Bank's compliance training program and make enhancements to ensure that all appropriate personnel are provided with sufficient detailed guidance, both in-person and written, to process loan, deposit, and other banking transactions in compliance with consumer protection laws and regulations and the Bank's CMS. The enhanced training program shall include methods to test staff knowledge, a mechanism for follow-up training when weaknesses are identified and consumer compliance training for the Board and senior management. All training shall be conducted by individuals with sufficient knowledge and expertise to impart critical awareness of consumer compliance laws and regulations, and the training program shall be reviewed and updated annually. The Bank shall retain documentation of training provided, including a list of personnel attending the training and the subjects and materials for training. The compliance training program shall be acceptable to the Regional Director as determined at subsequent examinations and/or visitations.

5. Within 60 days from receipt of the October 12, 2010 Compliance Report of Examination ("Compliance ROE") the Bank shall correct all apparent violations of regulation noted in the Compliance ROE. In addition, the Bank shall take all necessary steps to ensure future compliance with all applicable laws and regulations.

6. Beginning 30 days from receipt of the Compliance ROE, the Compliance Officer shall provide the Board with monthly reports detailing actions taken to comply with this Order. Reports to the Board shall also include descriptions of actions taken by management with respect to the violations, as well as CMS deficiencies presented in the Compliance ROE.

7. Within 60 days from the effective date of this Order, the Board shall review and revise audit practices and procedures to ensure comprehensive audit coverage, including the

elements described below. The Bank's actions as required by this paragraph shall be satisfactory to the Regional Director as determined at subsequent examinations and/or visitations.

(a) Audits of the Bank's CMS shall occur at least semi-annually, and at a minimum shall: define a comprehensive scope; identify the number of transactions to be sampled by category or product type; identify deficiencies; provide descriptions of or suggestions for corrective actions and timeframes for correction of any deficiencies, and establish follow-up procedures to verify that corrective actions are implemented and effective.

(b) Audit findings, deficiencies, and recommendations must be documented in a written report and provided to the Compliance Committee of the Board within 10 days of completion. In addition, the audit reports should be thoroughly reviewed by the Board and documented in the Board's minutes.

(c) Within 30 days of the receipt of the independent auditor's written report, the Board shall take action to address audit findings, correct any deficiencies noted, and implement any recommendations or explain in writing signed by the Board why a particular recommendation has not been implemented.

### **THIRD-PARTY PAYMENT PROCESSING**

8. As of the effective date of this Order, the Bank shall immediately cease providing third-party payment processing ("TPPP") for Triple Seven LLC, Mastery Merchant LLC, Powder Monkeys LLC, Elite Debit and its associated accountholders, customers, and clients as identified by their Agreement with the Bank dated September 17, 2010, or any other third party payment processor (collectively "Third Party Processors"), or their client entities unless the FDIC has provided written notice approving the activity.

9. As of the effective date of this Order, the Bank shall maintain adequate reserves for the potential charge backs from all TPPP conducted for the Third Party Processors and their client entities.

10. Within 10 days from the effective date of this Order, the Board shall ensure that the Bank has a system for assessing the adequacy of the reserve balance for the potential charge backs from all TPPP conducted for the Third Party Processors and their client entities.

11. Within 10 days from the effective date of this Order, senior management shall provide monthly reports to the Board on the volume of charge back activity and the adequacy of the reserve balance for the potential charge backs from TPPP conducted for the Third Party Processors and their client entities. Copies of monthly reports shall be provided to the Regional Director during the life of this Order.

12. Within 20 days from the effective date of this Order, the Bank shall increase oversight of any residual TPPP activities through third-party payment processor relationships.

At a minimum, the Board and senior management shall:

(a) Designate a qualified BSA and AML Officer with delegated authority and resources to implement and enforce BSA/AML compliance in all material respects with all laws and regulations. The Bank's actions as required by this paragraph shall be satisfactory to the Regional Director as determined at subsequent examinations and/or visitations;

(b) Ensure that all personnel whose work involves TPPP activities have sufficient training on the risks of such activities and BSA/AML training on the specialized risks of TPPP activity, fraud red flags, and appropriate customer due diligence maintenance and documentation;

(c) Review all existing TPPP client files for data and documentation sufficiency. A thorough written analysis of each TPPP client file shall be prepared by a trained and qualified employee and shall include a review of the types of business activity conducted by the client, including the legality of such activity, and a full risk assessment covering BSA/AML, compliance and reputational risk, and the likelihood of fraud, identity theft, or misrepresentation;

(d) Develop policies and procedures for informing senior management and the Board of all high-risk TPPP clientele;

(e) Revise the BSA/AML risk assessment to include risks related to TPPP activities, particularly those stemming from third party payment processor relationships and the processor client base;

(f) Establish appropriate, risk-based monthly reporting criteria for TPPP activity. Such monthly reporting should include volume, return items, and other statistical data on individual and aggregate TPPP clientele, as well as a methodology to convey the risk of the TPPP client base to senior management and the Board;

(g) Develop a formalized process for BSA/AML monitoring and review of TPPP activity for unusual or suspicious activity to ensure proper identification and reporting of activity warranting the filing of a Suspicious Activity Report, including an appropriate oversight role for the BSA/AML Officer and department to review, analyze, assess, and monitor TPPP activities; and

(h) Develop a methodology for accurately identifying TPPP profits and expenses and provide regular Board updates on TPPP net profits.

13. Within 10 days from the effective date of this Order, the Board shall increase its participation in ensuring that TPPP risk is appropriately monitored and that all internal and

external audit recommendations related to TPPP activity and monitoring are addressed.

Compliance with this paragraph at a minimum shall include the following:

(a) The BSA/AML Officer and Information Technology Officer shall provide BSA/AML reports to the Board at least monthly. The report shall include progress on correcting BSA/AML deficiencies relating to the TPPP activities; and

(b) Within 30 days, the Board shall receive enhanced BSA/AML training relating to TPPP. Such training must be designed to allow the Board to fully understand and appropriately accommodate the specialized risks of the TPPP activity. Thereafter, annual training refresher courses shall be provided to the Board.

14. Within 30 days from the effective date of this Order, the Bank shall conduct an assessment of the effectiveness of the Bank's BSA/AML compliance program for TPPP activities. The assessment should include transaction testing where appropriate. The results of the review shall be presented to the Board within 30 days of the completion of the assessment.

15. Within 90 days from the effective date of this Order, the Bank shall obtain an independent external audit of TPPP activity which focuses on the specific risks related to the third party processing relationships and client base of the Bank. Such an independent external audit shall include: transaction testing; a review of the sufficiency of Board-approved policies, procedures, and processes; an analysis of the reserve account; and a determination of customer due diligence documentation, analysis, and risk assessment adequacy. The findings of such report shall be reported in writing directly to the Board of Directors with a copy of such report to be sent to the Regional Director within 30 days of receipt by the Bank.

**MISCELLANEOUS**

16. Within 30 days from the effective date of this Order, the Board shall monitor and confirm actions taken by management to comply with the terms of this Order. All actions taken by the Board pursuant to this Order shall be duly noted in the minutes of its meetings. The Board shall certify in writing to the Regional Director when all of the above actions have been accomplished.

17. On or before the 30th day after the end of the first quarter following the effective date of this Order, and within 30 days of the end of each quarter thereafter, the Bank shall furnish written progress reports to the Regional Director detailing the form and manner of any actions taken to secure compliance with this Order and the results thereof. 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.

18. Following the effective date of this Order, the Bank shall send to its shareholder SunFirst Corporation a copy of this Order or otherwise furnish a description of this Order in conjunction with the next shareholder communication with its notice or proxy statement preceding the Bank's next shareholder meeting, in which case such description shall fully describe the Order in all material respects. Any description and accompanying communication, statement, or notice shall be sent to the FDIC, Accounting and Securities Section, 550 17th Street, NW, Washington, D.C. 20429, 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.

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 other action against the Bank or any

