

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

ARIZONA DEPARTMENT OF FINANCIAL INSTITUTIONS

PHOENIX, ARIZONA

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)	
In the Matter of)	
)	CONSENT ORDER
METRO PHOENIX BANK)	
PHOENIX, ARIZONA)	FDIC-11-083b
)	
(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), and the Arizona Department of Financial Institutions (“ADFI”) is the appropriate state banking agency under Arizona Revised Statutes § 6-123(1), for Metro Phoenix Bank, Phoenix, Arizona (“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 June 20, 2011, and accepted by the FDIC and the ADFI. With this Stipulation, the FDIC and ADFI agree to terminate Consent Order No. FDIC-10-759b, as of the effective date of this Stipulation and Consent Order. With the Stipulation, the Bank has consented, without admitting or denying any allegations of unsafe or unsound banking practices relating to management, capital, asset, liquidity, the enhancement and improvement of the Bank’s Compliance Management System

("CMS"), its Bank Secrecy Act ("BSA") and anti-money laundering ("AML") compliance program, 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 and the ADFI.

Having determined that the requirements for issuance of an order under section 8(b) of the Act, 12 U.S.C. § 1818(b), and Arizona Revised Statutes § 6-137B have been satisfied, the FDIC and ADFI hereby order that:

EXISTING PROVISIONS FROM NOVEMBER 10, 2010 ORDER

1. The Bank shall have and retain qualified management.

(a) Each member of management shall have qualifications and experience commensurate with his or her duties and responsibilities at the Bank. Management shall include the following: (i) a chief executive officer with proven ability in managing a bank of comparable size and risk profile; (ii) a chief financial officer with proven ability in all aspects of financial management; and (iii) a senior lending officer with significant lending, collection, and loan supervision experience and experience in upgrading a low quality loan portfolio. Each member of management shall be provided appropriate written authority from the Board to implement the provisions of this Order.

(b) The qualifications of management shall be assessed on its ability to:

- (i) comply with the requirements of this Order;
- (ii) operate the Bank in a safe and sound manner;
- (iii) comply with applicable laws and regulations; and
- (iv) restore and maintain all aspects of the Bank to a safe and sound condition, including asset quality, capital adequacy, earnings, management effectiveness, liquidity, and sensitivity to market risk.

(c) During the life of this Order, the Bank shall notify the Regional Director of the FDIC's San Francisco Regional Office ("Regional Director") and the Superintendent of the Arizona Department of Financial Institutions ("Superintendent"), in writing, of the resignation or termination of any of the Bank's directors or senior executive officers. Prior to the addition of any individual to the Board or the employment of any individual as a senior executive officer, the Bank shall comply with the requirements of section 32 of the Act, 12 U.S.C. § 1831i, and Subpart F of Part 303 of the FDIC Rules and Regulations, 12 C.F.R. §§ 303.100–303.104 and any requirement of the State of Arizona for prior notification and approval.

2. During the life of this Order, the Board shall continue to maintain adequate participation in the affairs of the Bank, including assuming full responsibility for the approval of sound policies and objectives and for the supervision of all of the Bank's activities, consistent with the role and expertise commonly expected for directors of banks of comparable size. This participation shall include meetings to be held no less frequently than monthly at which, at a minimum, the following areas shall be reviewed and approved: reports of income and expenses; new, overdue, renewal, insider, charged-off, and recovered loans; investment activity; liquidity and funds managements activities; operating policies; and individual committee actions. The Board minutes shall document these reviews and approvals, including the names of any dissenting directors.

3. (a) During the life of this Order, the Bank shall maintain its Tier 1 capital in such an amount to ensure that the Bank's leverage ratio equals or exceeds 10 percent.

(b) During the life of this Order, the Bank shall maintain its total risk-based capital ratio in such an amount as to equal or exceed 12 percent.

(c) The level of capital to be maintained during the life of this Order shall be in addition to a fully funded allowance for loan and lease losses (“ALLL”), the adequacy of which shall be satisfactory to the Regional Director and the Superintendent as determined at subsequent examinations and/or visitations. Any increase in Tier 1 capital necessary to meet the requirements of this paragraph may not be accomplished through a deduction from the Bank’s ALLL.

(d) If all or part of the increase in capital required by this Order is accomplished by the sale of new securities, the Board shall adopt and implement a plan for the sale of such additional securities, including the voting of any shares owned or proxies held or controlled by them in favor of the plan. Should the implementation of the plan involve a public distribution of the Bank's securities (including a distribution limited only to the Bank’s existing shareholders), the Bank shall prepare offering materials fully describing the securities being offered, including an accurate description of the financial condition of the Bank and the circumstances giving rise to the offering, and any other material disclosures necessary to comply with all applicable State and Federal securities laws. Prior to the implementation of the plan and, in any event, not less than 20 days prior to the dissemination of such materials, the plan and any materials used in the sale of the securities shall be submitted to the FDIC, Registration, Disclosure and Securities Unit, 550 17th St. N.W., Washington, D.C. 20429, for review, and to the Superintendent to obtain any and all necessary securities permits or other approvals. Any changes requested by the FDIC shall be made prior to dissemination. If the increase in capital is provided by the sale of noncumulative perpetual preferred stock, then all terms and conditions of the issue, including but not limited to those terms and conditions relative to interest rate and

convertibility factor, shall be presented to the Regional Director and the Superintendent for prior approval.

(e) Subject to obtaining all required prior authorizations, permits or other approvals from the Superintendent, the Bank shall promptly revise or supplement the offering materials it is using in connection with the offer and sale of its securities to fully and fairly disclose every material change or development regarding the Bank and its operation, including every planned change that would be material, that occurs during the offering of the securities. The Bank shall provide the revised offering materials or supplement, along with a notice that the subscriber may rescind its subscription, to each subscriber that has submitted a subscription for the Bank's securities before receiving the revised offering materials or supplement for at least ten (10) days before accepting the subscriber's subscription.

(f) In complying with the provisions of this paragraph, the Bank shall provide to any subscriber and/or purchaser of the Bank's securities, a written notice of any planned or existing development or other changes which are materially different from the information reflected in any offering materials used in connection with the sale of Bank securities. The written notice required by this paragraph shall be furnished within 10 days from the date such material development or change was planned or occurred, whichever is earlier, and shall be furnished to every subscriber and/or purchaser of the Bank's securities who received or was tendered the information contained in the Bank's original offering materials.

(g) For the purposes of this Order, the terms "leverage ratio", "Tier 1 capital" and "total risk-based capital ratio" shall have, the meanings ascribed to them in Part 325 of the FDIC's Rules and Regulations, 12 C.F.R. §§ 325.2(m), 325.2(v), 325.2(y), and Appendix A.

(h) The Bank shall not pay cash dividends or make any other payments to its shareholders without the prior written consent of the Regional Director and the Superintendent.

4. (a) The bank shall enhance and update plans to reduce the risk exposure in assets, with a balance of \$100,000 or greater, adversely classified "Substandard" or "Doubtful," including all outstanding loan commitments to a level of acceptable asset quality. For purposes of this provision, "reduce" means to collect, charge off, or improve the quality of an asset so as to warrant its removal from adverse classification by the Regional Director and the Superintendent. In developing the plan mandated by this paragraph, the Bank shall, at a minimum, and with respect to each such adversely classified loan or lease, review, analyze, and document the financial position of the borrower, including source of repayment, repayment ability, and alternative repayment sources, as well as the value and accessibility of any pledged or assigned collateral, and any possible actions to improve the Bank's collateral position.

(b) The plan shall also include, but not be limited to, the following:

(i) A schedule for reducing the outstanding dollar amount of each such adversely classified asset, including timeframes for achieving the reduced dollar amounts (at a minimum, the schedule for each such adversely classified asset must show its expected dollar balance on a quarterly basis);

(ii) Specific action plans intended to reduce the Bank's risk exposure in each such classified asset;

(iii) A schedule showing, on a quarterly basis, the expected consolidated balance of all such adversely classified assets, and the ratio of the consolidated balance to the Bank's projected Tier 1 capital plus the ALLL;

(iv) A provision for the Bank's submission of monthly written progress reports to its Board; and

(v) A provision mandating Board review of the progress reports, with a notation of the review recorded in the minutes of the meeting of the Board.

(c) The requirements of this paragraph do not represent standards for future operations of the Bank. The Bank shall continue to reduce the total volume of adversely classified assets. The plan may include a provision for increasing Tier 1 capital when necessary to achieve the prescribed ratio.

(d) The Bank shall, immediately upon completion, submit the plan to the Regional Director and the Superintendent for review and comment. Within 30 days from receipt of any comment from the Regional Director and the Superintendent, and after due consideration of any recommended changes, the Board shall approve the plan, which approval shall be recorded in the minutes of the Board meeting. Thereafter, the Bank shall implement and fully comply with the plan.

5. (a) Beginning with the effective date of this Order, the Bank shall not extend, directly or indirectly, any additional credit to, or for the benefit of, any borrower who has a loan or other extension of credit from the Bank that has been charged off or classified, in whole or in part, "Loss" and is uncollected. This paragraph shall not prohibit the Bank from renewing or extending the maturity of any credit in accordance with the Financial Accounting Standards Board ("FASB") Accounting Standards Codification 470-60 ("ASC 470-60"), formerly known as FASB Statement Number 15 ("FAS 15").

(b) Beginning with the effective date of this Order, the Bank shall not extend, directly or indirectly, any additional credit to, or for the benefit of, any borrower who has a loan

or other extension of credit from the Bank that has been classified, in whole or part, “Doubtful” or Substandard” without the prior approval of a majority of the Board or loan committee of the Bank. The Board and loan committee shall not approve any extension of credit or additional credit to such borrowers without first collecting in cash all past due interest.

6. During the life of this Order, the Bank shall enhance, revise, and maintain sound liquidity and funds management policies that adequately address liquidity needs and appropriately reduce its reliance on non-core funding sources. Such policies and their implementation shall be satisfactory to the Regional Director and the Superintendent as determined at subsequent examinations and/or visitations.

THIRD-PARTY PAYMENT PROCESSING

7. As of the effective date of this Order, the Bank shall not provide third-party payment processing (“TPPP”) for CheckGateway LLC, Teledraft, Inc., or any other third party payment processor (collectively “Third Party Processors”), or their client entities unless and until the Bank has completed comprehensive due diligence on all Third Party Processors and each of their related client entities. Such due diligence must include, but is not limited to, the following:

(a) A thorough, written analysis performed by a knowledgeable Bank employee(s) or a qualified consultant with TPPP expertise regarding any reputational, compliance, legal, fraud, Unlawful Internet Gambling Enforcement Act (“UIGEA”), and Bank Secrecy Act/Anti-Money Laundering risks posed by the Third Party Processors and their related client entities;

(b) An arm’s-length legal opinion, commissioned and paid for by the bank, from qualified counsel with experience in banking and/or internet commerce law regarding the legal, reputational, and fraud risk related to any potentially illegal activities performed or

facilitated by sites offering tobacco, pharmaceuticals, and on-line gaming; and

(c) The development and implementation of consistent policies and procedures regarding TPPP activities, including comprehensive due diligence processes.

Further, such policies shall be evaluated to ensure that they

- (i) Reflect actual activities at the Bank;
- (ii) Address Unfair or Deceptive Acts and Practices (“UDAP”) and

UIGEA:

(iii) Manage Automated Clearing House (“ACH”) and Remotely Created Check (“RCC”) activities;

(iv) Identify and eliminate instances of TPPP for client entities of the Third Party Processors who also provide TPPP, whether related or unrelated to the entities listed in paragraph 1 (*e.g.* “nested” Third Party Processors);

(v) Provide internal monitoring and complaint coverage; and.

(vi) Include a comprehensive list of entities that present elevated risk or potential for consumer harm and for which the bank will not process transactions.

8. As of the effective date of this Order, the Bank shall maintain adequate reserves for potential charge backs from all TPPP conducted for the Third Party Processors and their client entities. The Bank’s reserve methodology shall be fully supported and documented, and required reserves shall have a perfected collateral hold to protect the Bank.

9. Within 10 days from the effective date of this Order, senior management shall provide monthly reports to the Board detailing, but not limited to, the volume of activity, the volume of charge back activity, the adequacy of reserves for potential charge backs from TPPP conducted for Third Party Processors and their client entities, and volume and return rates at the

individual client entity and aggregate levels. The Bank shall also develop procedures for informing management and the Board of any suspicious or high risk activities conducted by client entities. Copies of monthly reports shall be provided to the Regional Director and Superintendent during the life of this Order.

10. Within 20 days from the effective date of this Order, the Bank shall 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.

11. Within 90 days from the effective date of this Order, and at least annually thereafter, the Bank shall commission a comprehensive, independent third-party audit of TPPP and related activities. Such an independent third-party audit shall include, at a minimum:

- (a) Transaction testing;
- (b) Risk assessments of Third Party Processors and client entities;
- (c) An evaluation UIGEA compliance;
- (d) A review of the sufficiency of Board-approved policies, procedures, and processes along with an assessment of the management's compliance with established policies, procedures, and processes;
- (e) An analysis of the reserve account; the appropriateness of existing infrastructure and staffing; and
- (f) A determination of customer due diligence documentation, analysis, and risk assessment adequacy.

The findings of such audit shall be reported in writing directly to the Board of Directors with a copy of such reports to be sent to the Regional Director and Superintendent within 30 days of receipt by the Bank.

12. Within 30 days from the effective date of this Order, the Bank shall complete a profitability analysis of the ACH/RCC departments and TPPP program, including projected profitability. Such analysis must factor all costs related to the ACH/RCC departments and TPPP program, including, but not limited to, personnel, audit, training, legal, and compliance costs. Such analysis must also include a business plan approved by the Board of Directors and contain reasonable and fully supported assumptions. Actual ACH/RCC department and TPPP program revenues and expenses shall be monitored and reported to the Board of Directors no less than monthly.

BANK SECRECY ACT / ANTI-MONEY LAUNDERING

13. Within 60 days from the effective date of this Order, the Bank shall enhance its Bank Secrecy Act (“BSA”)/Anti-Money Laundering (“AML”) risk assessment to include risks related to TPPP, and the Bank shall develop an Office of Foreign Assets Control (“OFAC”) risk assessment.

14. Within 30 days from the effective date of this Order, the Bank shall develop written policies and procedures related to Enhanced Due Diligence (“EDD”) for high risk customers, including determining reports and other means that will be used to monitor suspicious activity to ensure proper reporting of activity warranting the filing of a Suspicious Activity Report (“SAR”).

15. Within 90 days from the effective date of this Order, and at least annually thereafter, the Bank shall commission a comprehensive, independent third-party audit of the

BSA/AML compliance program. Such independent third-party audits shall include, at a minimum:

- (a) Transaction testing;
- (b) A review of the sufficiency of Board-approved BSA/AML/OFAC policies, procedures, and processes; and
- (c) A review of the sufficiency of internal controls, staffing, training, and expertise to determine if they are appropriate in relation to the BSA risk profile of the Bank and considering the level of risk incurred by the TPPP services. The findings of such audit shall be reported in writing directly to the Board of Directors with a copy of such reports to be sent to the Regional Director and Superintendent within 30 days of receipt by the Bank.

16. As of the effective date of this Order, the Bank shall ensure that all underlying originators and beneficiaries of wire transfers are screened against all government lists, including OFAC and Financial Crimes Enforcement Network (“FinCEN”) Section 314(a).

17. Within 30 days from the effective date of this Order, the Bank shall ensure that the BSA Officer has sufficient training, resources, and communication with all Bank departments to ensure BSA/AML compliance. The Bank shall provide additional BSA/AML training to all personnel whose work involves TPPP activities.

18. Within 30 days from the effective date of this Order, the BSA Officer shall develop a plan to review all high-risk accounts and high-risk transactions (“Transaction Review”), including but not limited to the Insured Bank’s large currency transaction reports (“CTRs”), cash purchases of monetary instruments, wire transfer activity, and foreign exchange services for the six-month period immediately preceding the effective date of this Order (the “Transaction Review Period”), and shall prepare and file any additional CTRs and SARs

necessary based upon the review. Based upon the results of the review, the Regional Director and the Superintendent may extend the Transaction Review Period if necessary.

(a) Within 10 days of preparing a plan for the Transaction Review, but prior to commencement of the Transaction Review, the Insured Bank shall submit to the Regional Director and the Superintendent a written plan for approval that sets forth:

(i) the scope of the Transaction Review, including the types of accounts and transactions to be reviewed;

(ii) the methodology for conducting the Transaction Review, including any sampling procedures to be followed;

(iii) the expertise and resources to be dedicated to the Transaction Review;

(iv) the anticipated date of completion of the Transaction Review;
and

(v) a commitment that any interim reports, draft reports or workpapers associated with the Transaction Review will be made available to the Regional Director and the Superintendent upon request.

(b) On completion of the reviews required pursuant to the paragraphs above, the Insured Bank shall submit the written findings of the review and copies of any additional SARs and CTRs filed to the Regional Director and the Superintendent.

(c) Throughout the Transaction Review, the Insured Bank shall ensure that all matters or transactions required to be reported that have not previously been reported are reported in accordance with applicable rules and regulations.

(d) Documentation supporting any determination made pursuant to the paragraphs above, shall be retained in the Insured Bank's records for such period of time as may be required by any applicable rules or regulations.

19. Within 90 days from the effective date of this Order, the Bank shall correct all apparent violations of law and regulation cited in the January 24, 2011, Report of Visitation.

MISCELLANEOUS

20. 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 and Superintendent when all of the above actions have been accomplished.

21. 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 and Superintendent 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 and Superintendent have released the Bank in writing from making further reports.

22. Following the effective date of this Order, the Bank shall send to its shareholders 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, the ADFI, or any other federal or state agency or department from taking any other action against the Bank or any of the Bank's current or former institution-affiliated parties as that term is defined in section 3(u) of the Act, 12 U.S.C. § 1813(u).

This Order will become effective upon its issuance by the FDIC and the ADFI. The provisions of this Order shall be binding upon the Bank, its institution-affiliated parties, and any successors and assigns thereof.

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The provisions of this Order shall remain effective and enforceable except to the extent that and until such time as any provision has been modified, terminated, suspended, or set aside by the FDIC and ADFI.

Issued pursuant to delegated authority

Dated at San Francisco, California, this 21st day of June, 2011

_____/s/
Stan Ivie
Regional Director
San Francisco Region
Federal Deposit Insurance Corporation

_____/s/
Lauren Kingry
Superintendent
Arizona Department of Financial Institutions