

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

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	)	
In the Matter of	)	CONSENT ORDER, ORDER
	)	FOR RESTITUTION, AND
	)	ORDER TO PAY
AMERICAN EXPRESS CENTURION BANK	)	CIVIL MONEY PENALTY
SALT LAKE CITY, UTAH	)	
	)	
(INSURED STATE NONMEMBER BANK)	)	FDIC-13-0285b
	)	FDIC-13-0284k
_____	)	

The Federal Deposit Insurance Corporation (“FDIC”) has jurisdiction over American Express Centurion Bank (“Bank” or “AECB”) under section 3(q) of the Federal Deposit Insurance Act (“FDI Act”), 12 U.S.C. § 1813(q).

The FDIC determined that the Bank has engaged in deceptive and unfair acts and practices in or affecting commerce in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1) (“Section 5”), stemming from the marketing, promotion, and sale of certain add-on products associated with its charge cards and credit cards, including the Account Protector product, the ID Protect and ID Protect Premium products, and the Lost Wallet Protector product as marketed or sold to Card Members in Puerto Rico.

The Bank, by and through its duly elected and acting Board of Directors (“Board”), has executed a STIPULATION AND CONSENT TO THE ISSUANCE OF A CONSENT ORDER, ORDER FOR RESTITUTION, AND ORDER TO PAY CIVIL MONEY PENALTY (“CONSENT AGREEMENT”), dated December 17, 2013, that is accepted by the FDIC. With the CONSENT AGREEMENT, the Bank has consented, without admitting or denying any violations of law or regulation, to the issuance of this CONSENT ORDER, ORDER FOR

RESTITUTION, AND ORDER TO PAY CIVIL MONEY PENALTY (collectively “ORDER”) by the FDIC.

Having determined that the requirements for issuance of an order under sections 8(b) and 8(i)(2) of the FDI Act, 12 U.S.C. §§ 1818(b) and 1818(i)(2), have been satisfied, the FDIC hereby issues the following:

**I. CONSENT ORDER**

**DEFINITIONS**

1. For purposes of this ORDER, the following definitions shall apply:
  - (a) “Account Protector” shall mean the Account Protector program, a debt cancellation credit card add-on product that AECB marketed and sold to Card Members from 2004 - 2012 that allowed Card Members to request benefit payments toward their minimum balances following certain life events, including but not limited to unemployment, disability, and other events.
  - (b) “Board” shall mean AECB’s duly elected and acting Board of Directors.
  - (c) “Card” shall mean any consumer charge card or credit card issued by AECB.
  - (d) “Card Member” shall mean any consumer who has applied or applies for, and received or receives an AECB consumer charge card or credit card.
  - (e) “Credit Card Add-on Products” or “CCAO Products” shall mean any fee-based or no-charge products or services AECB markets or offers to Card Members as an add-on to a Card and that are supplementary to the credit

provided by the Card, including but not limited to Account Protector, ID Protection Products, and Lost Wallet Protector.

- (f) “Effective Date” shall mean the date on which this ORDER is issued.
- (g) “ID Protection Products” shall mean “ID Protect” and “ID Protect Premium” that AECB marketed or sold to Card Members from November 2009 until June 2012, and shall include Single Identity – the predecessor to ID Protect – that provided consumers with reports, updates or monitoring of information appearing online and information reported to a credit reporting agency. ID Protect Premium also provided access to a one-time triple-bureau credit report and triple-bureau credit monitoring.
- (h) “Lost Wallet Protector” shall mean the Lost Wallet Protector product marketed or sold to Card Members since November 2011, and shall include Credit Card Registry – the predecessor to Lost Wallet Protector that was marketed or sold to Card Members prior to November 2011– which provided assistance to Card Members in replacing lost or stolen credit cards, passports, mobile phones and in making emergency notifications.
- (i) “Lost Wallet PR” shall mean the Lost Wallet Protector product AECB marketed or sold to Card Members in Puerto Rico until September 2012.
- (j) “Regional Director” shall mean the FDIC Regional Director for the San Francisco Region.

## **FINDINGS OF FACT**

The FDIC finds the following:

2. AECB is a federally insured state nonmember bank chartered by the State of Utah.
3. With respect to the marketing of Account Protector, ID Protection Products, and Lost Wallet PR, the Bank's compliance monitoring, service provider management, and quality assurance resulted in ineffective oversight, which failed to prevent, identify, or correct certain improper sales practices.

### **Account Protector**

4. AECB marketed Account Protector as a means for a Card Member to pay the minimum payment due on the Card Member's account following certain life events.
5. A Card Member enrolled in Account Protector paid a monthly fee of 0.85 percent of the Card Member's balance as of the statement closing date.
6. The Account Protector benefit payment amount was the lesser of \$500 or 2.5% of the Card Member's account balance as of the date of the qualifying event. A given benefit payment could be less than a Card Member's minimum monthly payment, requiring the Card Member to pay any difference between the benefit payment and minimum payment. For a significant percentage of Card Members enrolled in Account Protector who received benefits, the benefit payment did not always cover the minimum payment due on the Card Member's account.
7. A Card Member enrolled in Account Protector who submitted a benefit claim that was approved received a payment toward the Card Member's minimum payment due each

month for the duration of the benefit period. Benefit periods varied based on the nature of the qualifying event:

- (a) Card Members with approved claims for hospitalization or starting college received the benefit payment for one month;
- (b) Card Members with approved claims for marriage, birth or adoption of children, home purchase, call to active military duty, relocation, loss of spouse, or divorce received the benefit payment each month for two months;
- (c) Card Members with approved claims for a leave of absence from their place of employment received the benefit payment each month for up to three months; and
- (d) Card Members with approved claims for involuntary unemployment or disability received the benefit payment each month for up to 24 months.

8. A Card Member who was unemployed or disabled at the time of enrollment was not eligible for a benefit payment due to unemployment or disability existing at the time of enrollment.

9. With respect to Account Protector, the improper outbound telemarketing practices included, but were not limited to, the following examples:

- (a) Representing that the benefit payment amount would cover the Card Member's minimum payment due when, in fact, the benefit payment would be 2.5% of a Card Member's outstanding balance on the date of the qualifying event, up to \$500 which frequently did not equal the minimum payment due;

- (b) Implying that benefits would last up to 24 months when, in fact, only two of the thirteen qualifying events with a benefit period covered by Account Protector included benefit periods of 24 months, and the other eleven qualifying events had benefit periods of only one, two, or three months;
- (c) Representing that there would be no fee if the balance in the account was paid off, without disclosing that the account balance had to be paid off before the end of the billing cycle, a date that always preceded the statement due date;
- (d) Disclosing on telemarketing calls that there would be no fee for balances under \$100 when, in fact, the fee for Account Protector was 0.85 percent of the Card Member's balance;
- (e) Failing to disclose near the outset of the call that Account Protector was optional and not required for the Card Member to activate or use the Card Member's account;
- (f) Representing that Account Protector would improve or maintain a Card Member's credit score; and
- (g) Implying that benefits would be immediately available when there was a claims process that had to be completed before any benefits were paid.

### **ID Protection Products**

10. AECB marketed the ID Protection Products as protection against identity theft for Card Members. In offering for sale and selling ID Protection Premium, AECB represented that in exchange for a monthly fee, AECB would provide features that included a service to monitor Card Members' credit information.

11. The ID Protection Products had a two-step enrollment process. Following enrollment, an enrolled Card Member was sent a welcome kit that included additional information concerning the ID Protection Products. Included in the welcome kit was the first notice that additional information was required to fully-activate credit monitoring and public records monitoring benefits. Until a Card Member submitted the additional information to AECB, the Card Member would not receive the full benefit of ID Protection Products.

12. AECB did not inform Card Members during the telemarketing or enrollment processes that enrollment was a two-step process. AECB billed Card Members the full amount for ID Protection Products whether or not the Card Member completed the second step.

13. Approximately 85 percent of Card Members who enrolled in the ID Protection Products did not complete the second step of the two-step process and paid the full product fee without receiving all of the advertised benefits.

#### **Lost Wallet PR**

14. AECB marketed Lost Wallet PR as a tool to assist Card Members in Puerto Rico with cancelling and replacing lost or stolen credit cards, including non-American Express cards; providing key and wallet return; suspending mobile phone services; providing emergency contact services; and providing assistance in replacing passports.

15. Ninety-seven percent of Card Members enrolled in Lost Wallet PR enrolled via telemarketing calls conducted in Spanish. Customer service representatives used English telemarketing scripts and translated the scripts into Spanish for the enrollment calls. AECB did not provide uniform approved Spanish language scripts for these enrollment calls. In addition, all written materials provided to Card Members by AECB related to Lost Wallet PR were provided in English.

16. As a result of these sales practices, some Card Members likely did not understand how to access all benefits of the product or how to register additional credit or charge cards held by the Card Member and other items, such as passports, after enrollment.

17. Only 40 percent of Card Members enrolled in Lost Wallet PR registered any item beyond the Card Member's AECB Card, which was automatically registered at the time of enrollment.

### **CONCLUSIONS OF LAW**

18. The FDIC finds that AECB engaged in violations of Federal consumer financial laws, including violations of:

- (a) Section 5 for deceptive marketing of Account Protector;
- (b) Section 5 for unfair marketing practices with respect to ID Protection Products; and
- (c) Section 5 for deceptive marketing practices with respect to Lost Wallet PR.

IT IS HEREBY ORDERED that the Bank, its institution-affiliated parties ("IAPs"), as that term is defined in 12 U.S.C. § 1813(u), and its successors and assigns, cease and desist from engaging in unsafe or unsound banking practices and operating in violation of Section 5 by engaging in the deceptive and unfair practices described herein.

IT IS FURTHER ORDERED that the Bank, its IAPs, and its successors and assigns, shall take the following affirmative action:

### **CORRECT VIOLATIONS OF LAW**

19. Within 60 days of the Effective Date, the Bank shall correct all violations of law as described herein and implement procedures to prevent their recurrence. The Bank's actions as

required by this paragraph must be satisfactory to the Regional Director as determined at subsequent examinations and/or visitations.

20. The Bank, whether acting directly or through third parties, shall cease all unfair and deceptive acts or practices in connection with the marketing, sales, and administration of Account Protector, ID Protection Products, or Lost Wallet PR, and ensure compliance with the guidance set forth in *Unfair or Deceptive Acts or Practices by State-Chartered Banks* (FIL-26-2004, issued March 11, 2004). Without limiting the generality of the foregoing

(a) The Bank shall effect and maintain compliance with Section 5; and

(b) The Bank, whether acting directly or through third parties, shall cease and desist from any marketing or solicitation of Account Protector, ID Protection Products, or Lost Wallet PR until it has submitted a compliance plan, specifically designed to eliminate all violations of Section 5 in the marketing and servicing of these products to the Regional Director for non-objection (the "Compliance Plan"). This Compliance Plan shall be designed to comply with all provisions of this ORDER.

**Correct Deceptive Marketing of Account Protector**

21. The Bank shall take all action necessary to eliminate all deceptive acts and practices in violation of Section 5 with respect to Account Protector. In addition, the Bank shall take all necessary steps to effect and maintain future compliance with Section 5 when marketing or selling Account Protector, as described more particularly herein.

22. The Bank, whether acting directly or through third parties, shall not make, or allow to be made, any deceptive representations, statements, or omissions, expressly or by implication, in the marketing materials, telemarketing scripts and/or sales presentations used to

solicit any Card Member or prospective Card Member to enroll in Account Protector, including but not limited to misrepresentations as to the following:

- (a) Any and all fees, costs, expenses and charges associated with Account Protector;
- (b) That Account Protector is optional and not required for the Card Member to activate or use his or her Card;
- (c) That Account Protector will improve or maintain a Card Member's credit score;
- (d) That Account Protector will cover a Card Member's minimum balance;
- (e) The timing of and mechanism for calculating a Card Member's benefit amount available when the Card Member uses Account Protector;
- (f) Payment terms for Account Protector, including the date AECB will use to calculate any fee incurred for Account Protector;
- (g) The length of the benefit period, including that most qualifying events carry a benefit period of one, two, or three months; and
- (h) Any material conditions, benefits and restrictions related to Account Protector.

**Correct Unfair Marketing of ID Protection Products**

23. The Bank shall take all action necessary to eliminate all unfair acts and practices in violation of Section 5 with respect to the ID Protection Products. In addition, the Bank shall take all necessary steps to effect and maintain future compliance with Section 5 when marketing or selling the ID Protection Products, as described more particularly herein.

24. The Bank, whether acting directly or through third parties, shall disclose to Card Members during telemarketing solicitations the specific terms and features of the ID Protection Products.

25. The Bank shall not charge Card Members for the ID Protection Products until the Card Members complete the steps necessary to receive the full benefits of the products.

**Correct Deceptive Marketing of Lost Wallet PR**

26. The Bank shall take all action necessary to eliminate all deceptive acts and practices in violation of Section 5 with respect to Lost Wallet PR. In addition, the Bank shall take all necessary steps to effect and maintain future compliance with Section 5 when marketing or selling the Lost Wallet PR, as described more particularly herein.

27. The Bank, whether acting directly or through third parties, shall not make, or allow to be made, any deceptive representations, statements, or omissions, expressly or by implication, in the marketing materials, telemarketing scripts and/or sales presentations used to solicit any Card Member or prospective Card Member to enroll in Lost Wallet PR, including but not limited to misrepresentations or omissions as to the following:

- (a) That Lost Wallet PR is optional and not required for the Card Member to activate or use his or her Card;
- (b) Any steps the Card Member must take following enrollment to obtain Lost Wallet PR benefits; and
- (c) Any material conditions, benefits and restrictions related to Lost Wallet PR.

## **COMPREHENSIVE CREDIT CARD ADD-ON PRODUCT REVIEW**

IT IS FURTHER ORDERED that the Bank take additional affirmative actions as follows:

### **Independent Third Party Review**

28. Within 30 days from the Effective Date, the Bank shall submit to the Regional Director for non-objection the name and qualifications of an independent third party (“Add-On Review Consultant”) who possesses the appropriate expertise and qualifications to review all Credit Card Add-on Products offered by the Bank. At a minimum, the Add-on Review Consultant shall:

- (a) Review and assess all CCAO Products, except for Account Protector, ID Protection Products, and Lost Wallet PR, for compliance with Section 5 and all other applicable Federal consumer financial laws; and
- (b) Provide to the Board a detailed written report containing its analysis, assessments, and recommendations, which the Board shall review within 60 days of receipt. This review shall be recorded and noted in the Board minutes.

29. Within 30 days from the receipt of non-objection by the Regional Director of the selection of the Add-On Review Consultant, the Bank shall develop, in consultation with the Add-On Review Consultant, and submit to the Regional Director for non-objection, a CCAO Product review schedule that shall include, at a minimum:

- (a) A list grouping all CCAO products to be reviewed with a prioritized review schedule;
- (b) The date by which the review will be, or has been, completed for each CCAO product; and

(c) The date that the final written reports will be, or have been, completed for all CCAO products.

30. The Bank shall, within 15 days of the Board's review of the Add-On Review Consultant's report, provide the Regional Director with a copy of the report.

31. If any report provided by the Add-On Review Consultant identifies any issues regarding compliance with Section 5, or any other applicable Federal consumer financial law, the Bank shall:

(a) Within 120 days of receiving the Add-On Review Consultant's report, submit a remediation plan to the Regional Director for non-objection prior to implementation; and

(b) Within 120 days of receiving the Add-On Review Consultant's report, submit to the Regional Director for non-objection an implementation plan for corrective measures to address any issues contained in the Add-On Review Consultant's report utilizing the Compliance Program and CMS established in accordance with the October 1, 2012, Joint Consent Order issued by the FDIC and CFPB, In the Matter of AMERICAN EXPRESS CENTURION BANK, SALT LAKE CITY, UTAH, Docket Numbers FDIC-12-315b, FDIC-12-216k, and 2012-CFPB-0002 (Oct. 1, 2012) ("October 2012 Consent Order").

32. The Bank shall develop and implement a record-keeping system and internal audit procedures that are reasonably designed to allow the FDIC to:

(a) Review and monitor the Bank's practices relating to the CCAO Products;  
and

- (b) Confirm that the Bank is in compliance with this ORDER and all applicable Federal consumer financial laws, including Section 5.

## **II. ORDER FOR RESTITUTION**

### **PAYMENT FLOOR**

33. Pursuant to the ORDER, the Bank shall provide restitution in an amount not less than \$40,900,000, less any restitution made by the Bank prior to the Effective Date of this ORDER that complies with the requirements of this ORDER (“Payment Floor”), for the purpose of providing restitution as required by this Section. If AECB claims to have made any restitution prior to the Effective Date of this ORDER that complies with the requirements of this ORDER, the Bank shall provide appropriate proof of such restitution to the Regional Director within 30 days of the Effective Date.

34. The Bank shall make all restitution required by the ORDER, regardless of whether the total of such restitution exceeds the Payment Floor.

35. If the Bank has provided restitution to a Card Member pursuant to the order issued on December 24, 2013, by the Consumer Financial Protection Bureau, then this ORDER shall not be construed as requiring the Bank to provide duplicate restitution to that Card Member. The Bank shall provide appropriate proof of such restitution to the Regional Director.

### **RESTITUTION PLAN FOR ELIGIBLE CONSUMERS**

36. For purposes of this restitution, the following definitions shall apply:

- (a) Account Protector Eligible Consumers are defined as all Card Members who were subject to the deceptive pricing claims and who did not receive the benefit of the product as the Bank marketed it. Account Protector Eligible Consumers fall into one or more of three groups:

1. Card Members who bought Account Protector through inbound or outbound telemarketing (“Telemarketing Account Protector Eligible Consumers”);
2. Card Members who received a benefit payment that was not sufficient to meet the minimum payment due in the billing cycle in which the payment was received, regardless of the sales channel (“Min Due Account Protector Eligible Consumers”); and
3. Card Members who were denied certain benefits because the Card Member’s life event experienced while enrolled in Account Protector began prior to enrollment (“Denied Account Protector Eligible Consumers”).

(b) ID Protection Eligible Consumers are defined as all Card Members who purchased ID Protect and ID Protect Premium.

(c) Lost Wallet PR Eligible Consumers are defined as all Puerto Rico Card Members who purchased Lost Wallet PR via telemarketing from July 2000 until September 2012, and did not register any item beyond the Card with which the Card Member enrolled.

37. Eligible Consumers are defined as all Account Protector Eligible Consumers, ID Protection Eligible Consumers and Lost Wallet PR Eligible Consumers. Within 90 days after the Effective Date, the Bank shall submit a Restitution Plan (the “Restitution Plan”), including samples of letters or other communications sent or to be sent to consumers, to the Regional Director for non-objection.

38. With respect to Account Protector Eligible Consumers, the Restitution Plan shall, at a minimum, require the Bank to:

(a) Refund program fees to Telemarketing Account Protector Eligible

Consumers as follows:

1. for those Telemarketing Account Protector Eligible Consumers who were enrolled in Account Protector for less than twelve months, a full refund of all program fees plus at least 1.3% interest calculated from the date the fees were charged until the date of reimbursement, less any benefit payment the Card Member received during that enrollment; and
2. for Telemarketing Account Protector Eligible Consumers who were enrolled in Account Protector for twelve months or more, restitution equivalent to twelve months of the Card Member's average program fees plus at least 1.3% interest calculated from the date the fees were charged until the date of reimbursement, less any benefit payment the Card Member received during that enrollment.

(b) Provide restitution to Min Due Account Protector Eligible Consumers.

The restitution shall be the difference between the benefit payment the Card Member received and an amount equal to at least the minimum payment due, any applicable finance charges, late fees, and over-limit fees plus at least 1.3% interest calculated from the date the finance charges and fees were charged until the date of reimbursement. Restitution shall

include removing any penalty APR triggered as the result of the benefit payment being insufficient to meet the minimum payment due.

- (c) Provide restitution to Denied Account Protector Eligible Consumers. The restitution shall be the benefit payment amount the Card Member would have received (or the minimum due each relevant billing cycle, if greater), had the Card Member's benefit request not been denied, for the maximum benefit period for each event, including any applicable finance charges, late fees, and over-limit fees plus at least 1.3% interest calculated from the date the finance charges and fees were charged until the date of reimbursement. Restitution shall include removing any penalty APR triggered as the result of the benefit payment being insufficient to meet the minimum payment due.

39. With respect to ID Protection Eligible Consumers, the Restitution Plan shall, at a minimum, require the Bank to provide full restitution of fees, including any applicable finance charges and over-limit fees, plus at least 1.3% interest calculated from the date fees were charged until the date of reimbursement.

40. With respect to Lost Wallet PR Eligible Consumers, the Restitution Plan shall, at a minimum, require the Bank to provide full restitution of fees, including any applicable finance charges and over-limit fees, plus at least 1.3% interest calculated from the date fees were charged until the date of reimbursement.

41. The Restitution Plan shall provide for processes covering all Eligible Consumers regardless of their current account status with the Bank, including open accounts, closed

accounts with and without a balance, and charged-off accounts. The process shall include the following requirements:

- (a) for any open credit card account (including inactive accounts), the Bank shall deliver a statement credit to the account and/or otherwise send a check;
- (b) for any closed credit card account, the Bank shall decrease the account balance (if any) by the amount of the redress, and where the redress is greater than the existing account balance, mail to the Eligible Consumer a check in the amount of the excess;
- (c) for any charged-off account, the Bank shall decrease the charged-off balance by the amount of redress, and where the refund is greater than the existing charged-off balance, the Bank shall mail to the Eligible Consumer a check in the amount of the excess;
- (d) if the account holder is deceased, and the balance is greater than the refund, the Bank shall provide a statement credit to the account, and otherwise a refund check for the remaining refund shall be sent in accordance with applicable law; and
- (e) with respect to any bankruptcy, estate, accounts in litigation and sold charged-off accounts, the Bank shall make the refund in accordance with applicable law.

42. Within 180 days of receipt of non-objection from the Regional Director, the Bank shall implement the Restitution Plan. Restitution provided by the Bank shall not limit consumers' rights in any way.

43. The Bank shall retain for seven years 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.

#### **REVIEW OF RESTITUTION PLAN**

44. Prior to submission to the Regional Director, the Restitution Plan shall be reviewed by the Compliance Program Consultant retained pursuant to paragraph 24 of the October 2012 Consent Order or another independent third party capable of conducting this review that is acceptable to the Regional Director.

#### **MAILING REFUNDS**

45. Within 90 days from the Effective Date, the Bank shall submit to the Regional Director for review a plan for mailing refunds, including the proposed text of letters that have been sent or shall be sent to Eligible Consumers regarding restitution checks or account credits. For letters sent on or after the Effective Date of the ORDER, the letters shall include satisfactory language explaining the reason the Bank is sending a restitution check or crediting an account, including that the Bank is sending the check or crediting an account as the result of an enforcement action by the FDIC. Any letters or other communications sent after the Effective Date of this ORDER shall also include reference to and the web address for any FDIC press releases related to the ORDER. The Bank shall then address any comments of the Regional Director, making such changes as may be required to the proposed letters. The letters, incorporating any changes that may be required in response to comments by the Regional

Director, shall be sent by mail to all Eligible Consumers entitled to receive restitution checks and/or credits to their accounts in accordance with the ORDER.

46. When the Bank makes cash restitution by check made payable to any consumer receiving restitution under the ORDER (“Eligible Consumer”), AECB shall send the check by United States Postal Service first-class mail, address correction service requested, to the Eligible Consumer’s last address as maintained by 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 check for any eligible consumer is returned to the Bank after such second mailing by the Bank, or if a current mailing address cannot be identified using standard address search methodologies, the Bank shall retain the restitution amount of such Eligible Consumer for a period of three-hundred sixty (360) 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 shall be disposed of in accordance with the Restitution Plan.

## **INDEPENDENT CERTIFIED ACCOUNTING FIRM**

### **Engagement of Firm**

47. The Bank shall utilize, at its own expense, the services of the independent certified accounting firm (“Firm”) retained as part of the October 2012 Consent Order, or, within 15 days from after the Regional Director’s non-objection pursuant to Paragraph 48, retain, at its own expense, a different Firm acceptable to the Regional Director to determine compliance with the Restitution Plan. 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.

48. If the Bank elects to engage a different Firm, prior to engagement, and no later than 60 days from the Effective Date, 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 Regional Director for non-objection. If the Bank intends to utilize the services of the Firm retained pursuant to the October 2012 Consent Order, no later than 60 days from the Effective Date, the Bank shall submit notification of that intent, together with the proposed engagement letter with the Firm and the proposed agreed-upon procedures, to the Regional Director for non-objection.

49. The engagement letter between the Bank and the Firm shall grant 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 the ORDER.

50. To be acceptable to the Regional Director, any Firm other than the Firm retained pursuant to the October 2012 Consent Order must be an objective and unaffiliated third party and, at a minimum, comply with the Code of Conduct of the appropriate State Board of Accountancy.

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

52. The Firm shall submit the Restitution Report called for in paragraph 54 to the Regional Director for review, comment, and non-objection within 90 days after the Bank completes implementation of the Restitution Plan.

### **Report on Restitution**

53. The Firm shall review and verify that the Bank accurately identified Eligible Consumers, calculated restitution correctly, and made the appropriate account credits or cash refunds to Eligible Consumers.

54. The Firm shall prepare a detailed written report of its assessment of the Bank's compliance with the Restitution Plan ("Restitution Report"). The Restitution Report shall also include the following:

- (a) The processes and procedures by which the Bank determined the restitution amounts described in paragraphs 38-40;
- (b) The total number of each such class of Eligible Consumers;
- (c) The total amount of restitution made to each such class of Eligible Consumers under the Restitution Plan; and
- (d) The total amount of interest paid.

### **III. ORDER TO PAY CIVIL MONEY PENALTY**

55. IT IS FURTHER ORDERED that by reason of the violations of law and regulations set forth herein, and after taking into account the appropriateness of the penalty with respect to the size of financial resources and good faith of the Bank, the gravity of the violations, the history of previous violations by the Bank, and such other matters as justice may require, pursuant to section 8(i)(2) of the FDI Act, 12 U.S.C. § 1818(i)(2), the Bank shall pay a total civil money penalty of \$ 3,600,000. The Bank shall pay the civil money penalty to the Treasury of the United States, as directed by the FDIC. The Bank shall pay such civil money penalty itself, and is prohibited from seeking or accepting indemnification from such payment from any third party.

#### **IV. NOTIFICATION AND REPORTING REQUIREMENTS**

##### **PROGRESS REPORTS AND CERTIFICATIONS OF COMPLIANCE**

56. Within 30 days from the end of each calendar quarter following the Effective Date, the Bank shall provide a written progress report addressing each provision of the ORDER and detailing the form, manner, results and dates of any actions taken to secure compliance with the provisions of the ORDER to the Regional Director. All progress reports and other written responses to the ORDER shall be reviewed by the Board and made a part of the Board minutes. The progress reports shall be true and accurate and accompanied by a certification of compliance signed by the Chairman of the Board and the Bank President. The certification of compliance shall include the following:

- (a) A statement confirming that the Bank is in compliance with all provisions of the ORDER; or
- (b) If the Bank is not in compliance with all provisions of the ORDER, the Bank must provide:
  - (i) A list of the provisions with which the Bank is not yet in compliance, an explanation of why the Bank is not yet in compliance with each specific provision, and a description of the actions the Bank has taken to comply with the provision; and
  - (ii) A statement as to when the Bank will be in full compliance with the ORDER.

##### **SHAREHOLDER NOTIFICATION**

57. The Bank shall either provide a copy of the ORDER to its shareholder, American Express Travel Related Services (“AETRS”), or otherwise furnish a description of the ORDER

in conjunction with the next board of directors meeting of AETRS, in which case such 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, Disclosure and Securities Section, 550 17th Street, N.W., Washington, D.C. 20429, for non-objection or comment prior to dissemination to the Bank's shareholder. Any changes requested to be made by the FDIC shall be made prior to dissemination of the description, communication, notice, or statement. This description shall be disseminated in conjunction with the Bank's next shareholder communication and in conjunction with its notice or proxy statement preceding the Bank's next shareholder meeting. The terms "next shareholder communication" and "next shareholder meeting" mean the next shareholder communication and next shareholder meeting immediately after the FDIC provides the Bank with either non-objection of or comments about the description.

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

58. The provisions of the 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 of the Bank's current or former institution-affiliated parties, as that term is defined in section 3(u) of the FDI Act, 12 U.S.C. § 1813(u).

59. The ORDER shall be effective on the date of issuance.

60. Calculation of time limitations for compliance with the terms of the ORDER shall be based on calendar days, unless otherwise noted.

61. The provisions of the ORDER shall be binding on the Bank, its officers, agents, servants, employees, institution-affiliated parties, and any successors and assigns thereof.

