

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

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In the Matter of )	) CONSENT ORDER;
RIVER CITY BANK, INC. )	) ORDER FOR RESTITUTION;
LOUISVILLE, KENTUCKY )	) AND ORDER TO PAY
(Kentucky Chartered )	) CIVIL MONEY PENALTIES
Insured Nonmember Bank) )	)
_____ )	) FDIC-10-714B
_____ )	) FDIC-11-144K
_____ )	)

River City Bank, Inc. of Louisville, Kentucky ("Bank"), having been advised of its right to a NOTICE OF CHARGES AND OF HEARING detailing the unsafe or unsound banking practices and violations of law and/or regulation alleged to have been committed by the Bank, and of its right to a hearing on the charges under sections 8(b) and 8(i) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. §§ 1818(b) and (i), and having waived those rights, entered into a STIPULATION TO THE ISSUANCE OF A CONSENT ORDER, ORDER FOR RESTITUTION, AND ORDER TO PAY CIVIL MONEY PENALTIES ("STIPULATION") with counsel representing the Federal Deposit Insurance Corporation ("FDIC"), dated October 17, 2011, whereby, solely for the purpose of this proceeding and without admitting or denying the charges of unsafe or unsound banking practices and violations of law or regulation, the Bank consented to the issuance of a CONSENT ORDER , ORDER FOR RESTITUTION, AND ORDER TO PAY CIVIL MONEY PENALTIES, ("ORDER") by the FDIC.

The FDIC considered the matter and determined to accept the STIPULATION.

Having also determined that the requirements for issuance of an order under 12 U.S.C. §§ 1818(b) and (i) have been satisfied, the FDIC HEREBY ORDERS 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, take affirmative actions.

**I. CONSENT ORDER**

BOARD OVERSIGHT

1. From the effective date of this ORDER, the Bank's board of directors ("Board") shall increase its participation in the affairs of the Bank, assuming full responsibility for the approval of sound policies and objectives and for the supervision of all of the Bank's activities.

(a) Within sixty (60) days from the effective date of this ORDER, the Bank's Board shall appoint a compliance committee ("Compliance Committee"), which shall include at least two (2) directors who are not active officers of the Bank and at least one (1) member of senior management, plus the Compliance Officer retained pursuant to this ORDER.

(b) The existence of the Compliance Committee in no way diminishes the responsibility of the entire Board for ensuring compliance with the provisions of this ORDER.

(c) The Bank's Board, in conjunction with the Compliance Committee, shall allocate resources to the compliance area that are:

(i) commensurate with the level of complexity of the Bank's operations to ensure the establishment and implementation of an adequate Compliance Management System, as described in the FDIC's Compliance Examination Manual, Section II-2.1 to 2.4, ("Compliance Management System Guidance"), and shall include specific procedures to ensure the Bank's compliance with all consumer protection and compliance laws and regulations relating to financial transactions and services ("Consumer Laws"); and

(ii) sufficient to ensure the Bank's timely compliance with the provisions of this ORDER.

(d) The Bank's Board shall ensure that the Compliance Officer:

(i) is given and retains sufficient authority and independence to implement policies related to Consumer Laws and to institute corrective action as needed. This authority shall

include the ability to cross department or division lines, to have access to all areas of the Bank's operations, and to effectuate corrective action upon discovering deficiencies.

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

(e) The Bank's Board, in conjunction with the Compliance Committee, shall ensure that the duties and responsibilities of the Compliance Officer are clearly defined and provide the Compliance Officer with accessibility to both the Board and senior management. The duties assigned to the Compliance Officer shall include:

- (i) the preparation of monthly written reports that the Compliance Officer shall present to the Board;
- (ii) the prompt review and written response to audit reports relating to all areas of the Bank's Compliance Management System, with all written responses being presented to the Board; and
- (iii) the preparation of a schedule of requirements

for Consumer Laws (such as the type, content and timing of disclosures and maintenance of records) for the purpose of informing Bank employees of the requirements relating to their duties.

(f) Within sixty (60) days from the effective date of this ORDER, the Bank's Board shall have written procedures in place that provide for the monitoring of the Bank's compliance with this ORDER. These monitoring procedures shall mandate that:

(i) the Board meet monthly, at a minimum, during which the Board shall review, acknowledge, and approve reports submitted by the Compliance Officer, Compliance Management System audit reports, and the status of the Bank's overall compliance with this ORDER. Board minutes shall document these reviews and approvals, including the names of any dissenting directors.

(ii) the Compliance Committee report to the Board at each Board meeting held while the ORDER is in effect. This report shall include the minutes of the Compliance Committee meetings, which the Board shall review at its monthly meeting, and the minutes of the Board shall

document these reviews and approvals, including the names of any dissenting directors.

(iii) the Board shall review progress reports required by this ORDER, and any written responses to such reports, with each such report or response being signed by each member of the Board, and that the review of such documents be recorded in the minutes of the applicable Board meeting. Such reports may be discontinued when the corrections required by this ORDER have been accomplished and the Regional Director of the Chicago Regional Office of the FDIC ("Regional Director") has released, in writing, the Bank from making additional reports.

(g) The Board shall ensure proper and timely follow-up and resolution to audit and examination findings indicating the need for corrective action(s).

(h) The Board shall hold employees accountable for following adopted policies, procedures and regulatory requirements and shall develop an internal monitoring system of employees' performance to ensure that compliance policies, procedures and regulatory requirements are adequately followed.

MANAGEMENT

2. (a) While this ORDER is in effect, the Bank shall have and retain qualified management as set forth in subparagraph (b) below. Each member of management shall have the qualifications and experience commensurate with his or her duties and responsibilities within the Bank. The Board shall provide each member of management the appropriate written authority 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) effectuate the Bank's compliance with applicable laws, rules and regulations;
- (iv) develop, implement and administer a satisfactory Compliance Management System, pursuant to the FDIC's Compliance Management System Guidance; and
- (v) restore all aspects of the Bank to a safe and sound condition, including capital adequacy, asset quality, management effectiveness, earnings, liquidity, and sensitivity to interest rate risk.

REFUND ANTICIPATION LOANS

3. The Bank has exited, and shall not resume, refund anticipation lending.

DOLLARS DIRECT PROGRAM

4. (a) Within thirty (30) days from the effective date of this Order the bank shall develop, adopt and implement policies and procedures to assess, measure, monitor and control third party risk in its Dollars Direct business. At a minimum, the policies and procedures shall prohibit overdrafts.

(b) Within sixty (60) days from the effective date of this ORDER, the Bank shall develop, adopt and implement a Plan for its Dollars Direct Program ("Dollars Direct Plan") to appropriately assess, measure, monitor, and control third party risk, and ensure compliance with Consumer Law. The Dollars Direct Plan shall include at a minimum:

- (i) a review of each aspect of the Dollars Direct business to assess and measure third party risk to the Bank, and provisions to update the review on an ongoing basis.
- (ii) a comprehensive monitoring system for all Electronic Fund Distributor (EFDs) which contains, at a minimum, provisions to ensure each EFD has adequately implemented the Bank's Dollars Direct business including the



application procedure, insuring the appropriate signatures are obtained and disclosures provided to EFD customers, and the ability to adequately comply with the appropriate Consumer Law.

- (iii) a comprehensive training program for all EFDs and their employees. At a minimum the program shall ensure that comprehensive training is provided to all EFDs and employees or contractors who offer to, or discuss Dollars Direct services to the public, or who have access to customer information, in applicable Consumer Laws.
- (iv) provisions for annual audits of a minimum of ten percent (10%) of the Bank's EFDs to assess their overall knowledge of: (a) the EFD business; (b) compliance with Consumer Law; and (c) to determine if their location meets the Bank's standards for physical security, data integrity, and customer privacy. The Bank shall plan its subsequent audits to include EFDs that were not previously audited. At least one-half of the audits required by this paragraph shall be

completed by external auditors.

(v) provisions to insure that the Bank has adequate measures in place to control its third party risk.

(vi) the Dollars Direct Plan shall be acceptable to the Regional Director as determined at subsequent examinations and/or visitations.

(c) Notwithstanding subparagraphs 4(a) and (b), if any subsequent examinations or visitations identify significant weaknesses or significant violations in the Dollars Direct Program, the Bank shall, upon written direction by the Regional Director, immediately develop a plan to exit the Dollars Direct business.

COMPLIANCE OFFICER

5. Within sixty (60) days from the effective date of this ORDER, the Bank shall have and retain a Compliance Officer who possesses the requisite knowledge and experience to administer an effective Compliance Management System.

(a) The responsibilities of the Compliance Officer shall, at a minimum, include:

- (i) developing compliance policies and procedures and conducting regular reviews to ensure that updates are accomplished as necessary;
- (ii) administering a compliance training program

and providing training in Consumer Laws to the Bank's Board, Bank management and employees on a continuing basis;

- (iii) coordinating responses to consumer complaints;
- (iv) preparing and submitting monthly compliance reports to the Compliance Committee established pursuant to this ORDER;
- (v) conducting a prompt review and written response to audit reports relating to all areas of the Bank's Compliance Management System;
- (vi) preparing schedules of requirements for Consumer Laws (such as the type, content and timing of disclosures and maintenance of records) for the purpose of informing Bank employees of the requirements relating to their duties.

(b) The ongoing determination of whether the Bank has retained a qualified Compliance Officer within the meaning of this ORDER shall be based upon the continued effectiveness of the Bank in achieving compliance with the requirements of this ORDER and with the Consumer Laws.

COMPLIANCE POLICY AND PROCEDURES

6. Within ninety (90) days from the effective date of this ORDER, the Bank shall develop and implement a Compliance Policy, acceptable to the Regional Director as determined at subsequent examinations or visitations. At a minimum, this Policy shall:

(a) Require the adoption of a comprehensive Compliance Management System, which will be reviewed and approved annually by the Board; and

(b) Require the development of internal monitoring procedures to ensure that:

(i) the Bank's actual practices and procedures reflect the Compliance Policy; and

(ii) employees understand and follow the Compliance Policy to determine whether they are adhering to the requirements of Consumer Laws.

COMPLIANCE MONITORING

7. Within ninety (90) days from the effective date of this ORDER, the Bank shall ensure that effective compliance monitoring procedures are developed and instituted. The procedures required by this paragraph shall be acceptable to the Regional Director as determined at subsequent examinations or visitations of the Bank. At a minimum, the compliance monitoring procedures should include:

(a) Regular and on-going reviews of the banking and lending transactions that constitute the normal daily activities of employees for all Bank operating units to identify errors and overall compliance with the Bank's Compliance Policy, with such reviews taking place at least monthly.

(b) Information and instructions concerning the proper disclosures and calculations for each of the Bank's loan and deposit products;

(c) Instructions and schedules for the filing and retention of documents;

(d) Reviews of marketing literature and advertising prior to their implementation or use; and

(e) The establishment of an internal compliance communication system that provides updates to Bank employees and the Board about changes or additions to Consumer Laws.

COMPLIANCE CONSULTANT

8. While this ORDER is in effect, the Bank shall have and retain a qualified consultant with the requisite knowledge and experience to assist the Bank in developing an effective Compliance Management System.

(a) The Bank shall provide the Regional Director with a copy of the engagement letter or contract with the consultant for review. The contract or engagement letter, at a minimum should include:

- (i) a description of the work to be performed under the contract or engagement letter;
- (ii) the responsibilities of the consultant;
- (iii) an identification of the professional standards covering the work to be performed;
- (iv) identification of the specific procedures to be used when carrying out the work to be performed;
- (v) the qualifications of the consultant's employee(s) who are to perform the work;
- (vi) the time frame for completion of the work;
- (vii) any restrictions on the use of the reported findings; and
- (viii) a provision for unrestricted examiner access to workpapers, memoranda and/or reports.

(b) At a minimum, the Compliance Management System developed with the assistance of the consultant shall meet the standards set forth in the Compliance Management System Guidance, cited above.

#### TRAINING PROGRAM

9. Within ninety (90) days from the effective date of this ORDER, the Bank shall develop a training program, acceptable to

the Regional Director as determined at subsequent examinations or visitations, related to Consumer Laws for all Bank personnel, including senior management and the Board, commensurate with their individual job functions and duties.

EXTERNAL AUDIT

10. (a) Within one hundred twenty (120) days from the effective date of this ORDER, the Bank shall cause an external audit to be conducted to ensure compliance with Consumer Laws.

(b) The audit will assess the Bank's Compliance Management System in conjunction with the Compliance Management System Guidance, and at a minimum, shall:

- (i) be comprehensive in scope;
- (ii) identify the number of transactions sampled by category or product type;
- (iii) identify deficiencies;
- (iv) provide descriptions and suggestions for corrective actions and time frames necessary for correction; and
- (v) establish follow-up procedures to verify that corrective actions are implemented effectively.

(c) Audit findings, deficiencies, and recommendations shall be documented in a written report and provided to the Board within ten (10) days after completion of the external audit.

(d) Within thirty (30) days of receipt of the external auditor's written report, the Board shall meet and take action to address the audit findings, correct any deficiencies noted, and implement recommendations or explain in a written report why a particular recommendation has not been implemented, which shall be signed by all Board members and attached to Board minutes.

(e) The Bank shall provide the Regional Director with a copy of the proposed engagement letter with the external auditor for review before it is executed. The engagement letter, at a minimum, should include:

- (i) a description of the work to be performed under the engagement letter;
- (ii) the responsibilities of the external auditor;
- (iii) an identification of the professional standards used in relation to the work being performed;
- (iv) identification of the specific procedures to be used when carrying out the work to be performed;
- (v) the qualifications of the employee(s) who are to perform the work;
- (vi) the time frame for completion;
- (vii) any restrictions on the use of the



reported finding;

- (viii) a provision for unrestricted examiner access to work papers;
- (ix) a provision stating that the external auditor will present the audit findings directly to the Board.

(f) After receipt of the external audit, the Bank shall, on a quarterly basis, have subsequent external audits conducted. The Bank shall comply with all of the provisions of this paragraph for subsequent audits.

(g) A copy of any external audit(s) received by the Bank shall be submitted to the Regional Director.

#### DOCUMENTATION OF AUDIT FINDINGS

11. Within one hundred twenty (120) days from the effective date of this ORDER, the Bank shall formulate, adopt, and implement procedures, acceptable to the Regional Director as determined at subsequent examinations or visitations, to ensure that Bank responses to audit findings, including any Bank corrective action(s) in response to audit findings, are documented and reported to the Board.

#### CORRECTION OF VIOLATIONS

12. Within thirty (30) days from the effective date of this ORDER, the Bank shall eliminate or correct all violations of Consumer Laws identified in the Compliance Report and subsequent

correspondence dated February 18, 2011. In addition, the Bank shall establish and implement procedures, acceptable to the Regional Director as determined at subsequent examinations or visitations, as part of its Compliance Policy, to correct additional violations or lapses in management oversight that might lead to future violations in order to ensure compliance with all Consumer Laws.

STRATEGIC PLAN

13. (a) Within 30 days from the effective date of this ORDER, the Bank shall formulate, adopt, and implement a comprehensive strategic plan. The plan required by this paragraph shall contain an assessment of the Bank's current financial condition and market area and a description of the operating assumptions that form the basis for major projected income and expense components. The written strategic plan shall address, at a minimum:

- (i) strategies for pricing policies and asset/liability management; and
- (ii) financial goals, including pro forma statements for asset growth, capital adequacy, and earnings.

(b) Within 30 days from the end of each calendar quarter following the effective date of this ORDER, the Bank's Board shall evaluate the Bank's actual performance in relation to

the strategic plan required by this paragraph and record the results of the evaluation, and any actions taken by the Bank, in the minutes of the Board meeting at which such evaluation is undertaken.

(c) The strategic plan required by this ORDER shall be revised 30 days prior to the end of each calendar year during which this ORDER is in effect. Thereafter, the Bank shall approve the revised plan, which approval shall be recorded in the minutes of a Board meeting, and the Bank shall implement and adhere to the revised plan.

(d) Copies of the plan and revisions thereto required by this paragraph shall be submitted to the Regional Director.

## **II. ORDER FOR RESTITUTION**

The FDIC FURTHER ORDERS that:

1. Within 30 days from the effective date of this Order, the Bank shall identify and reimburse all customers adversely affected by the Bank's practices underlying cited violations of Section 5 of the Federal Trade Commission Act in the Compliance Report and subsequent correspondence dated February 18, 2011, including:

(a) For practices relating to the Bank's *Wall Street Journal* adjustable rate mortgage product, the Bank shall, at a minimum:

(i) determine the interest rate that should have

been assigned to each adjustable rate mortgage and the amount that was overpaid by the consumer;

- (ii) in writing, inform each identified consumer of the error and amount of reimbursement and provide the consumer with the choice for reimbursement with interest through the application of the amount to the principal of the loan or as a direct payment to the consumer;

(b) For practices relating to the Bank's failure to properly adjust monthly payments on ARM loans, the Bank shall, at a minimum:

- (i) identify all consumers whose monthly payments should have increased and where the payment was not properly allocated between principal and interest;
- (ii) determine how much the principal balance should have been reduced had the loan amortized correctly and calculate the amount of additional interest consumers paid as a result of this action. Any differential should be applied by the Bank toward reducing the consumer's principal balance. The

consumer shall not be required to pay any higher payments as a result of the Bank's failure to amortize the loan correctly.

- (iii) in writing, inform each identified consumer of the error and amount of reimbursement, with interest, and provide the consumer with the choice for reimbursement through the application of the amount to the principal of the loan or as a direct payment to the consumer;

- (c) For practices relating to the Bank's Dollar Direct

Program:

- (i) identify overdraft fees charged to each Dollar Direct debit card customer stemming from automated-teller-machine or point-of-sale transactions from 72 months preceding the examination;
- (ii) for each customer identified in subsection (i) above calculate the total reimbursement amount by identifying the issuance date of the periodic statement to each customer in which the first ATM or POS overdraft fees were assessed, and then add those initial overdraft fees to all such overdraft fees

assessed within 60 days after the issuance date of the periodic statement;

(iii) in writing, inform each customer identified above of the total overdraft amount assessed improperly against his/her account and reimburse the customer in the amount of such overdraft fees in the form of a cashier's check sent via First Class Mail to the customer's last known address. The Bank shall take reasonable efforts to locate customers identified pursuant to this paragraph, including requesting last known address correction service from the U.S. Postal Service and address requests through a credit bureau.

(d) If the Bank is required to reimburse a customer whose indebtedness is delinquent, in default, or charged off, it may apply the reimbursement to the customer's outstanding balance, if allowed by state law.

2. The Bank shall maintain written records of customers identified and reimbursements undertaken pursuant to the ORDER FOR RESTITUTION for review at subsequent examinations.

**III. DISCLOSURES and REPORTING**

1. Disclosure to Shareholder. Following the effective date of this ORDER, the Bank shall send to its shareholder a copy of this ORDER in conjunction with either: (a) the Bank's next shareholder communication; or (b) its notice or proxy statement preceding the Bank's next shareholder meeting.

2. Progress Reports. Within thirty (30) days from the end of the first calendar quarter following the effective date of this ORDER, and within thirty (30) days after the end of each successive calendar quarter thereafter, the Bank shall furnish written progress reports to the Regional Director detailing the form and manner of any action taken to secure compliance with this ORDER and the results thereof.

**IV. ORDER TO PAY CIVIL MONEY PENALTY**

The FDIC FURTHER ORDERS, after considering: the violations of law and/or regulations; the gravity of the conduct; the history of previous conduct by the Bank; the appropriateness of the penalty with respect to the financial resources and good faith of the Bank; the CONSENT ORDER and ORDER FOR RESTITUTION; and such other matters as justice may require, that, pursuant to Section 8(i)(2) of the FDI Act, 12 U.S.C. § 1818(i)(2), a Civil Money Penalty of \$145,000.00 be assessed against the Bank. The Bank shall pay the Civil Money Penalty to the United States Treasury.

**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, or for engaging in violations of Consumer Laws, including but not limited to Section 5 of the Federal Trade Commission Act.

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 this 17<sup>th</sup> day of November, 2011.

\_\_\_\_\_/s/\_\_\_\_\_  
Sylvia H. Plunkett  
Senior Deputy Director  
Compliance and CRA  
Examinations  
Division of Depositor and  
Consumer Protection  
Federal Deposit Insurance  
Corporation