

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

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	)	
In the Matter of	)	CONSENT ORDER,
	)	ORDER FOR RESTITUTION,
WEBBANK	)	AND ORDER TO PAY
SALT LAKE CITY, UTAH	)	CIVIL MONEY PENALTY
	)	
(INSURED STATE NONMEMBER BANK)	)	FDIC-10-792b
	)	FDIC-10-793k
_____	)	

The Federal Deposit Insurance Corporation (“FDIC”) is the appropriate Federal banking agency for WebBank, Salt Lake City, Utah (“Bank”) under 12 U.S.C. § 1813(q)(3).

The FDIC has reason to believe that the Bank has engaged in unsafe or unsound banking practices and violations of Section 5 of the Federal Trade Commission Act (“Section 5”), 15 U.S.C. § 45(a)(1), as amended, and the Fair Debt Collection Practices Act (“FDCPA”), 15 U.S.C. Section 1601 et seq., as amended, in connection with the Bank’s credit card relationship with Genesis Financial Solutions (“Genesis”).

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, Order for Restitution and Order to Pay (“Stipulation”) dated December 21, 2010, that is accepted by the FDIC. With the Stipulation, 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 referred to as “Order”) by the FDIC.

Having determined that the requirements for issuance of an order under 12 U.S.C. §§ 1818(b) & (i) have been satisfied, the FDIC hereby orders the Bank and its institution-affiliated parties, as that term is defined in 12 U.S.C. § 1813(u), to take the following actions:

**I. CONSENT ORDER**

A. The FDIC hereby orders that the Bank, its institution-affiliated parties, and its successors and assigns:

1. Refrain from offering credit cards that are intended for the transfer and payment of charged-off consumer debt (“Balance Transfer Credit Cards”) without prominently disclosing that the debt could not be collected under applicable statute of limitations periods;

2. Refrain from misleading consumers about the utility of Balance Transfer Credit Cards advertised as credit cards if the consumers have no available credit at the time the credit card is issued; and

3. Refrain from misleading consumers concerning any subsequent changes in terms or conditions of the credit card account.

B. It is further ordered that the Bank, its institution-affiliated parties, and its successors and assigns, take affirmative action as follows:

1. **BOARD OF DIRECTORS**

(a) From the effective date of this Order, the Board shall participate fully in the oversight of the Bank’s compliance management system, to include assuming full responsibility for sound policies, practices, and supervision of all the Bank’s compliance-related activities, consistent with the role and expertise commonly expected for directors of banks of comparable size and complexity.

(b) Within 30 days from the effective date of this Order, the Board shall establish a compliance committee comprised of at least three directors who are not officers of the Bank (“Compliance Committee”).

(i) The Compliance Committee shall meet at least monthly 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 compliance with this Order.

(ii) The Compliance Committee shall report its monthly discussions to the Board, 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.

(iii) The Board, in conjunction with the Compliance Committee, shall allocate resources that are:

(A) Commensurate with the level of complexity of the Bank’s operations to ensure the establishment and implementation of an adequate Compliance Management System, including procedures ensuring the Bank’s compliance with all applicable state and federal consumer protection laws and all implementing rules and regulations, regulatory guidance, and statements of policy (“Consumer Protection Laws”); and

(B) Sufficient to ensure the Bank’s compliance with this Order.

(iv) The Board, in conjunction with the Compliance Committee, shall:

(A) Ensure that the duties and responsibilities of the Compliance Officer are clearly defined and provide for accessibility to both the Board and the Compliance Committee;

(B) Require the Compliance Officer to provide to the Compliance Committee monthly written reports, including, but not limited to, the enactment and/or promulgation of new Consumer Protection Laws and changes to existing Consumer Protection Laws, training performed, monitoring and audits performed, corrective action taken, and compliance with this Order;

(C) 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 cross departmental lines, have access to all areas of the Bank's operations, and effectuate corrective action upon discovering deficiencies; and

(D) Ensure that the Compliance Officer receives ongoing training, sufficient time, and adequate resources to effectively oversee, coordinate, and implement the Bank's Compliance Management System.

(c) Within 90 days from the effective date of this Order, the Board shall develop and adopt a comprehensive educational program for periodic training for each member of the Board. The educational program shall specifically address Consumer Protection Laws.

2. **OVERSIGHT OF THIRD-PARTY AGREEMENTS AND SERVICES**

(a) Within 60 days from the effective date of this Order, the Bank shall develop and maintain effective monitoring, training, and audit procedures to review each aspect of the Bank's agreements with third parties and the services performed for the Bank pursuant to these agreements ("Third-Party Agreements and Services"). The policies and procedures shall, at a minimum, provide for:

- (i) Bank review and approval of copies of: (A) all marketing and solicitation materials, including direct mail or internet solicitations, promotional materials, advertising, telemarketing scripts (“Marketing and Solicitation Materials”), and (B) other materials provided to consumers generated in connection with the administration and servicing of the Third-Party Agreements and Services;
- (ii) Maintenance of records of all service provider agreements and approved Marketing and Solicitation Materials, including any changes or amendments with respect to such materials;
- (iii) Monitoring of the performance of marketing and solicitation programs for new accounts;
- (iv) Prompt 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 third-party credit card programs (other than routine requests such as requests to cease and desist collection contact), and maintenance by the Bank of all such documents;
- (v) Procedures for promptly addressing and resolving consumer complaints, regardless of the source;
- (vi) Procedures for the monitoring and auditing of collection activities and customer service call centers;
- (vii) Bank review of all third-party credit card program partners’ credit, fraud, and risk management materials, including policy manuals and practices, to determine compliance with all Consumer Protection Laws;

(viii) An effective training program that includes comprehensive training in all Consumer Protection Laws, including Section 5, for all Bank personnel; and

(ix) Prior Board approval of any new or renewed Third-Party Agreements and Services.

(b) During the life of this Order, the Bank's Compliance Committee established pursuant to paragraph 1(b) of section I(B) of this Order shall, on a quarterly basis, submit a written report to the Board and senior management as to whether the third parties are in compliance with Consumer Protection Laws. The written report shall include potential violations, deficiencies or other concerns. The Board shall be responsible for ensuring that corrective actions are taken to address the findings of the written report.

3. **COMPLIANCE MANAGEMENT SYSTEM**

(a) Within 60 days from the effective date of this Order, the Bank shall develop and implement a Compliance Management System that is commensurate with the level of complexity of the Bank's operations.

(b) The Compliance Management System shall include the development and implementation of a comprehensive written compliance program ("Compliance Program") which shall include all of the Consumer Protection Laws to which the Bank is subject. At a minimum, the Compliance Program shall provide for and include:

(i) Development and implementation of operating procedures for each of the Consumer Protection Laws to which the Bank is subject. Operating procedures shall be distributed to all employees having responsibilities that relate to applicable Consumer Protection Laws.

(ii) Development and implementation of a formal training program for

all personnel who have compliance responsibilities to ensure that all such personnel are thoroughly knowledgeable of applicable compliance requirements.

(iii) Development and implementation of a program to monitor the Bank's compliance with Consumer Protection Laws.

(iv) Development and implementation of procedures to ensure follow-up actions and corrective attention are provided to exceptions identified during monitoring.

(c) The Board shall review the Compliance Program on an annual basis. Any subsequent modifications to the Compliance Program shall be approved by the Board, which approval shall be recorded in the minutes of the Board. Thereafter, the Bank shall follow the written Compliance Program and/or any subsequent modification thereto.

4. **COMPLIANCE OFFICER**

(a) During the life of this Order, the Bank shall have and retain a qualified Compliance Officer who possesses the requisite knowledge, skills, and experience to administer an effective Compliance Management System, including experience with Third-Party Agreements and Services. The Compliance Officer must have experience with third-party credit card agreements. The Compliance Officer shall be given stated independent authority by the Bank's Board to implement and supervise the Bank's Compliance Program.

(b) The Compliance Management System shall provide sufficient staff personnel to assist the Compliance Officer.

5. **INDEPENDENT AUDIT PROGRAM**

(a) Within 120 days from the effective date of this Order, the Bank shall have an independent audit to ensure compliance with Consumer Protection Laws. The audit shall be conducted by qualified personnel with experience in conducting independent audits of

compliance programs of banks of comparable complexity. The comprehensive audit will assess the Bank's Compliance Program and all Third-Party Agreements and Services.

(b) Audit findings, deficiencies, and recommendations must be documented in a written report and provided to the Board or Audit Committee within 30 days after completion of the independent audit. In addition, the audit reports should be thoroughly reviewed by the Board and be fully documented in the Board's minutes.

(c) Immediately upon receipt, the Board shall forward copies of the audit reports to the Commissioner of the Utah Department of Financial Institutions ("Commissioner") and the Regional Director of the FDIC's San Francisco Regional Office ("Regional Director").

(d) Within 60 days of receipt of the independent auditor's written report, the Audit Committee or the Board shall take action to address the audit's findings, correct any deficiencies noted, and implement any recommendations or explain in writing, in a document signed by all Board members, why a particular recommendation has not been implemented.

(e) After receipt of the initial independent audit, the Bank shall conduct regular independent audits. The subsequent audits shall comply with all of the provisions of this Order and shall be conducted on at least an annual basis, or more frequently if warranted.

6. **CORRECTION OF VIOLATIONS OF LAW AND/OR REGULATIONS**

(a) Within 30 days of the effective date of this Order, the Bank shall correct, on an ongoing basis, all alleged violations of Consumer Protection Laws reflected in the Joint Compliance Examination Report dated May 26, 2009 ("ROE"). In addition, the Bank shall ensure its future compliance with all applicable Consumer Protection Laws, particularly Section 5. The Bank's actions as required by this paragraph shall be satisfactory to the Commissioner and the Regional Director as determined at subsequent examinations and/or visitations.

(b) During the life of this Order, the Bank shall not make, directly or indirectly, any false, deceptive, or misleading representations with respect to any extension of credit or other Bank product or service, including the advertising, marketing, offering, soliciting, extending or servicing of any extension of credit or other Bank product or service.

## **II. ORDER FOR RESTITUTION AND OTHER RELIEF**

It is further ordered that:

### **1. RESERVE ACCOUNT AND PAYMENT FLOOR**

(a) Within 10 days from the effective date of this Order, the Bank shall reserve or deposit into a segregated deposit account an amount not less than \$150,000 (“Payment Floor”).

(b) The Bank shall make all restitution payments required by paragraphs 3 and 4 of section II of this 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.

### **2. INDEPENDENT CERTIFIED ACCOUNTING FIRM**

(a) Within 45 days from the issuance of this Order, the Bank shall retain, at its expense, an independent certified accounting firm (“Firm”) acceptable to the Commissioner and the Regional Director to determine compliance with the Restitution Plan set forth in paragraphs 3 and 4 of section II of this Order. 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 and provide the reports called for in paragraphs 3 and 4 of section II of this Order.

(b) Prior to the engagement of the Firm, and no later than 30 days from the issuance of this Order, 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 Commissioner and the Regional Director for non-objection.

(c) The engagement letter between the Bank and the Firm shall grant the Utah Department of Financial Institutions and 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 this Order.

(d) To be acceptable to the Commissioner and the Regional Director, the Firm must be independent and, at a minimum, comply with the Code of Conduct of the appropriate State Board of Accountancy and meet the auditor independence requirements of the Securities and Exchange Commission.

(e) Within 15 days after submission of the Firm's name, the Commissioner and the Regional Director shall notify the Bank in writing of the FDIC's objection or non-objection thereto.

3. **RESTITUTION PLAN FOR GENESIS FINANCIAL SOLUTIONS  
("GENESIS") CREDIT CARD PROGRAM**

(a) Within 60 days from the effective date of this Order, the Bank shall prepare a comprehensive restitution plan ("Restitution Plan") for all consumers who had or currently have a Pearl Card Gold MasterCard ("Pearl Card") issued by the Bank through an agreement with Genesis ("Eligible Consumers"). The Bank shall submit the Restitution Plan to the Commissioner and the Regional Director for their review, comment, and non-objection prior to implementation. The Restitution Plan shall require the following:

(i) For all Eligible Consumers, the Bank shall reverse any reporting of default on such accounts to any Credit Reporting Agency (“CRA”) and refrain from subsequently reporting any default on such accounts to any CRA;

(ii) The Bank shall reverse the annual fee charged for the first year of accounts of all Eligible Consumers who:

(A) Received any of the Group A Solicitations listed in Exhibit 1 (“Group A Solicitations”);

(B) Made no payments on their accounts; and

(C) Whose accounts are currently in default.

(iii) The Bank shall reimburse in cash the annual fee charged for the first year of accounts of all Eligible Consumers who:

(A) Received any of the Group A Solicitations; and

(B) Made payments on their accounts.

(iv) The Bank shall reimburse in cash the annual fee charged for the first year of accounts of all Eligible Consumers who:

(A) Received any of the Group B Solicitations listed in Exhibit 1 (“Group B Solicitations”) wherein the solicitation either indicated that there was no annual fee, that the annual fee would be waived for twelve months, or made no reference to an annual fee; and

(B) Converted to Graduate status prior to the end of the first year. For purposes of this paragraph, Graduate status means that the credit cardholder has paid off the entire balance transfer.

(b) Within 30 days of receipt of non-objection from the Commissioner and the Regional Director, the Bank shall implement the Restitution Plan. Any required cash restitution amount shall be provided to each of the Eligible Consumers in the form of a cashier's check.

(c) The Firm hired by the Bank pursuant to paragraph 2 of section II of this Order shall review and verify that the Bank accurately identified the Eligible Consumers and correctly credited the accounts of, and made cash refunds to, as appropriate, Eligible Consumers.

(d) The Firm shall prepare a detailed written report of the processes and procedures by which the Bank determined the restitution amounts described in paragraph 3(a) of section II of this Order. The report shall also include the following: (i) total number of Eligible Consumers and (ii) total amount of restitution made under the Restitution Plan.

(e) The report described in paragraph 3(d) of section II of this Order shall be submitted to the Commissioner and the Regional Director for their review, comment, and non-objection within 60 days after the Bank has completed implementation of the Restitution Plan.

(f) The Bank shall retain all records pertaining to the Restitution Plan, 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.

#### 4. **MAILING REFUNDS**

When the Bank makes cash refunds to Eligible Consumers by cashier's check made payable to that eligible consumer, it shall send the cashier's check by United States Postal Service first-class mail, address correction service requested, to the consumer's last address as maintained in 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 cashier's check for any Eligible Consumer is returned to the Bank after such second mailing by the Bank, the Bank shall retain the restitution amount of such Eligible Consumer for a period of three-hundred sixty-two (362) 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 Restitution Plan.

### **III. ORDER TO PAY**

It is further ordered, that by reason of the alleged violations of law and unsafe or unsound banking practices, including deceptive practices in violation of Section 5, and after taking into account the Consent Order and Order for Restitution, 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 the Bank, and such other matters as justice may require, pursuant to 12 U.S.C. § 1818(i)(2), a civil money penalty of \$300,000.00 is assessed against the Bank. The Bank shall pay the civil money penalty to the Treasury of the United States.

### **IV. REPORTING REQUIREMENTS**

#### **PROGRESS REPORTS**

On or before the 30<sup>th</sup> day after the end of the first calendar quarter following the effective date of this Order, and on or before the 30<sup>th</sup> day after the end of every calendar quarter thereafter, the Bank shall furnish written progress reports to the Commissioner and 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 Commissioner and the Regional Director has expressly released the Bank in writing from making any further reports.

**V. SAVINGS CLAUSE AND EFFECTIVE DATE OF ORDER**

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 be binding on the Bank, its institution-affiliated parties, and their successors and assigns. 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 29<sup>th</sup> day of December, 2010..

/s/  
Sylvia Plunkett  
Associate Director  
Division of Supervision and Consumer Protection