UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, by Attorney General KATHLEEN G. KANE, Plaintiff, v. THINK FINANCE, INC., TC LOAN SERVICE, LLC, ELEVATE CREDIT, INC., FINANCIAL U, LLC, KENNETH E. REES, WILLIAM WEINSTEIN, WEINSTEIN, PINSON AND RILEY, PS, CERASTES, LLC, NATIONAL CREDIT ADJUSTERS, LLC, SELLING SOURCE, LLC and PARTNERWEEKLY, LLC, d/b/a MONEYMUTUAL.COM , and other JOHN DOE persons or entities, Defendants.	CIVIL ACTION NO. _____

NOTICE OF REMOVAL

Defendants Think Finance, Inc., TC Loan Service, LLC, and Financial U, LLC, hereby remove this civil action from the Court of Common Pleas of Philadelphia County, First Judicial District of Pennsylvania, to the United States District Court for the Eastern District of Pennsylvania. This Court has jurisdiction under 28 U.S.C. §§ 1331 and 1441.

In further support of this Notice of Removal, Defendants state as follows:

PROCEDURAL HISTORY

1. On November 13, 2014, the Commonwealth of Pennsylvania, acting through its Attorney General, the Honorable Kathleen G. Kane, filed this action in the Court of Common Pleas of Philadelphia County, First Judicial District of Pennsylvania, Case No. 141101359.

2. On November 20, 2014, the Attorney General served the Complaint and Summons on Defendants Think Finance, Inc., and TC Loan Service, LLC. True and correct copies of the Complaint, with exhibits, and Summons are attached hereto as Exhibit A. On December 15, 2014, counsel for Financial U, LLC, accepted service on its behalf. A true and

correct copy of the signed Acceptance of Service is attached hereto as Exhibit B.

3. Exhibits A-B constitute all of the process, pleadings, and orders served on Think Finance, Inc., TC Loan Service, LLC, and Financial U, LLC, in this case, and are attached hereto pursuant to 28 U.S.C. § 1446(a).

TIMELINESS OF REMOVAL

4. Defendants' removal notice is timely under 28 U.S.C. § 1446(b) because it is filed within thirty (30) days after service of the Summons and Complaint upon Defendants Think Finance, Inc., and TC Loan Service, LLC, on November 20, 2014.

VENUE

5. The Court of Common Pleas of Philadelphia County, First Judicial District of Pennsylvania, is located within the Eastern District of Pennsylvania. 28 U.S.C. § 118(a). This Notice of Removal is therefore properly filed in this Court pursuant to 28 U.S.C. § 1441(a).

BASIS FOR REMOVAL JURISDICTION

I. The Allegations.

6. The Complaint challenges Defendants Think Finance, Inc. ("Think Finance"), TC Loan Service, LLC ("TC Loan Service"), Elevate Credit, Inc., Financial U, LLC, and Kenneth Rees' (collectively, the "Think Finance Defendants") provision of services to a bank and three Native American tribes who offered loans and cash advances over the internet. According to the Complaint, the bank and the tribes were only "nominal" lenders, (Compl. ¶¶ 32, 45), and the Think Defendants associated with them in order "[t]o evade licensure, *usury* and consumer protection laws" regulating payday loans offered to Pennsylvania consumers, (*id.* ¶ 2 (emphasis added)).

7. The Complaint alleges a two-part "scheme." Under the "first phase," Defendants Think Finance,[1] TC Loan Service, and Rees allegedly utilized a so-called "rent-a-bank" model, in which they partnered with First Bank of Delaware ("FBD"), a bank insulated from state

[1] Prior to 2010, Think Finance was known as ThinkCash, Inc. (Compl. ¶ 30.)

regulation, to serve as "nominal lender," while they served as "the *de facto*, non-bank lender" that in actuality "marketed, funded and collected the loan and performed other lender functions." (*Id.* ¶ 32.) This partnership allowed Think Finance "to offer high-rate 'installment loans' as the supposed servicing agent of the bank." (*Id.* ¶ 36.) According to the Complaint, the "rent-a-bank scheme" continued in spite of a Federal Deposit Insurance Corporation ("FDIC") cease and desist order until 2011. (*Id.* ¶¶ 37-40.)

8. Plaintiff alleges that under the "second phase" of the "scheme," the Think Finance Defendants adopted a so-called "rent-a-tribe" model, in which they relied on three Native American tribes to perform the role of "nominal lender" originally held by FBD. (*Id.* ¶ 45.) The loan agreements used by two of the tribes contained a provision stating that the borrower "consent[ed] to the sole subject matter and personal jurisdiction" of the lending tribe and "further agree[d] that no other state or federal law or regulation" applies to the loan agreement, its enforcement, or interpretation. (*See id.* ¶¶ 57, 59; *id.* Ex. D (Plain Green Loan Agreement), Ex. E (Great Plains Lending Agreement).) The third tribe's agreement contained similar provisions. (*See id.* ¶ 67; *id.* Ex. F at XVI. Transfer of Rights; Maintenance of Register ("[T]his agreement shall remain exclusively subject to the laws and courts of the Tribe. As an integral component of accepting this Agreement, you irrevocably consent to the jurisdiction of the Tribal courts for the purposes of this Agreement."), XVIII. Governing Law (stating that the agreement is governed by tribal law, the Indian Commerce Clause, and other applicable federal law).

9. Whether through the alleged rent-a-bank or rent-a-tribe model, the core of Plaintiff's allegations are that the interest charged on the loans made to Pennsylvania consumers under the Think Finance Defendants' scheme was usurious and in violation of section 201 of Pennsylvania's Loan Interest and Protection Law, 41 P.S. § 201. (*See, e.g.*, Compl. ¶¶ 1, 31-32, 44, 48.) Indeed, Plaintiff variously describes the loans as "illegal" and "usurious." (*See id.* ¶ 2 (alleging that the loans at issue are "illegal loans that flout Pennsylvania law"), ¶ 3 ("illegal loans made through this scheme to Pennsylvania residents"), ¶ 18 ("illegal usurious loans"), ¶ 19 (same), ¶ 39 ("illegal loans"), ¶ 42 ("illegal, usurious loans"), ¶ 44 (describing Tribal loans as

"usurious loan products").) Each of Plaintiff's five claims turn, at least in part, on this alleged charging of illegal interest. Plaintiff's first three claims for violations of Pennsylvania's Corrupt Organizations Act, 18 Pa. C.S.A. § 911, are premised on the underlying "racketeering activity" of collecting interest at a rate that exceeds 25% per year. (Compl. ¶¶ 93, 97, 106, 113.) Plaintiff's fourth claim, for violation of the Fair Credit Extension Uniformity Act, 73 P.S. § 2270.1 *et seq.*, is predicated upon Defendants' collection of interest in excess of the limits created by Pennsylvania's usury law, whether as debt collectors or creditors. (Compl. ¶¶ 122-24.) Finally, under Plaintiff's fifth claim, Defendants are alleged to have violated the Consumer Protection Law, 73 P.S. § 201-1 *et seq.*, "because the credit offered is unlawful in Pennsylvania." (Compl. ¶ 132.)

II. Federal Question Jurisdiction

10. This is a civil action over which this Court has original jurisdiction pursuant to 28 U.S.C. § 1331 (federal question), and is one that may be removed to this Court pursuant to the provisions of 28 U.S.C. § 1446.

11. Federal question jurisdiction exists when an action presents a claim "arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. Under the well-pleaded complaint rule, a claim ordinarily arises under federal law only when a federal question is presented on the face of the complaint. *See Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). There are, however, at least two exceptions to the well-pleaded complaint rule: the complete preemption doctrine and the substantial federal question doctrine. Both of those exceptions apply in this case.

A. Complete Preemption

12. The Complaint can be removed because it falls under the "complete preemption" exception to the well-pleaded complaint rule. The complete preemption doctrine allows for the removal of cases in which the "pre-emptive force of [federal law] is so 'extraordinary' that it 'converts an ordinary state common-law complaint into one stating a federal claim for purposes of the well-pleaded complaint rule.'" *Caterpillar*, 482 U.S. at 393 (citation omitted).

13. The Complaint includes claims that are subject to federal question jurisdiction because the Complaint challenges the amount of interest that FBD charged for loans, and state-law challenges to the amount of interest charged by a state-chartered, federally insured bank are completely preempted and arise under federal law.

14. FBD was a federally insured, state-chartered bank existing under the laws of Delaware. (*See* Compl. ¶ 35; *id.* Ex. A at p. 1, p. 2 ¶ 4; Declaration of Ira N. Richards ("Richards Decl.") Ex. A (FDIC, Demographic Information, First Bank of Delaware).)[2] As such, it was subject to the provisions of § 521 of the Depository Institution Deregulation and Monetary Control Act ("DIDA"), 12 U.S.C. § 1831d. "DIDA creates a federal remedy in favor of borrowers who are charged rates in excess of the limit established in § 521(a)." *Hill v. Chem. Bank*, 799 F. Supp. 948, 951 (D. Minn. 1992).

15. In *Beneficial National Bank v. Anderson,* 539 U.S. 1 (2003), the Supreme Court held that §§ 85 and 86 of the National Bank Act ("NBA") completely preempt state law usury claims against national banks. 539 U.S. at 11 ("Because §§ 85 and 86 provide the exclusive cause of action for [usury] . . . claims, there is, in short, no such thing as a state-law claim of usury against a national bank. . . . This cause of action against national banks only arises under federal law and could, therefore, be removed under § 1441."). Explaining that § 521 contains an express preemption clause and "incorporates verbatim the language of § 85 of the NBA," the Third Circuit followed *Beneficial National Bank* in holding that § 521 of DIDA "completely preempts any state law attempting to limit the amount of interest and fees a federally insured-state chartered bank can charge." *In re Cmty. Bank of N. Va.*, 418 F.3d 277, 295 (3d Cir. 2005)

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[2] In determining whether a complaint includes any claims that are completely preempted, a "court may 'look beyond the face of the complaint to determine whether a plaintiff has artfully pleaded his suit so as to couch a federal claim in terms of state law.'" *Pryzbowski v. U.S. Healthcare, Inc.*, 245 F.3d 266, 274 (3d Cir. 2001) (quoting *Jass v. Prudential Health Care Plan, Inc.*, 88 F.3d 1482, 1488 (7th Cir. 1996)); *see Pascack Valley Hosp., Inc. v. Local 464A UFCW Welfare Reimbursement Plan*, 388 F.3d 393, 399-402 (3d Cir. 2004) (considering evidence extrinsic to the complaint to determine whether complete preemption applied and created federal jurisdiction); *Palmer v. Kraft Foods Global, Inc.*, No. 13-6260, 2014 U.S. Dist. LEXIS 10700, at *9-15 (E.D. Pa. Jan. 29, 2014) (same).

("*In re Community Bank*"); *cf. Greenwood Trust Co. v. Massachusetts*, 971 F.2d 818, 824, 827 (1st Cir. 1992) (noting that parallel provisions of DIDA and the NBA should be read *in pari materia* and holding that § 521 expressly preempts state laws regulating interest).

16. To analyze whether complete preemption arose from the allegations before it, the Court of Appeals focused on whether the complaint "alleged state law claims of unlawful interest by a nationally or state chartered bank." *In re Cmty. Bank*, 418 F.3d at 296. It declined to find such claims in the complaint before it because (1) the complaint did not assert any claims against a national or state-chartered federally insured bank, and (2) the complaint did not assert any usury claims against any party under state law. *Id.* Here, neither of these reasons applies to bar the conclusion that complete preemption arises.

17. As in *In re Community Bank*, the Complaint does not directly assert claims against a bank, but it nonetheless alleges state law claims of unlawful interest by FBD. *See id.* The Third Circuit explained that the complaint before it asserted no claims that challenged a bank's interest rate because the loans at issue were made by a non-depository institution, and then bought by another non-bank in the secondary market. *Id.* at 296-97. In contrast, the Complaint attacks the interest rate charged on loans *made by* FBD.

18. The Complaint concedes that under the first phase of the Think Finance Defendants' alleged "scheme," FBD made the loans issued to Pennsylvania consumers. (*See* Compl. ¶ 36.) Plaintiff also makes the vague and conclusory allegation that FBD was used by the Think Finance Defendants as a "nominal" lender to evade state usury laws, without explaining what that means or offering any factual support. (*Id.* ¶ 32.) Plaintiff alleges that in 2008, the FDIC ordered FBD to cease its "'lending programs offered, marketed, administered, processed and/or serviced by third-parties,' specifically the bank's agreement with 'TC Loan Service, LLC d/b/a ThinkCash.'" (*Id.* ¶ 37 (internal citation omitted).)

19. However, the documents attached to the Complaint and referenced within it demonstrate that this allegation is simply wrong. The documents show that the FDIC ordered FBD to terminate only "*certain* third-party lending programs and third-party providers that

exhibit the characteristics of a 'Rent-a-BIN' or 'Rent-a-ICA' arrangement," and specifically permitted FBD to continue doing business with other entities, including those at issue here. (*See id.* Ex. A. at p. 4 ¶ 9 (emphasis added), *id.* at Ex. C to Ex. A ¶¶ 16, 18.) The Complaint references the FDIC's cease and desist order, (Compl. ¶ 37), but does not attach it, (*see* Richards Decl. Ex. B). That order explains that the "Rent-a-BIN" or "Rent-a-ICA" arrangements it prohibits are those detailed in the FDIC's *Credit Card Activities Manual*, (*id.* at 4), which explains that a "Rent-a-BIN" or "Rent-a-ICA" arrangement is one in which a bank allows a third party to conduct credit card activities with or through one of the bank's BINs or ICAs, which are numbers issued by a card association, such as Visa or MasterCard, to identify the bank for various processes, (Richards Decl. Ex. C at 120 & n.8). The bank receives a "rental" fee in exchange for allowing the entity to use its BIN or ICA. (*Id.* at 120.) Essentially, the bank is either renting its right to offer credit cards that have the applicable card association's label logo or allowing the third party to use its BIN or ICA to acquire merchants and settle their credit card transactions. (*Id.*; *id.* Ex. D at 180.)

20. By the FDIC's own view, the arrangement between FBD and the Think Finance Defendants did not have "Rent-a-BIN" or "Rent-a-ICA" characteristics. According to the allegations in the Complaint, FBD offered online loans and cash advances. (Compl. ¶¶ 1, 32, 36.) There are no allegations of any activities related to credit cards, much less that FBD received fees from the Think Finance Defendants for use of one of FBD's BINs or ICAs. More fundamentally, the FDIC order *expressly authorized* FBD to continue to do business with the Think-related entities "Marketing provider Tailwind Marketing, LLC" and "Software provider TC Decision Sciences, LLC." (*Id.* at Ex. C to Ex. A ¶¶ 16, 18.) Plaintiff's allegations that the FDIC ordered FBD and the Think Finance Defendants to terminate their arrangement, and that FBD and Think continued to operate illegally after 2008, is, therefore, flat wrong. Accordingly, there are no viable allegations in the Complaint to even suggest that FBD served as anything other than the lender in a legitimate lending program, for which the Think Finance Defendants provided ancillary services. Thus, unlike in *In re Community Bank*, Plaintiff's claims directly

challenge the interest rate of bank-made loans.

21. Plaintiff itself has also approved the very lending program it now attacks. Plaintiff suggests that the program was not legitimate because the Think Finance Defendants "marketed, funded, and collected the loan and performed other lender functions." (Compl. ¶ 32.) It also disputes the legitimacy of the Think Finance Defendants' relationship with the tribes with allegations that the Think Finance Defendants "provide the infrastructure to market, fund, underwrite and collect the loans, providing some or all of the following: customer leads, a technology platform, investors who fund the loans, and/or the payment-processing and collection mechanisms . . . ." (*Id.* ¶¶ 48; *see also id.* ¶ 106 (Think Finance Defendants engaging in "racketeering activity" by "designing, providing and managing the web technology that powers" the tribal lending programs; providing marketing assistance; arranging for provision of capital; and arranging for sale of uncollected debt).) These alleged activities, however, were detailed to the Commonwealth and sanctioned by it.

22. To bring its loan program with FBD to Pennsylvania, TC Loan Service (doing business as ThinkCash) applied for a credit services loan broker license with the Pennsylvania Department of Banking in 2007. (Declaration of Kristen M. Hensley ("Hensley Decl.") Ex. A.) As part of that application, TC Loan Service provided a fulsome description of its partnership with FBD. It stated that TC Loan Service would be the "marketer/servicer" for the program, providing consumer marketing, application processing, ongoing customer support, and collections services. (*Id.* at Attachment 2.) FBD would serve as lender and provide underwriting criteria, rollbacks, funding, and payment processing. (*Id.*) TC Loan Service specifically noted that it had a marketing and servicing agreement with FBD and would receive a one-time fee for each new loan made by a customer. (*Id.*) The Department of Banking approved TC Loan Service's application and issued it a license. (*Id.*) As Plaintiff had earlier approved of the Think Finance Defendants' role in the lending program, its attempt to now cast that same role as illegitimate or illegal fails. The lending program at issue in the Complaint was disclosed, reviewed, and found by Plaintiff itself to be *legitimate*. Plaintiff's allegations to the contrary are

simply implausible.

23. While the absence of a bank defendant in *In re Community Bank* signaled that the plaintiff's claims were not directed at a bank's exercise of its federally granted powers, such an inference has no force in this case. First, FBD's absence here does not diminish the fact that Plaintiff's Complaint, unlike the complaint in *In re Community Bank*, challenges the interest FBD charged on loans it originated. (*See* Hensley Decl. Ex. A at Attachment 2 ("Although ThinkCash is the marketer/servicer for the program, the bank is the lender.") The Eight Circuit has confirmed that where a complaint challenges a bank's interest rate, complete preemption may arise even though the bank itself is not a defendant. *See Krispin v. May Dep't Stores Co.*, 218 F.3d 919, 924 (8th Cir. 2000). In *Krispin*, holders of a department store's credit card brought a case alleging violation of Missouri's usury laws. The court concluded that removal based upon complete preemption under the NBA was proper because even though there were no claims against a national or state-chartered bank, the loans were issued by a national bank. *Id.* It explained that even though the store purchased the bank's receivables daily, it made "sense to look to the originating entity (the bank), and not the ongoing assignee (the store), in determining whether the NBA applies." *Id.* Second, it is questionable whether FBD *could* be added as a defendant—it "is no longer in business." (Compl. ¶ 43.)

24. Courts have likewise held in the general preemption context that claims against non-bank defendants may be preempted where they interfere with the exercise of a bank's authorized powers. As one court succinctly stated, "the question here is not *whom* the [state] statute regulates, but rather, against *what activity* it regulates." *SPGGC, LLC v. Ayotte*, 488 F.3d 525, 532 (1st Cir. 2007) (citing *Watters v. Wachovia Bank, N.A.*, 550 U.S. 1, 127 S. Ct. 1559, 1570 (2007)) (holding that state law claims against mall defendant that acted as agent for national bank's gift card program were preempted by the NBA because the state law indirectly prohibited the bank from exercising an allowed activity by prohibiting the mall from doing it); *see also State Farm Bank v. Reardon*, 539 F.3d 336, 349 (6th Cir. 2008) (claims based on state statute that regulated independent agents of bank against such agents were preempted under the

Home Owners' Loan Act because they had the effect of impinging on bank's exercise of federally granted powers); *Sawyer v. Bill Me Later, Inc.*, --- F. Supp. 2d ---, 2014 WL 2159044, at *4, *8 (D. Utah May 23, 2014) (where bank originated loans, state usury claims against non-bank service provider were preempted by DIDA even though plaintiff alleged that bank was not the true lender and program was intentionally structured to evade certain state usury laws). Here, the challenge to FBD's banking power is direct, as Plaintiff predicates each of its claims on violations of state laws that limit interest rates, in contradiction to FBD's power to set interest rates under federal law.

25. In sum, under the analysis required by the Third Circuit, complete preemption arises here because the Complaint "allege[s] state law claims of unlawful interest by a nationally or state chartered bank." *In re Cmty. Bank*, 418 F.3d at 296.

B. Substantial Question of Federal Law

26. A second exception to the well-pleaded complaint rule arises where a state-law claim turns on a substantial, dispositive issue of federal law. *Franchise Tax Bd. for State of Cal. v. Constr. Laborers Vacation Trust of S. Cal.*, 463 U.S. 1, 9 (1983), *superseded by statute on other grounds*, 28 U.S.C. § 1441(e); *Smith v. Kansas City Title & Trust Co.*, 255 U.S. 180, 201-02 (1921). A state-law claim gives rise to federal question jurisdiction if the claim "necessarily raise[s] a stated federal issue, actually disputed and substantial, which a federal forum may entertain without disturbing any congressionally approved balance of federal and state judicial responsibilities." *Grable & Sons Metal Prods., Inc. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 314 (2005).

27. This Court has federal question jurisdiction over Plaintiff's Complaint because it necessarily raises and actually disputes at least two substantial federal issues. The alleged misconduct underlying Plaintiff's claims is that the Think Finance Defendants made loans and cash advances for which they charged interest in excess of the limits set by Pennsylvania usury law. In particular, Plaintiff alleges that under the "second phase" of the Think Finance Defendant's alleged "scheme," it partnered with three Native American tribes to make those

loans and cash advances. (Compl. ¶¶ 45, 47-48.) As with FBD, Plaintiff concedes that the tribes were the lenders in the lending program at issue. (*Id.* ¶ 48.) Plaintiff also alleges, and exhibits attached to the Complaint show, that the tribes asserted that tribal law governs the loans. (*Id.* ¶¶ 57, 59, 67; *id.* Exs. D, E, F.) To resolve Plaintiff's claims, each of which is premised on a violation of state law, the Court must decide first, whether state law governs the loans and second, whether the tribes' assertion of jurisdiction is valid.

28. Whether the loans originated by the tribes are subject to Pennsylvania law raises a substantial and disputed federal issue. "Indian tribes are 'domestic dependent nations' that exercise inherent sovereign authority over their members and territories. *Okla. Tax Comm'n v. Citizen Band Potawatomi Indian Tribe of Okla.*, 498 U.S. 505, 509 (1991) (citation omitted). They retain the right to "make their own laws and be ruled by them." *Williams v. Lee*, 358 U.S. 217, 220 (1959). Nonetheless, "Congress has broad power to regulate tribal affairs under the Indian Commerce Clause, Art. 1, § 8, cl. 3." *White Mountain Apache Tribe v. Bracker*, 448 U.S. 136, 142 (1980). In light of these two principles, the Supreme Court has held that states may regulate tribal activities, but only in a limited manner that considers the tribe's right to self-government and Congress's power to manage tribal affairs. *Id.* at 142-43. Thus, even though Plaintiff's Complaint is premised on violations of Pennsylvania law, the Court must first resort to this federal law to determine whether such laws have any force as to the loans made by the tribes, or if they remain subject to tribal law alone.

29. Plaintiff's claims will remain unresolved, however, without the Court's decision on a second federal issue. As set forth above, the loan agreements entered into between the tribes and borrowers contain choice-of-law and forum selection provisions that assume the tribes' legal authority over the borrowers. Before Plaintiff's claims may proceed—all of which, again, assume that Pennsylvania law applies—the Court must also determine whether these provisions are valid. If they are, Plaintiff's claims fail because Pennsylvania law will be inapplicable. Whether the provisions are valid requires determining whether the provisions reflect a valid exercise of the tribes' civil jurisdiction over nonmembers, a matter of federal law.

See U.S. ex rel. Morongo Band of Mission Indians v. Rose, 34 F.3d 901, 905 (9th Cir. 1994) ("Tribal jurisdiction over non-Indians is a question of federal law . . . .").

30. As the Supreme Court has explained, although Indian tribes generally lack legal authority over persons who are not tribal members, there are two exceptions to that general rule. *Montana v. United States*, 450 U.S. 544, 565 (1981). The first exception is relevant here: "A tribe may regulate, through taxation, licensing, or other means, the activities of nonmembers who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements." *Id.* In this case, the Court must evaluate whether this exception applies and allows the tribes to exercise the regulatory and judicial authority asserted by the loan contract provisions. Plaintiff's Complaint thus also depends on this second disputed and substantial issue of federal law.

31. This Court may entertain the claims asserted in the Complaint without disturbing any congressionally approved balance of federal and state judicial responsibilities. That balance "as to Indian tribes is heavily weighted on the federal side," *Massachusetts v. Wampanoag Tribe of Gay Head*, No. 13-13286-FDS, 2014 WL 2998989, at *4 (D. Mass. July 1, 2014), as it has been recognized that "Indian sovereignty and the congressional goal of Indian self-government" are "important federal interests," *California v. Cabazon Band of Mission Indians*, 480 U.S. 202, 216-17 (1987) (so stating in the related context of tribal gaming), *superseded by statute on other grounds as stated in Michigan v. Bay Mills Indian Cmty.*, 134 S. Ct. 2024, 2034 (2014).

32. Removal based on the existence of a substantial federal question is therefore warranted. *See Grable & Sons Metal Prods.*, 545 U.S. at 313-14.

SUPPLEMENTAL JURISDICTION UNDER 28 U.S.C. § 1367

33. This Court should exercise supplemental jurisdiction under 28 U.S.C. § 1367 over any claims that are not independently removable. *See* 28 U.S.C. § 1367(a).

CONSENT AND JOINDER

34. Defendants Elevate Credit, Inc., Kenneth E. Rees, William Weinstein, Weinstein, Pinson and Riley PS, Cerastes, LLC, National Credit Adjusters, LLC, Selling Source LLC; and

PartnerWeekly, LLC d/b/a Moneymutual.com have consented to and/or joined in this notice of removal as shown by the forms that as are attached hereto as Exhibit C. No consent is necessary as to the remaining defendants, "John Does," who are not named in the complaint and have not been served. *Green v. Am. Online (AOL)*, 318 F.3d 465, 470 (3d Cir. 2003) ("However, the general rule that all defendants must join in a notice of removal may be disregarded where, as here, the non-joining defendants are unknown.").

NOTICE TO STATE COURT AND PLAINTIFF

35. Counsel for Defendant certifies that pursuant to 28 U.S.C. § 1446(d), copies of this Notice of Removal will be filed with the Clerk of the Court of Common Pleas of Philadelphia County, First Judicial District of Pennsylvania, and served on Plaintiff promptly.

Dated: December 17, 2014

Respectfully submitted,

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Exhibit A

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THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

COMMONWEALTH OF PENNSYLVANIA	:	**November Term, 2014**
by Attorney General	:	
KATHLEEN G. KANE	:	**No.**
	:	
Plaintiff	:	
	:	
vs.	:	
	:	

THINK FINANCE, INC., TC LOAN SERVICE, LLC, ELEVATE CREDIT, INC., FINANCIAL U, LLC and KENNETH E. REES
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-and-

other JOHN DOE persons or entities

NOTICE TO DEFEND

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PAGES, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS AFTER THIS COMPLAINT AND NOTICE ARE SERVED, BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU, AND A JUDGMENT MAY BE ENTERED AGAINST YOU WITHOUT FURTHER NOTICE FOR ANY MONEY CLAIMED IN THE COMPLAINT OR FOR ANY OTHER CLAIM OR RELIEF REQUESTED BY THE PLAINTIFF. YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU.

YOU SHOULD TAKE THIS NOTICE TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE(S) SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY

OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

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AVISO

Le han demandado a usted en la corte. Si usted quiere defen derse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias, de plazo al partir de la fecha de la demanda y la notificacion. Hace falta ascentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacio. Ademas, la corte puede decider a favor del demandante y require que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

LLEVE ESTA DEMANDA A UN ABOGADO IMMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

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THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

COMMONWEALTH OF PENNSYLVANIA by Attorney General KATHLEEN G. KANE	:	**November Term, 2014**
	:	**No.**
Plaintiff	:	
vs.	:	

THINK FINANCE, INC., TC LOAN SERVICE, LLC, ELEVATE CREDIT, INC., FINANCIAL U, LLC and KENNETH E. REES
4150 International Plaza, Suite 400
Fort Worth, Texas 76109-4819

WILLIAM WEINSTEIN, WEINSTEIN, PINSON AND RILEY, PS and CERASTES, LLC
2001 Western Avenue, Suite 430
Seattle, Washington 98121-3132

NATIONAL CREDIT ADJUSTERS, LLC
327 W. 4th Avenue
Hutchinson, Kansas 67501

SELLING SOURCE, LLC and PARTNERWEEKLY, LLC, d/b/a MONEYMUTUAL.COM
325 E. Warm Springs Road
Las Vegas, Nevada 89119-4238

-and-

other JOHN DOE persons or entities

Defendants

COMPLAINT

The Commonwealth of Pennsylvania, by its Attorney General, the Honorable Kathleen G. Kane, brings this Complaint against Think Finance, Inc., TC Loan Service, LLC, Elevate Credit, Inc., Financial U, LLC, Kenneth E. Rees, William Weinstein, Weinstein, Pinson & Riley, PS, Cerastes, LLC, National Credit Adjusters, LLC, Selling Source, LLC and PartnerWeekly, LLC, d/b/a MoneyMutual.com, and other John Doe persons and entities (collectively "Defendants"), pursuant to the Pennsylvania Corrupt Organizations Act, 18 Pa. C.S.A. § 911, *et seq*. (hereinafter "PA COA"); for violations of the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq*. (hereinafter "Consumer Protection Law"), to restrain unfair or deceptive acts or practices in the conduct of any trade or commerce declared unlawful

by Section 201-3 of the Consumer Protection Law; and for violations of the Pennsylvania Fair Credit Extension Uniformity Act, 73 P.S. § 2270.1, *et seq*. (hereinafter "FCEUA") and alleges as follows:

I. INTRODUCTION

1. Defendants illegally solicit, arrange, fund, purchase, service and/or collect loans and cash advances made to Pennsylvania citizens over the Internet. These loans and cash advances charge well in excess of the usury ceiling established by Pennsylvania law. Defendants also engage in various forms of unfair or deceptive conduct related to that business activity.

2. To evade licensure, usury and consumer protection laws, Defendants Think Finance, Inc., TC Loan Service, LLC, Elevate Credit, Inc., Financial U, LLC and Kenneth Rees (hereinafter "the Think Finance Defendants") have used affiliations with a rogue bank and Native American tribes as vehicles for this illegal activity. Knowing that banks and tribal corporations have insulation from state jurisdiction under the doctrines of federal bank preemption and tribal sovereign immunity, the Think Finance Defendants have, as an alternative to making the loans in their own name, structured, participated in, and operated this scheme in which they act as providers of contracted "services" to the bank and the tribes, and, through such devices, have profited from illegal loans that flout Pennsylvania law, using deliberate deceptions targeting Pennsylvania consumers.

3. Also involved in this scheme are various debt buyers and debt collectors, including, but not limited to, Defendants William Weinstein, Weinstein, Pinson and Riley, PS and Cerastes, LLC (hereinafter collectively, "the Weinstein Defendants") and National Credit Adjusters, LLC, who are actively collecting or attempting to collect illegal loans made through this scheme to Pennsylvania residents.

4. Also currently or formerly involved in the illegal lending scheme are the affiliated marketing companies, Selling Source, LLC and PartnerWeekly, LLC, d/b/a MoneyMutual.com (hereinafter collectively, the Selling Source Defendants), which generate leads over the Internet for high-rate lenders and, upon information and belief, have made referrals of Pennsylvania residents to the scheme for a commission.

5. In this action, the Commonwealth, through its Attorney General, asserts and exercises its enforcement authority and power under the following Pennsylvania statutes: (a) the Corrupt Organizations Act, 18 Pa. C.S.A. § 911; (b) the Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.*; and (c) the Fair Credit Extension Uniformity Act, 73 P.S. § 2270.1.

6. The Bureau of Consumer Protection of the Office of the Attorney General and the Pennsylvania Department of Banking and Securities (hereinafter "the Banking Department") have received numerous complaints from consumers harmed by the scheme alleged herein. Among the consumers victimized by the Defendants are Pennsylvania citizens at or above the age of 60. The Commonwealth believes there are numerous consumers who have been harmed due to the methods, acts and practices alleged herein.

7. The public interest is served by seeking before this Honorable court a permanent injunction to restrain the methods, acts and practices alleged, including restitution and disgorgement of all income and monies Defendants have derived from these methods, acts and practices, as well as civil penalties, and investigative and litigation costs, including but not limited to attorney's fees.

II. THE PARTIES

8. Plaintiff is the Commonwealth of Pennsylvania, appearing through its Attorney General, the Honorable Kathleen G. Kane, with offices at 21 South 12th Street, 2nd Floor, Philadelphia, Pennsylvania 19107 and at Strawberry Square, 15th Floor, Harrisburg, Pennsylvania 17120.

9. Article 4, § 4.1 of the Pennsylvania Constitution designates the Attorney General as "the chief law officer of the Commonwealth." *See also* 71 P.S. § 732-204(c) (directing the Attorney General, as a general matter, to represent the Commonwealth in all civil actions brought by the Commonwealth).

10. The Attorney General is, by statute, expressly designated as the Commonwealth agency authorized to enforce the following two statutes and to seek injunctive and other appropriate relief to restrain conduct prohibited by such statutes: PA COA, 18 Pa. C.S.A. § 911(e) and the Consumer Protection Law, 73 P.S. § 201-4.

11. Defendant Think Finance, Inc. is a Delaware corporation headquartered at 4150 International Plaza, Suite 400, Fort Worth, Texas 76109. It formerly had the name ThinkCash, Inc. This defendant is not registered with the Pennsylvania Department of State Corporation Bureau.

12. Defendant TC Loan Service, LLC is a Delaware limited liability company located at 4150 International Plaza, Suite 400, Fort Worth, Texas 76109. This defendant is registered with the Pennsylvania Department of State Corporation Bureau as a Pennsylvania limited liability company. It is registered with the Pennsylvania Department of Banking as a foreign limited liability company, which during the period 12/29/2010 to 2/1/2012, was doing business in Pennsylvania as a "credit services" licensee, from the website www.thinkcash.com.

13. Defendant Elevate Credit, Inc. is a Delaware corporation located at 4150 International Plaza, Suite 400, Fort Worth, Texas 76109. This defendant is not registered with the Pennsylvania Department of State Corporation Bureau.

14. Defendant Financial U, LLC is a Delaware limited liability company with offices at 4150 International Plaza, Suite 400, Fort Worth, Texas 76109. This defendant is not registered with the Pennsylvania Department of State Corporation Bureau.

15. Defendant Kenneth E. Rees is an individual residing in Texas who, until the business restructuring described below, was the President and Chief Executive Officer of Think Finance, Inc. He is currently the Chief Executive Officer of Elevate Credit, Inc. and, upon information and belief, retains a controlling interest and operational role in Think Finance. He personally has designed and directed the business activity described herein.

16. Defendant William Weinstein is an attorney, debt buyer and debt collector who, upon information and belief, resides in Washington State and is the principal of a Washington law firm, Defendant Weinstein, Pinson and Riley, PS, that specializes in debt collection, with principal offices at 2001 Western Avenue, Suite 400, Seattle, Washington 98121. These defendants are not registered with the Pennsylvania Department of State Corporation Bureau.

17. Located at the same Seattle address as Defendant Weinstein's law firm are other corporate entities controlled by Weinstein. These entities purchase large portfolios of bad debt and function as the client of Weinstein's law firm. One such entity is Defendant Cerastes, Inc., a Delaware corporation. This defendant is not registered with the Pennsylvania Department of State Corporation Bureau. (hereinafter Weinstein; Weinstein, Pinson and Riley, PS; and Cerastes will be collectively referred to as "the Weinstein Defendants.")

18. Cerastes has purchased illegal usurious loans made to Pennsylvania residents, either from the Think Finance Defendants, and/or from the tribal entities affiliated with the Think Finance Defendants or from other nominal entities designated by the scheme to hold the loans, or is the successor to another Weinstein corporation or limited liability company that purchased the debt, and has been engaging in debt collection activity pertaining to such loans. At Defendant Weinstein's direction, his law firm, Defendant Weinstein, Pinson and Riley have been engaged in collection activity directed against Pennsylvania residents regarding such loans.

19. Defendant National Credit Adjusters, LLC (hereinafter "NCA") is a Kansas limited liability company located at 327 W. 4th Street, Hutchinson, Kansas 67501. NCA has either purchased illegal usurious loans made to Pennsylvania residents from the Think Finance Defendants and/or from the tribal entities affiliated with the Think Finance Defendants or from other nominal entities designated by the scheme to hold the loans, or is the successor to another corporation or limited liability company that purchased the debt, and has been engaging in debt collection activity pertaining to such loans. This defendant is registered with the Pennsylvania Department of State Corporation Bureau as a foreign limited liability company located in Kansas.

20. Defendant Selling Source, LLC, is a Delaware limited liability company, based in Las Vegas, Nevada. It is a holding company that owns other legal entities engaged in marketing over the Internet. One of those entities is PartnerWeekly, LLC, a Nevada limited liability company, which is located at 325 E. Warm Springs Road, Las Vegas, Nevada 89119. PartnerWeekly, LLC generates leads for sale to lenders including the Think Finance Defendants and/or their tribal lender affiliates. These defendants are not registered with the Pennsylvania Department of State Corporation Bureau, nor is the fictitious name "Money Mutual" registered.

21. Defendants John Doe include the various other non-tribal persons or entities that, in concert with and/or at the direction of the Think Finance Defendants, have participated in the funding, origination, collection or marketing of loans made in the name of "ThinkCash", "Plain Green," "Great Plains Lending" and "MobiLoans." Such persons or entities include, but are not limited to: the lessee of a Philadelphia postal box that is designated to receive payments relating to loans made in the name of Plain Green or Great Plains Lending; entities that Think Finance has located or arranged to provide the lending capital used to make loans to Pennsylvania residents or to funnel such lending capital to the tribal entities; additional entities that Think Finance has located or arranged to purchase and/or collect unpaid balances purportedly owed by Pennsylvania borrowers; and those entities that are involved in processing payments that are electronically debited from the bank accounts of Pennsylvania consumers. Plaintiff does not yet know the identity of these persons or entities but does intend to add them as party-defendants as their identities become known.

III. JURISDICTION AND VENUE

22. This Court has jurisdiction to hear this matter pursuant to 42 Pa. C.S.A. § 931 which grants this Court "unlimited original jurisdiction of all actions and proceedings."

23. This Court has personal jurisdiction over Defendants pursuant to 42 Pa. C.S.A. § 5322 in that Defendants (a) are transacting business in this Commonwealth, as defined by 42 Pa. C.S.A. § 5322(a)(1), (b) are causing harm to Pennsylvania citizens by acts occurring outside the Commonwealth, 42 Pa. C.S.A. § 5322(a)(4), or (c) have maintained the most minimum contact with this Commonwealth allowed under the United States Constitution, 42 Pa. C.S.A. § 5322(b).

24. Venue is appropriate in this Court because harmed consumers reside in this county. Pa. R. Civ. P. 1006(a). Moreover, various instrumentalities of the scheme have been located in Philadelphia, making this a county in which "a transaction or occurrence took place out of which the cause of action arose." *Id*. The operational center of First Bank of Delaware, a key partner in the scheme, was located in a Philadelphia office building. Currently, the postal box designated for receipt of payments on loans made in the name of Plain Green and Great Plains Lending is located in Philadelphia.

IV. THE FACTS OF THE CASE

a. Pennsylvania Restrictions on High-Rate Lending over the Internet

25. Under Section 201 of the Loan Interest and Protection Law (hereinafter "LIPL"), 41 P.S. § 201, the maximum lawful rate of interest for the loan and use of money in amounts less than $50,000 is six percent per year.

26. The six-percent interest cap applies to all consumer lenders except those lenders who are licensed under the Consumer Discount Company Act (hereinafter "CDCA"), 7 P.S. §§ 6201-6219, and who make loans in accordance with the limitations and requirements of that statute. *See Pa. Dept. of Banking v. NCAS of Delaware, LLC*, 948 A.2d 752 (Pa. 2008). This cap applies to all credit-related charges, however labeled, and applies to credit lines as well as fixed-amount loans. *Id*.

27. As of February 1, 2009, the usury restrictions imposed by LIPL and the CDCA apply to loans made to Pennsylvania citizens over the Internet. *Cash America Net of Nevada, LLC v. Com., Dept. of Banking*, 8 A.3d 282 (Pa. 2010) (upholding 2008 Banking Dept. official interpretation that went into effect February 1, 2009).

28. Thus, as of February 1, 2009, "payday lending"—the "consumer lending practice in which a lender offers consumers high-rate, short-term loans secured by either a post-dated check or a debit authorization from a bank," *id*., 8 A.3d at 284—has been illegal in Pennsylvania, whether done through storefronts or over the Internet.

29. The Think Finance Defendants are not licensed under the CDCA, and thus they are prohibited from making and collecting on any consumer loans to Pennsylvania citizens that charge interest at rates in excess of six percent.

b. Phase One of the Scheme: Rent-A-Bank

30. Prior to a 2010 corporate name change, Defendant Think Finance, Inc. was known as ThinkCash, Inc.

31. ThinkCash, Inc. was formed by Defendant Rees in or around 2001 as a payday lender that operated over the Internet rather than through "bricks and mortar" payday lending stores, making short-term loans at effective annual rates in excess of 200 or 300 percent. Early on, Defendant Rees, using various affiliated companies, offered two payday loan products, one called "PaydayOne" and one called "ThinkCash." Upon information and belief, Defendant Rees and other Think Finance Defendants offered "PaydayOne" loans in states where payday lending was legal and designed an equivalent "ThinkCash" loan product for use in states, like Pennsylvania, where payday lending was not legal.

32. Because they could not target or contract with Pennsylvania consumers directly for the usurious and illegal loans, Defendants Think Finance (then "ThinkCash"), TC Loan Service, LLC and Rees, utilized a lending model known in the money lending industry as "rent-a-bank" to do so indirectly. Under this model, a payday lender legally prohibited from making loans in a particular jurisdiction would evade those legal restrictions by partnering with an out-

of-state bank that, for a fee, would act as the nominal lender while the *de facto*, non-bank lender marketed, funded and collected the loan and performed other lender functions. Because banks are insulated from state examination and regulation by virtue of federal bank pre-emption doctrines, many payday lenders were, for a period of time, able to use these "rent-a-bank" arrangements to evade enforcement in states where, like Pennsylvania, payday lending is illegal under state law.

33. Beginning in 2005, the Federal Deposit and Insurance Corporation. (hereinafter "FDIC") began to limit its regulated banks with regard to their "rent-a-bank" arrangements with payday lenders. *See* FDIC, Guidelines for Payday Lending, FIL-14-2005.

34. As a result of that policy announcement by the FDIC, most banks that were engaged in rent-a-bank partnerships with payday lenders terminated those relationships. Thus, all of the storefront payday lending that had been conducted in Pennsylvania through the use of these bank partnerships ceased and those stores closed.

35. However, one FDIC-regulated bank, First Bank of Delaware (hereinafter "FBD"), operating mainly from an office building in Center City Philadelphia, developed a niche specialty in providing banking services to payday lenders and other merchants involved in illegal activity to circumvent the law of Pennsylvania and other jurisdictions.

36. One of the payday lenders that established a relationship with this rogue bank was Defendant TC Loan Service, LLC, d/b/a "ThinkCash." Through its version of the rent-a-bank model, ThinkCash and FBD developed a relationship that enabled ThinkCash to offer high-rate "installment loans" as the supposed servicing agent of the bank, representing itself on its website as "ThinkCash by First Bank of Delaware."

37. In October, 2008, however, the FDIC initiated an enforcement action against FBD that, among other things, resulted in an administrative order to cease and desist the bank's "lending programs offered, marketed, administered, processed and/or serviced by third-parties," including, specifically, the bank's agreement with "TC Loan Service, LLC d/b/a ThinkCash." *See In the Matter of First Bank of Delaware*, FDIC-07-256b and FDIC-07-257k (June 10, 2008 Notice of Charges for an Order to Cease and Desist and Oct. 3, 2008 Stipulation and Consent to the Issuance of An Order to Cease and Desist, the latter of which a copy is attached hereto as Exhibit A).

38. At the time of this cease and desist order, the Pennsylvania Banking Department had already issued its official interpretation clarifying that it would begin enforcing state usury restrictions against payday lenders transacting business with Pennsylvania borrowers over the Internet, giving the industry until February 1, 2009 to end all such activity.

39. In willful and deliberate disregard of the FDIC cease and desist order and the Banking Department announcement, FBD and the Think Finance Defendants continued operating their rent-a-bank scheme and, specifically, continued to make their illegal loans to Pennsylvania consumers. Attached as Exhibit B is a July, 2010 computer screenshot of a marketing email directed to a consumer by a lender calling itself "ThinkCash by First Bank of Delaware," with a "Customer Support" mailing address in Philadelphia.

40. The Think Finance Defendants continued loan-related activity through its relationship with FBD until sometime in 2011. While continuing this illegal activity through the FBD relationship, the Think Finance Defendants began at the same time to plan for a transition to a whole new mechanism for this activity. This plan included, among other things, (a) the 2010 corporate name change of ThinkCash, Inc. to Think Finance, Inc.; and (b) a structural shift from a "rent-a-bank" model to the "rent-a-tribe" model described below.

41. With its arrangement with FBD facing the continuing threat of regulatory and other law enforcement pressure, the Think Finance Defendants pursued various alternative strategies for recharacterizing or restructuring its illegal usury business in Pennsylvania. On December 29, 2010, shortly before it ceased making loans to Pennsylvania consumers under its "ThinkCash" label, Defendant TC Loan Service, LLC obtained a Pennsylvania license as a "credit services organization," pursuant to the Credit Services Act, 73 P.S. § 2181, *et seq*.

42. In registering itself as such an entity, Defendant TC Loan Service, LLC represented itself to the Banking Department as:

> A person who, with respect to the extension of credit by others, sells, provides or performs or represents that he or she can or will sell, provide or perform any of the following services in return for the payment of money or other valuable consideration:
>
> (i) Improving a buyer's credit record, history or rating.
> (ii) Obtaining an extension of credit for a buyer.
> (iii) Providing advice or assistance to a buyer with regard to either subparagraph (i) or (ii).

73 P.S. § 2182. Upon information and belief, Defendant did not conduct any business in Pennsylvania as a "credit services organization," and, instead, elected to continue the scheme involving illegal, usurious loans in Pennsylvania via the rent-a-tribe structure described below.

43. FBD is no longer in business. On October 23, 2012, its shareholders voted to dissolve the bank and on November 12, 2012 the United States Department of Justice announced a settlement resulting, *inter alia*, in the bank's payment of a $15 million civil penalty. *See United States v. First Bank of Delaware*, No. 12-6500-HB (E.D. Pa.). The FDIC sold all of the bank's assets to a Pennsylvania-based bank, but, upon information and belief, these assets did not include any of the ThinkCash loans, over which the Think Finance Defendants continued to exercise ownership and control.

c. Phase Two of the Scheme: Rent-A-Tribe

44. Despite the loss of their partnership with FBD, the Think Finance Defendants created a new mechanism to continue the usury scheme, turning to a model that Internet payday lenders in the United States had developed as a lucrative substitute for the rent-a-bank model. Under this new model, known in the money lending industry as "rent-a tribe," the payday lender would try to take advantage of the similar immunity from state enforcement enjoyed by Native American tribes through business relationships with a tribe that could enable the payday lender to construct a tribal façade for its usurious loan products.

45. Upon information and belief, the strategy of the Think Finance Defendants was to identify a tribal partner willing to play a function similar to the role played by FBD in the ThinkCash arrangement, with the tribe performing the role of nominal lender but with Think Finance earning significant revenues generated by the lending activity, denominated as fees or charges for services provided to the tribal entity.

46. Think Finance also desired, through such arrangement with such tribal entity or entities to continue to exploit the existing ThinkCash customer base to generate future loans and to create a structure that produced revenues for itself equivalent to or greater than those earned from its in-house credit products like PaydayOne loans.

47. The Think Finance Defendants established business relationships with three separate Native American tribes. These tribal entities and the lending websites they operate in conjunction with Think Finance are:

a. The Chippewa Cree Tribe of the Rocky Boy's Indian Reservation, Montana (hereinafter "Chippewa Cree Tribe") and its lending website, www.plaingreen.com (hereinafter "Plain Green");

b. The Otoe-Missouria Tribe of Indians, located in Red Rock, Oklahoma (hereinafter "Otoe-Missouria Tribe") and its lending website, www.greatplainslending.com (hereinafter "Great Plains Lending"); and

c. The Tunica-Biloxi Tribe of Louisiana (hereinafter "Tunica-Biloxi Tribe") and its website, www.mobiloans.com (hereinafter "MobiLoans").

48. Under the rent-a-tribe version of the Think Finance usury scheme, the loans are made in the name of lender affiliated with one of these tribes, but, upon information and belief, the Think Finance Defendants provide the infrastructure to market, fund, underwrite and collect the loans, providing some or all of the following: customer leads, a technology platform, investors who fund the loans, and/or the payment-processing and collection mechanisms used to obtain payments from consumers. Defendants earn significant revenues from the scheme through providing such services to the three tribal entities.

49. Upon information and belief, the Think Finance Defendants created "Financial U" as a mechanism intended to justify the extraction of additional revenues from the scheme, disguised as payments for services provided. Each of the three websites, supposedly associated with separate Native American tribes that have no relationship to each other, offer the identical "educational" videos and tools as a service made available to loan borrowers, purportedly provided by "Financial U."

50. Upon information and belief, the Think Finance Defendants charge the tribes for the use of this "Financial U" material, in amounts in excess of any actual value provided to the tribes or their customers through such material, and through this subterfuge, the Think Finance Defendants conceal the nature and extent of their participation in or direction of the scheme, and the extent to which the revenues generated by these three supposedly unrelated websites actually flow to the Think Finance Defendants rather than the three tribes that sponsor the respective websites.

51. In a 2012 interview appearing in a Dallas on-line feature on "Dallas Entrepreneurs of the Year 2012," Defendant Rees bragged that despite losing a "bank client" in 2010—presumably referring to his rent-a-bank relationship with FBD—that had been the source of more than half of the annual revenue for Think Finance, the company managed to increase revenue by 15% in 2011 and projected a 50% increase in 2012 through its "new direction," namely, providing a so-called "technology platform to Native American tribes with lending businesses." *See* http://www.dmagazine.com/Home/D_CEO/2012/July_August/Ernst_and_Young_Dallas_Entrepreneurs_of_the_Year_2012_07.aspx.

52. The first of the Think Finance partnerships was the "Plain Green" label. It began approximately in March, 2011, when the Chippewa Cree Tribe changed an existing tribal payday loan business into one designed and supported by Think Finance.

53. Among the benefits Defendants used to induce the Chippewa Cree Tribe into this partnership was Defendants' existing portfolio of customers and existing loan balances from the ThinkCash-FBD period. As part of its arrangement with the tribe, the Think Finance Defendants transferred the existing ThinkCash loans and the ThinkCash customer database to the new "Plain Green" entity.

54. Think Finance designed the web platform used by Plain Green so that existing ThinkCash customers visiting the ThinkCash website at www.thinkcash.com would be routed automatically to the Plain Green site, www.plaingreenloans.com, where they would be recognized as an existing customer and able to log into their account and, if they wished, could obtain new loans. Attached as Exhibit C is a printout of what a ThinkCash customer, visiting the site www.thinkcash.com would have seen in June, 2011, including (a) a "Welcome Back" greeting containing the logos of both ThinkCash and Plain Green, and an automatic link to the

Plain Green site, (b) an "FAQ" page that explained how Plain Green was now available to offer "the same prompt, friendly customer service," and loans up to $2,500, "using the same email address and password you used for your ThinkCash account," and (c) the Plain Green loan application page to which the returning ThinkCash customer would be automatically routed.

55. In fact, Pennsylvania consumers who had obtained usurious loans from the ThinkCash site returned for more money and obtained loans, at equivalent or higher cost, from "Plain Green."

56. Attached as Exhibit D is a redacted loan agreement between a Pennsylvania consumer and Plain Green, created over the Internet during May, 2012, on the Plain Green website developed and managed by Think Finance. The loan is for $1,200, payable over a period of approximately 14 months, at an Annual Percentage Rate of 279.22%. These terms are those that appear under the "Loan Cost and Terms" page on the Plain Green website, http://www.plaingreenloans.com/loan-cost-and-terms.

57. The sample Plain Green loan agreement is on a form contract that contains the following provision in a paragraph beginning, **This Loan Agreement ("the Agreement") is subject solely to the exclusive laws and jurisdiction of the Chippewa Cree Tribe of the Rocky Boy's Indian Reservation, Montana ("Chippewa Cree")**:

> By executing this Agreement, you hereby acknowledge and consent to be bound to the terms of this Agreement, consent to the sole subject matter and personal jurisdiction of the Chippewa Cree Tribal Court, and further agree that no other state or federal law or regulation shall apply to this Agreement, its enforcement or interpretation.

58. Sometime after establishing its relationship with the Chippewa Cree Tribe, Think Finance established a similar relationship with the Otoe-Missouria Tribe, calling the lender created by this second relationship "Great Plains Lending." Attached as Exhibit E is a redacted

loan agreement between a Pennsylvania consumer and Great Plains Lending, created over the Internet during July, 2012, on a website developed and managed by Think Finance. The loan is for $600, payable over a period of approximately seven months, at an Annual Percentage Rate of 448.77%. These terms are those that appear under the "Loan Cost and Terms" page on the Great Plains Lending website, https://www.greatplainslending.com/loan-cost-and-terms.

59. The sample Great Plains Lending loan agreement is on a form contract that contains the following provision in a paragraph beginning, **This Loan Agreement ("the Agreement") is subject solely to the exclusive laws and jurisdiction of the Otoe-Missouria Tribe of Indians, a federally recognized Indian tribe**:

> By executing this Agreement, you hereby acknowledge and consent to be bound to the terms of this Agreement, consent to the sole subject matter and personal jurisdiction of the Otoe-Missouria Tribe of Indians Tribal Court, and further agree that no other state or federal law or regulation shall apply to this Agreement, its enforcement or interpretation.

60. The form contracts used by Plain Green and Great Plains Lending are nearly identical, because, upon information and belief, the Think Finance Defendants and/or their agents participated in drafting them.

61. Upon information and belief, numerous Pennsylvania consumers entered into such loan contracts with these two tribal entities affiliated with Think Finance.

62. Defendant's third "tribal" relationship is with the Tunica-Biloxi Tribe, the nominal lender behind the credit product "MobiLoans" and the website www.mobiloans.com. Described on the website as "Fast cash for people on the go," this product differs from the other two in that instead of offering consumers loans at specific amounts, it offers an ongoing "line of credit." However, despite this difference, the Moiloans product is designed to generate fees and charges equivalent to those generated by Plain Green or Great Plains Lending loans.

63. According to the MobiLoans website, "[o]ne of the best features of the MobiLoans line of credit is simple, easy-to-understand pricing." This pricing includes fees that are charged in two ways. First, there are upfront fees, including a "cash advance" fee of $3 per $20 received for advances up to $500, and $2 per $20 for larger advances. The upfront fee is charged at the front end, as soon as the cash proceeds are transferred into the consumer's account. Second, as consumers repay the credit over time, a "Fixed Finance Charge" is added to the loan balance which, according to the website, is "calculated on a tiered level based upon the unpaid balance."

64. Consumers with open MobiLoans balances are billed every two weeks, and invited to pay a "minimum payment" that is calculated in accordance with a standard formula. The MobiLoans website provides illustrations of the amount of fees and charges generated by such "minimum payment" repayments. *See* http://www.MobiLoans.com/What-It-Costs. One such illustration is for a MobiLoans cash advance of $1,000, repaid in accordance with that "minimum payment" formula, where consumer will make 20 bi-weekly payments totaling $2,265, meaning that $1,265 in fees or charges would be collected. Expressed as an Annual Percentage Rate, repayment of a $1,000 debt in accordance with that schedule would be the equivalent of an APR of approximately 246%.

65. Under Pennsylvania usury restrictions, it does not matter how credit-related fees or charges for small-balance "lines of credit" are named or calculated; if in the aggregate such fees or charges cost consumers the equivalent of interest rates that would be illegal, those fees and charges are illegal. *See* 7 P.S. § 6203; *Pa. Dept. of Banking v. NCAS of Delaware, LLC.* Using the illustrated cash advance and repayment schedule in the prior paragraph, a 6% rate

would allow for collection of fees and charges of about $53.33, meaning that the excess, $1,211.67, would be illegal fees and charges.

66. Attached as Exhibit F is a redacted account statement, received by a Pennsylvania consumer from MobiLoans in August, 2013, on an account that the consumer opened sometime in 2012 on the MobiLoans website developed and managed by the Think Finance Defendants, along with a form "MobiLoans Credit Agreement and Terms and Conditions" that was made available to her at the time she obtained her initial cash advance of $500.

67. The "MobiLoans Credit Agreement and Terms and Conditions," which the website developed and managed by the Think Finance Defendants provides to "approved" customers, contains the following emphasized language at the beginning of the 10 pages of text:

> MobiLoans, LLC is an entity owned and operated by the Tunica-Biloxi tribe of Louisiana, the credit issued to you and information provided under this agreement by MobiLoans is done so solely under the provisions of laws of the Tunica-Biloxi tribe of Louisiana and applicable federal law**.**

In a section of the form agreement entitled "Governing Law," consumers are informed that "Neither this Agreement nor the Lender is subject to the laws of any State of the United States."

68. During the operation of both stages of the Think Finance usury scheme, the company continued to provide equivalent loan and credit-line products directly to consumers, without the use of a bank or a tribal partner/intermediary, in states where such consumer lending is legal. At the same time it was offering the "ThinkCash" product to Pennsylvania borrowers, using FBD as the façade to shield it from potential state law enforcement authorities, the Think Finance Defendants also maintained a separate, but equivalent payday lending product and website named "PaydayOne."

69. Similarly, during the period they have been operating the three tribal lending sites, the Think Finance Defendants have also been directly selling similar products, using separate labels sold from separate websites. *See, e.g.*, the high-rate "Rise" loans available at www.risecredit.com. They designed the Rise website to recognize the state where the inquiring consumer is located. Over a banner including a photo of Rocky and the Philadelphia skyline, visitors from computers in Pennsylvania receive the following message when arriving at the site: "We're currently unable to serve you in PENNSYLVANIA but please check back with us in the near future." Attached as Exhibit G is a copy of that website homepage.

70. Think Finance publicly lists the three tribal websites as its own products, along with the labels it markets and sells itself directly to the public. Attached as Exhibit H-1 is a list of "Think Finance Products" that appeared on the company's LinkedIn page as of July 19, 2013, including Payday One, Plain Green, Great Plains Lending and MobiLoans. Attached as Exhibit H-2 is a list containing these same four labels, under the heading "Products powered by the Think Finance Platform," appearing on the company's United Kingdom site.

71. On or about May 1, 2014, Think Finance split itself into two companies. It placed into the new company, Defendant Elevate Credit, Inc., the loan products it markets directly in its own name in jurisdictions where such high-cost lending is legal, such as the "Rise" loans discussed above. The original company, Think Finance, Inc., now focuses entirely on what it describes as the provision of services to third-party lenders.

72. Upon information and belief, business equity or other assets attributable to the pre-existing company's illegal activities directed against Pennsylvania consumers may have been transferred to the new company, Elevate Credit, Inc.

73. Upon information and belief, significant revenues generated by the above-described scheme were and continue to be extracted from Pennsylvania consumers.

d. Other Participants in the Think Finance Scheme and Ongoing Harms to Pennsylvania Consumers

74. Usurious loans and/or "cash advances" made to Pennsylvania consumers in the name of Plain Green, Great Plains Lending or MobiLoans have been funded by an investor or investors supplied by the Think Finance Defendants, which investors continue to fund loans and cash advances to Pennsylvania consumers.

75. Payments by Pennsylvania consumers on Plain Green and Great Plains Lending loans and on MobiLoans credit lines were and continue to be processed electronically and directly debited from the consumers' bank accounts by the same bank. Upon information and belief, the Think Finance Defendants arranged the banking relationship or arranged a relationship with a payment processor that found the bank.

76. Each of the three separate websites direct consumers to send their payments to postal boxes in the same Philadelphia postal office.

77. Upon information and belief, the Think Finance Defendants have participated in the sale or transfer of loan balances supposedly owed by Pennsylvania consumers to Plain Green, Great Plains Lending or MobiLoans to various debt buyers, including the Weinstein Defendants and Defendant National Credit Adjusters.

78. Upon information and belief, the three tribal lenders affiliated with the Think Finance Defendants stopped accepting loans from new Pennsylvania consumers sometime in mid-2013. However, Pennsylvania consumers are still being injured by the scheme in at least several ways.

79. First, Pennsylvania consumers are facing ongoing collection of consumer debt owed nominally to Plain Green, Great Plains Lending or MobiLoans. For example:

a. On January 29, 2014, the Weinstein Defendants filed a proof of claim in the bankruptcy case of a Pennsylvania consumer for the balance owing on a loan issued by Plain Green, LLC.

b. During the period 2012-2014, Plaintiff has received numerous complaints from consumers about abusive collection activity by debt collectors, including Defendant National Credit Adjusters, regarding debts originated by Plain Green, Great Plains Lending or MobiLoans.

80. Second, even though not accepting applications from new Pennsylvania customers, upon information and belief, the three websites continue to make new loans or cash advances, all of which are illegal under Pennsylvania law, to existing Pennsylvania customers who need only log-in to their accounts, update their personal information already appearing on the screen, and request a new loan or advance. By way of example, on June 24, 2014, Plain Green made a $600 loan to a Pennsylvania customer known to the Plaintiff, which customer used his email address and existing password to obtain the loan. During the period July 1, 2014 to September 16, 2014, Plain Green collected full repayment of this loan from this customer's Pennsylvania bank account, in accordance with the usury scheme described above.

81. Third, even though the three websites are not presently accepting applications from new Pennsylvania consumers, unlike Defendants' "Rise" website, these websites do not block access from Pennsylvania consumers. On the contrary, it is only after Pennsylvania consumers visiting any of those sites transmit their personal information—including social security number, driver license and bank account information—that the site informs them that, as Pennsylvania residents, they cannot obtain credit.

82. Personal information about a consumer—particularly where it includes social security numbers and bank account information—is a highly valuable commodity known in the

lead generation trade as a "full data lead." Full Data Leads are used by fraudulent telemarketers, internet lenders, and other entities engaged in illegal activity injurious to consumers.

83. Defendants have no legitimate business purpose in extracting such highly personal information from consumers to whom they know they cannot legally provide their usurious credit products.

84. Upon information and belief, the Think Finance Defendants are nonetheless collecting this personal information in order to store it for future use and/or to sell it to others (or to enable their tribal partners to sell it to others). For example, the Privacy Policy on the MobiLoans website expressly states that MobiLoans shares personal information with "Non-Affiliates" and does so "as soon as the same day that you apply for a line of credit."

85. Besides being able to access and obtain loans from direct visits to the Plain Green, Great Plains Lending and MobiLoans websites, Pennsylvania consumers are also lured or directed to these sites by direct mail. By way of example, attached as Exhibit I is a copy of direct mail solicitation a Pennsylvania consumer received from Great Plains Lending around September, 2012.

86. Another referral source to the various Think Finance-affiliated websites has been MoneyMutual.com, a payday loan "lead generator" owned by the Selling Source Defendants. Consumers are lured to the site by television advertising featuring television personality Montel Williams, whose image is also featured on the website, under the banner, "Instant Approval, Get Cash Fast."

87. The Selling Source Defendants were expressly named in the FDIC's October 2008 cease and desist order as one of the business partnerships that FBD was required to terminate. *See* Exhibit C to the FDIC Order (Exhibit A hereto).

88. As a result of a February 2011 Consent Agreement and Order between the Selling Source Defendants and the Banking Department, the Selling Source Defendants agreed and were ordered to block access to their websites to Pennsylvania consumers and to cease targeting any internet lending advertisements to Pennsylvania consumers. *Commonwealth of Pennsylvania Dept. of Banking v. Selling Source, L.L.C. d/b/a Money Mutual*, Dkt. No. 100286 (ENF-C&D) (Pa. Banking Dept.). Attached as Exhibit J is a copy of the Consent Agreement and Order.

89. The Selling Source Defendants deliberately violated the Consent Agreement and Order. At least until July, 2013, they were continuing to sell leads involving Pennsylvania borrowers to Plain Green. This arrangement included a web link from the MoneyMutual site to the Plain Green site, inviting Pennsylvania consumers "to take advantage of an opportunity with our partner Plain Green Loans for your short-term financial needs," by simply clicking a button to transfer to the loan application page of the Plain Green site. Attached as Exhibit K is a screenshot from the MoneyMutual site, taken on July 16, 2013, illustrating the direct connection between a visit to the site from a computer in Pennsylvania and the Plain Green site.

90. The Selling Source Defendants designed their MoneyMutual website to give consumers visiting the site the impression that any personal information they provide when applying for a loan is kept "private" and "secure." However, in contrast to such representations and assurances, Defendants' Privacy Policy, available on the site through a small-print link at the bottom of the website, reveals that Defendants, in fact, "reserve the right to share, rent, sell or otherwise disclose your information with/to third parties," including, among others, "e-mail marketers; wireless service providers and telemarketers."

91. Upon information and belief, the Selling Source Defendants have, in fact, derived income from selling the information of Pennsylvania consumers to such third parties.

V. CLAIMS FOR RELIEF

COUNT ONE
(Against the Think Finance Defendants)
(Violations of Corrupt Organizations Act, 18 Pa. C.S.A. § 911(b)(1))

92. Plaintiff realleges and incorporates by this reference all prior paragraphs of this Complaint.

93. Under PA COA, 18 Pa. C.S.A. § 911, "racketeering activity" includes the collection of any money on account of a debt which arose as the result of the lending of money at a rate of interest exceeding 25% per annum. 18 Pa. C.S.A. § 911(h)(1)(iv). The above-described scheme constitutes "racketeering activity" in that the consumer credit offered and collected by the arrangements known as ThinkCash, Plain Green, Great Plains Lending and MobiLoans is at an effective rate far exceeding 25% per annum.

94. Under 18 Pa. C.S.A. § 911(b)(1), it is unlawful for any person who has received income derived, directly or indirectly, from a pattern of "racketeering activity" in which such person participated as a principal, to use or invest, directly or indirectly, any part of such income in the operation of any "enterprise."

95. This language was adopted from the federal RICO statute, 18 U.S.C. § 1962(a). "Principal" is not defined in PA COA. Under federal law, a "principal" includes anyone who "commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission." 18 U.S.C. § 2.

96. PA COA defines an "enterprise" as "any individual, partnership, corporation, association or other legal entity, and any union or group of individuals associated in fact although not a legal entity, engaged in commerce and includes legitimate as well as illegitimate entities and government entities." 18 Pa. C.S.A. § 911(h)(3).

97. On multiple occasions as detailed above, the Think Finance Defendants participated as a principal in the racketeering activity described above in that they aided, abetted, counseled, commanded, induced or procured the usurious and illegal lending described above.

98. The Think Finance Defendants derived income from such racketeering activity and used or invested that income in the operation of an "enterprise," as defined by 18 Pa. C.S.A. § 911(h)(3), such enterprises being, among others, ThinkCash, Inc., TC Loan Service, LLC, Think Finance, Inc., Elevated Credit, Inc. and Financial U, LLC.

99. Upon information and belief, this income includes not only what Defendants have derived directly from loans made in the name of ThinkCash, Plain Green, Great Plains Lending and MobiLoans Pennsylvania borrowers, but also from their possible trafficking in the personal information obtained through the websites from Pennsylvania borrowers who are not offered loans.

100. Through their above-described acquisition, use and investment of funds acquired from a usury scheme, the Think Finance Defendants violated and are continuing to violate 18 Pa. C.S.A. § 911(b)(1).

101. Plaintiff is expressly authorized to enforce PA COA, 18 Pa. C.S.A. § 911(e), by seeking an appropriate order preventing and restraining any violations, 18 Pa. C.S.A. § 911(d).

102. A violation of PA COA "shall be deemed to continue so long as the person who committed the violation continues to receive any benefit from the violation." 18 Pa. C.S.A. § 911(c). Accordingly, in addition to enjoining Defendants from any future acquisition, use and investment of funds acquired from this or any similar usury scheme targeting Pennsylvania consumers, any equitable relief ordered against Defendants should also include, and Plaintiff therefore demands, an order divesting and disgorging all income or monies obtained, directly or

indirectly, from activity related to ThinkCash, Plain Green, Great Plains Lending or MobiLoans loans or cash advances, or from any services provided in connection with such loans or cash advances, attributable to Pennsylvania consumers, and invalidating any beneficial interest related to existing loans to Pennsylvania consumers.

COUNT TWO
(Against Think Finance Defendants)
(Violations of Corrupt Organizations Act, 18 Pa. C.S.A. § 911(b)(3))

103. Plaintiff realleges and incorporates by this reference all prior paragraphs of this Complaint.

104. Under 18 Pa. C.S.A. § 911(b)(3), it is unlawful for any person "employed by or associated with" an "enterprise" to conduct or participate, directly or indirectly, in the enterprise's affairs, through a pattern of racketeering activity.

105. The above-described "rent-a-bank" arrangement between TC Loan Service, LLC and FBD and the "rent-a-tribe" arrangements between the Think Finance Defendants and their affiliated lenders, Plain Green, Great Plains Lending and MobiLoans, are each association-in-fact enterprises engaged in commerce within the definition of an "enterprise" in 18 Pa. C.S.A. § 911(h)(3).

106. The Think Finance Defendants are associated with those association-in-fact enterprises and participate directly in the affairs of those enterprises through a pattern of racketeering activity, namely, the usury scheme described above, in which, on multiple occasions, the enterprise has collected money on account of a debt which arose as the result of the lending of money at a rate of interest exceeding 25% per annum. The role of the Think Finance Defendants in these enterprises is multi-faceted, including, but not limited to, some or all of the following: (a) designing, providing and managing the web technology that powers each

of the three tribal lending operations; (b) arranging for the provision of lending capital to each of the three nominal tribal lenders; (c) providing customer databases and leads and other marketing assistance; (d) arranging payment processing services; (e) collecting unpaid loans and arranging the sale of uncollected debt to debt buyers; (f) arranging for the sale of consumer personal information obtained through the various websites and/or (g) coordinating and managing the enterprises.

107. Also playing distinct roles in the associations-in-fact are:

a. Various investors in the loans and cash advances made by the associations-in-fact to Pennsylvania consumers and/or those who provide lending capital for such loans and who, in exchange, earn a significant rate of return on those investments;

b. The payment processors and banks that arrange the electronic transfers from the bank accounts of Pennsylvania consumers to the accounts controlled by the association-in-fact;

c. The person or persons who control the payment postal boxes in Philadelphia;

d. Various debt buyers and/or debt collectors involved in collecting delinquent balances supposedly owed to the association-in-fact by Pennsylvania consumers, including the Weinstein Defendants and Defendant National Credit Adjusters;

e. The Selling Source Defendants, and, possibly, other lead generators who receive or received commissions or referral fees for referring Pennsylvania consumers to the association in fact or who purchase or purchased personal information about Pennsylvania consumers from the associations-in-fact.

108. Through their above-described participation in and conduct of the enterprises, the Think Finance Defendants have violated and are continuing to violate 18 Pa. C.S.A. § 911(b)(3).

109. Plaintiff is expressly authorized to enforce the Corrupt Organizations Act, 18 Pa. C.S.A. § 911(e), by seeking an appropriate order preventing and restraining any violations, 18 Pa. C.S.A. § 911(d).

110. A violation of the PA COA statute "shall be deemed to continue so long as the person who committed the violation continues to receive any benefit from the violation." 18 Pa.

C.S.A. § 911(c). Accordingly, in addition to enjoining Defendants from any future participation in or conduct of this or any similar usury scheme targeting Pennsylvania consumers, any equitable relief ordered against Defendants should also include, and Plaintiff therefore demands, an order divesting and disgorging all income or monies obtained, directly or indirectly, from activity related to ThinkCash, Plain Green, Great Plains Lending or MobiLoans loans or cash advances, or from any services provided in connection with such loans or cash advances, attributable to Pennsylvania consumers, and invalidating any beneficial interest related to existing loans to Pennsylvania consumers.

COUNT THREE
(Against All Defendants)
(Violations of Corrupt Organizations Act, 18 Pa. C.S.A. § 911(b)(4))

111. Plaintiff realleges and incorporates by this reference all prior paragraphs of this Complaint.

112. Under 18 Pa. C.S.A. § 911(b)(4), it is unlawful for any person "to conspire to violate" §§ 911(b)(1) or (b)(3).

113. The Think Finance Defendants conspired to violate 18 Pa. C.S.A. §§ 911(b)(1) and/or (b)(3), in violation of 18 Pa. C.S.A. § 911(b)(4), by entering into the above described rent-a-bank and rent-a-tribe arrangements and facilitating—and profiting from—lending activity that they know is illegal in Pennsylvania.

114. The Selling Source Defendants conspired with the Think Finance Defendants and others, with knowledge of the scheme's purpose and intent, to provide customer leads to the said schemes, conspired to violate 18 Pa. C.S.A. § 911(b)(1) and (3), in violation of 18 Pa. C.S.A. § 911(b)(4).

115. The Weinstein Defendants and Defendant National Credit Adjusters conspired with the Think Finance Defendants and others, with knowledge of the scheme's purpose and intent, to violate 18 Pa. C.S.A. § 911(b)(1) and (3), in violation of 18 Pa. C.S.A. § 911(b)(4), by purchasing and/or collecting usurious loans made to Pennsylvania consumers by the various lending schemes.

116. Plaintiff is expressly authorized to enforce the Corrupt Organizations Act, 18 Pa. C.S.A. § 911(e), by seeking an appropriate order preventing and restraining any violations, 18 Pa. C.S.A. § 911(d).

117. A violation of the PA COA statute "shall be deemed to continue so long as the person who committed the violation continues to receive any benefit from the violation." 18 Pa. C.S.A. § 911(c). Accordingly, in addition to enjoining Defendants from any future agreements to provide services to this or any similar usury scheme targeting Pennsylvania consumers, any equitable relief ordered against Defendants should also include, and Plaintiff therefore demands, an order divesting and disgorging all income or monies obtained, directly or indirectly, from activity related to ThinkCash, Plain Green, Great Plains Lending or MobilLoans loans or cash advances, or from any services provided in connection with such loans or cash advances, attributable to Pennsylvania consumers, and invalidating any beneficial interest related to existing loans to Pennsylvania consumers.

COUNT FOUR
(Against Think Finance, Weinstein and NCA Defendants)
(Violations of FCEUA and the Consumer Protection Law for Collecting Illegal Interest)

118. Plaintiff realleges and incorporates by this reference all prior paragraphs of this Complaint.

119. The Weinstein Defendants and Defendant National Credit Adjusters are persons conducting business within this Commonwealth, acting on behalf of Plain Green, Great Plains Lending and MobiLoans or their successors in interest, and engaging or aiding directly or indirectly in collecting debts owed or allegedly owed to such creditors. Therefore, Defendants are each a "debt collector" within the meaning of the Fair Credit Extension Uniformity Act, ("FCEUA"), 73 P.S. § 2270.1.

120. To the extent that any Think Finance Defendant is itself engaged in collection activity regarding consumer debt supposedly owed by Pennsylvania consumers to ThinkCash, Plain Green, Great Plains Lending or MobiLoans, it, too, is a "debt collector" within the meaning of the Fair Credit Extension Uniformity Act, ("FCEUA"), 73 P.S. § 2270.1.

121. Under the FCEUA, any debt collector that violates any provision of the federal Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 et seq., by that act, commits "an unfair or deceptive act or practice" under Pennsylvania law. 73 P.S. § 2270.4(a).

122. Under the FDCPA, 15 U.S.C. § 1692f(1), a debt collector that collects or attempts to collect "any amount (including any interest, fee, charge, or expense incidental to the principal obligation)" that is prohibited by state law thereby commits an "unfair or unconscionable" act prohibited by the FDCPA. *See Pollice v. National Tax Funding, LP*, 225 F.3d 379, 406-07 (3d Cir. 2000). Accordingly, as provided by 73 P.S. § 2270.4(a), these acts unlawful under the FDCPA also constitute "unfair or deceptive acts or practices" prohibited by the FCEUA.

123. As debt collectors collecting or attempting to collect on loans or advances that are unlawful in Pennsylvania, Defendants have violated and are violating the FCEUA, 73 P.S. § 2270.4(a), every time they collect any interest, fee or charge from a Pennsylvania consumer in excess of the six-percent ceiling established by LIPL.

124. Even if viewed as the "creditor" rather than a "debt collector," the FCEUA prohibits each of the Defendants from collecting interest prohibited by state law. *See* 73 P.S. § 2270.4(b)(6)(i). Thus, whether determined to be engaging in this collection activity as a "debt collector" or "creditor," each of the Defendants are liable for violations of the Consumer Protection Law, 73 P.S. § 201-1 et seq. *See* FCEUA, 73 P.S. § 2270.5(a).

125. The Plaintiff is empowered by 73 P.S. § 201-4 to bring an equitable action to enjoin Defendants' above-described debt-collection practices prohibited by the FCEUA and the UTPCPL, and, as a component of such equitable relief, can obtain an appropriate order of restitution, ordering Defendants to "restore to any person in interest" any money acquired by means of such prohibited practices. 73 P.S. § 201-4.1.

126. The above-described debt-collection violations having been and continuing to be willful, in so far as they are the result of a deliberate scheme to circumvent this and other state's usury laws, being conceived, organized and directed by Defendants, Plaintiff also requests, besides an appropriate order of restitution to benefit the injured Pennsylvania consumers, civil penalties for the benefit of the Commonwealth, in the amount of $1,000 per violation—and, in the case of consumers sixty years of age or older, $3,000 per violation—pursuant to 73 P.S. § 201-8(b).

127. Some of the debt buyers engaged in this illegal activity, including Defendant National Credit Adjusters, have aggravated their willful and illegal collection of usurious debts through abusive collection practices, including false representations that there will be law enforcement action taken in Pennsylvania against the consumer debtors, threatening legal action to collect debts on loan amounts that are illegal in Pennsylvania, falsely representing that debts incurred on loan amounts that are illegal in Pennsylvania can be collected, contacting consumers

at their place of employment and repeated, harassing telephone calls, which practices are themselves violations of the FDCPA and FCEUA. These additional violations constitute an additional aggravating factor warranting civil penalties against such parties.

COUNT FIVE
(Against All Defendants)
(Additional Violations of the Consumer Protection Law for Misrepresentation and Deception)

128. Plaintiff realleges and incorporates by this reference all prior paragraphs of this Complaint.

129. The Think Finance Defendants have designed and are operating so-called "technology platforms" that offer to Pennsylvania consumers illegal usurious loans and credit lines represented falsely as being purely the product of the lawful exercise of tribal sovereignty and being subject to no state law.

130. Such representations are false, misleading or confusing in that (a) they obfuscate the central role played by the Think Finance Defendants in the usury scheme, (b) the loans and credit lines are illegal in Pennsylvania and (c) the legal status of the tribes does not transform illegal products into legal ones under Pennsylvania law.

131. These false, misleading or confusing representations about the characteristics of the so-called tribal loans are unfair and deceptive acts or practices prohibited by 73 P.S. § 201-2(4)(v) and constitute fraudulent or deceptive conduct which creates a likelihood of consumer confusion or misunderstanding, prohibited by 73 P.S. § 201-2(4)(xxi). *See Pa. Dept. of Banking v. NCAS of Delaware, LLC*, 995 A.2d 422, 442-45 (Pa. Commwlth. 2010).

132. Further, Defendants' above-described "rent-a-tribe" scheme is in itself an unfair or deceptive practice because the credit offered is unlawful in Pennsylvania; because they misrepresent the extent to which such credit is actually offered by "another;" and because they

have created a likelihood of confusion or misunderstanding as to the source, sponsorship and approval of these credit products, in violation of 73 P.S. § 201-2(4)(i), (ii), (v) and (xxi).

133. With regard to cash advances made pursuant to MobiLoan credit lines, the Think Finance Defendants' representation that debts incurred by consumers are repaid at an "Annual Percentage Rate of 0%," is, for Pennsylvania borrowers, a misleading representation of the actual cost of using this product, as interpreted by Pennsylvania law. By representing this as "0%" credit, Defendants are systematically representing that MobiLoan credit lines have characteristics and ingredients they do not have, in violation of 73 P.S. § 201-2(4)(v), and are engaging in deceptive conduct which creates a likelihood of consumer confusion or misunderstanding, in violation of 73 P.S. § 201-2(4)(xxi) .

134. In making such false representations in the course of engaging in any collection activity regarding such extensions of credit, Defendants also are violating 15 U.S.C. § 1692e(2)(A) and 73 P.S. §2270.4(a) (if Defendants are "debt collectors"), or 73 P.S. § 2270.4(b)(5)(ii) (if Defendants are "creditors").

135. Each of the "tribal" websites developed and operated by the Think Finance Defendants have been designed to obtain personal information from Pennsylvania residents—including their social security, driver license and bank account numbers—before informing them that loans are not presently being offered to Pennsylvania residents.

136. By obtaining the personal information of Pennsylvania consumers, through the pretense of offering loans they have no intention of making, Defendants are:

a. Causing likelihood of confusion or of misunderstanding as to the source of goods or services, in violation of 73 P.S. § 201-2(4)(ii);

b. Advertising goods or services with intent not to sell them as advertised, 73 P.S. § 201-2(4)(ix);

c. Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding, 73 P.S. § 201-2(4)(xxi).

137. The Selling Source Defendants have also engaged in fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding, in violation of 73 P.S. § 201-2(4)(xxi), by obtaining the personal information of Pennsylvania consumers for resale to third parties while representing to those consumers that their information will be "private" and "secure."

138. Defendants failed to register Think Finance, Inc., Financial U, LLC, Cerastes, LLC, Selling Source, LLC and PartnerWeekly, LLC as foreign or domestic business corporations with the Pennsylvania Department of State Corporations Bureau in accordance with the requirements of the Business Corporation Law, 15 Pa.C.S. § 1101, *et seq*.

139. Defendants failed to register the names "Financial U" and "MoneyMutual" with the Pennsylvania Department of State Corporations Bureau in accordance with the Fictitious Names Act, 54 Pa.C.S. § 301, *et seq*.

140. By conducting business in Pennsylvania without such mandatory registration, Defendants committed unfair and deceptive acts or practices prohibited by Section 201-3 of the Consumer Protection Law by, among other things:

(a) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services, in violation of 73 P.S. § 201-2(4)(ii);

(b) Causing likelihood of confusion or of misunderstanding as to affiliation, connection or association with, or certification by, another, in violation of 73 P.S. § 201-2(4)(iii);

(c) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that he does not have, in violation of 73 P.S. § 201-2(4)(v); and

(d) Engaging in any other fraudulent or deceptive conduct which creates a likelihood of confusion or of misunderstanding, in violation of 73 P.S. § 201-2(4)(xxi).

141. Plaintiff is authorized to seek injunctive relief enjoining such unfair and deceptive practices by 73 P.S. § 201-4.

142. Pursuant to 73 P.S. § 201-4.1 Plaintiff is also authorized to seek an order directing that Defendants restore to Pennsylvania consumers any money acquired by means of such unfair and deceptive practices.

143. In addition, pursuant to 73 P.S. § 201-8(b), Plaintiff is also authorized to seek a finding that Defendants' violations were willful and, in the event such a finding is made, to seek civil penalties of $1,000 per violation, increased to $3,000 per violation for violations committed against consumers 60 years or older,

VI. PRAYER FOR RELIEF

WHEREFORE, the Commonwealth of Pennsylvania respectfully requests that this Honorable Court issue an Order:

A. Declaring Defendants' conduct as described herein above to be in violation of the PA COA; the Consumer Protection Law; and the FCEUA;

B. Permanently enjoining Defendants and all other persons acting on their behalf, directly or indirectly, from violating the PA COA; the Consumer Protection Law; and the FCEUA and any amendments thereto, including placing reasonable restrictions on Defendants' future activities or investments and ordering Defendants to divest themselves of any interest, direct or indirect, in enterprises, as authorized by 18 Pa. C.S § 911(d)(1);

C. Directing Defendants to make full restitution pursuant to Section 201-4.1 of the Consumer Protection Law to all consumers who have suffered losses as a result of the acts and practices alleged in this complaint and any other acts or practices which violate the PA COA; the Consumer Protection Law; and the FCEUA;

D. Directing the Defendants to disgorge and forfeit all profits they have derived as a result of their violation of the PA COA and the Consumer Protection Law, as set forth in this Complaint;

E. Directing Defendants to pay to the Commonwealth civil penalties of One Thousand and 00/100 Dollars ($1,000.00) for each instance of a violation of the Consumer Protection Law, and Three Thousand and 00/100 Dollars ($3,000.00) for each instance of a violation of the Consumer Protection Law involving consumers aged sixty (60) or older as victims;

F. Requiring Defendants to pay the Commonwealth's investigative and litigation costs in this matter;

G. Invalidating any beneficial interest in existing consumer debt purported to be owed by Pennsylvania consumers;

H. In the event Defendants have issued any reports to credit bureaus regarding obligations they claim to be owed by Pennsylvania consumers, directing Defendants to notify credit bureaus to remove all such references to ThinkCash, First Bank of Delaware, Plain Green, Great Plains Lending or MobiLoans; and

I. Granting such other general, equitable and/or further relief as the Court deems just and proper.

Respectfully submitted,

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Date: 11-13-14

By: _____

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Special Counsel to the Commonwealth

VERIFICATION

I, John D. Gaskill, hereby state that I am an Agent with the Pennsylvania Office of Attorney General, Bureau of Consumer Protection, Philadelphia Regional Office and am authorized to make this verification on behalf of the Plaintiff in the within action. I hereby verify that the facts set forth in the foregoing Complaint are true and correct to the best of my knowledge or information and belief. I understand that the statements made therein are made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsifications to authorities.

Date: 11/13/14

JOHN D. GASKILL
Consumer Protection Agent

EXHIBIT A

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

In the Matter of FIRST BANK OF DELAWARE WILMINGTON, DELAWARE (INSURED STATE NONMEMBER BANK)	STIPULATION AND CONSENT TO THE ISSUANCE OF AN ORDER TO CEASE AND DESIST, ORDER FOR RESTITUTION, AND ORDER TO PAY FDIC-07-256b FDIC-07-257k

Subject to the acceptance of this STIPULATION AND CONSENT TO THE ISSUANCE OF AN ORDER TO CEASE AND DESIST, ORDER FOR RESTITUTION, AND ORDER TO PAY (CONSENT AGREEMENT) by the Federal Deposit Insurance Corporation (FDIC), it is hereby stipulated and agreed by and between a representative of the Legal Division of the FDIC and First Bank of Delaware, Wilmington, Delaware (Respondent) as follows:

1. The Respondent has received a NOTICE OF CHARGES FOR AN ORDER TO CEASE AND DESIST AND FOR RESTITUTION; NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTIES; FINDINGS OF FACT AND CONCLUSIONS OF LAW; ORDER TO PAY; AND NOTICE OF HEARING (collectively, NOTICE) issued by the FDIC on June 10, 2008 detailing the violations of law and/or regulations and unsafe or unsound banking practices alleged to have been committed by the Respondent for which an ORDER TO CEASE AND DESIST, ORDER FOR RESTITUTION, AND ORDER TO PAY (ORDER) may issue against the Respondent pursuant to sections 8(b) and 8(i)(2) of the Federal Deposit Insurance Act (Act), 12 U.S.C. §§ 1818(b) and 1818(i)(2).

2. Respondent has been further advised of its right to a

hearing on the charges under sections 8(b) and 8(i)(2) of the Act, 12 U.S.C. §§ 1818(b) and 1818(i)(2), and the FDIC Rules of Practice and Procedure, 12 C.F.R. Part 308.

3. The Respondent is represented by counsel.

4. The Respondent admits that the FDIC is the appropriate Federal banking agency to maintain this enforcement action pursuant to section 3(q)(3) of the Act, 12 U.S.C. § 1813(q)(3), and that the FDIC has jurisdiction over it and the subject matter of this proceeding.

5. The FDIC has reason to believe that the Respondent engaged in unsafe or unsound banking practices and violations of law and/or regulations in connection with the operation and oversight of the Respondent's National Consumer Products Division, including, but not limited to, the lending programs offered, marketed, administered, processed and/or serviced by third-parties pursuant to the agreements set forth in Exhibits "A" and "B" attached hereto. Specifically, the FDIC has reason to believe the Respondent engaged in violations of:

(a) section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1) (Section 5);

(b) section 205.10 of Regulation E of the Board of Governors of the Federal Reserve System, 12 C.F.R. § 205.10;

(c) the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 *et seq.*;

(d) Part 332 of the FDIC Rules and Regulations, 12 C.F.R. Part 332, implementing the consumer privacy safeguards of the Gramm-Leach-Bliley Act, 15 U.S.C. §§ 6801 *et seq.*;

(e) the Equal Credit Opportunity Act, 15 U.S.C. §§ 1691 *et seq.* and Regulation B of the Board of Governors of the Federal Reserve System, 12 C.F.R. Part 202 *et seq.*;

(f) the E-Sign Act, 15 U.S.C. §§ 7001 *et seq.*; and

(g) the CAN-SPAM Act of 2003, 15 U.S.C. §§ 7701 *et seq.*

6. In the interest of compromise and settlement, the Respondent, solely for the purpose of this proceeding pursuant to sections 8(b) and 8(i)(2) of the Act, 12 U.S.C. §§ 1818(b) and 1818(i)(2), and without admitting or denying any of the unsafe or unsound banking practices or violations of law or regulations as set forth in paragraph 5 of this CONSENT AGREEMENT, hereby consents and agrees to the issuance of the ORDER by the FDIC, and further consents and agrees to pay a civil money penalty in the amount of $304,000 to the Treasury of the United States pursuant to the provisions of section 8(i)(2) of the Act, 12 U.S.C § 1818(i)(2).

7. The Respondent further agrees to pay the civil money penalty assessed by delivering to the FDIC a certified check payable to the Treasury of the United States in the amount of $304,000 upon execution of this CONSENT AGREEMENT. Upon issuance of the ORDER by the FDIC, the FDIC shall remit the certified check to the Treasury of the United States.

8. In the event the FDIC accepts this CONSENT AGREEMENT and issues the ORDER, Respondent agrees not to seek or accept indemnification for the civil money penalty assessed and paid in this matter.

9. Paragraph I of the ORDER provides that the Respondent shall terminate certain third-party lending programs and third-party providers that exhibit the characteristics of a "Rent-a-BIN" or "Rent-a-ICA" arrangement. Exhibit "C" attached hereto lists certain third parties that provide services directly to the Respondent. The FDIC and Respondent hereby agree that these third-parties are not subject to the termination provision set forth in paragraph I of the ORDER.

10. The Respondent further stipulates and agrees that such ORDER will be deemed to be an order which has become final under the Act, and that such ORDER shall become effective upon its issuance by the FDIC and fully enforceable by the FDIC pursuant to the provisions of the Act subject only to the conditions of paragraphs 11 and 12 of this CONSENT AGREEMENT.

11. In the event the FDIC accepts this CONSENT AGREEMENT and issues the ORDER, it is agreed that no action will be taken by the FDIC against the Respondent to enforce the ORDER in the United States District Court unless the Respondent, its affiliates, their successors or assigns, or their respective directors, officers, employees, and agents, has violated or is about to violate any provision of such ORDER.

12. (a) In the event the FDIC accepts this CONSENT AGREEMENT and issues the ORDER, and except for any claims against any of the CompuCredit Parties, as hereinafter defined, this will be a release by the FDIC of the Respondent, its affiliates, their successors and assigns, and their respective directors, officers, employees, and agents (collectively, the Bank Parties) with

respect to the violations of Section 5 identified by the FDIC arising out of or related to the Tribute Little Rock, Imagine Little Rock, Purpose Advantage, and Embrace credit card programs or relating in any manner to the FDIC's Report of Examination dated April 25, 2007 and/or the FDIC's Compliance Report of Examination as of April 6, 2006 and related investigations, in each case to the effective date of the ORDER (Release Violations). The CompuCredit Parties shall mean CompuCredit Corporation, Atlanta, Georgia (CompuCredit), its officers, directors, employees, subsidiaries, successors and assigns, and any party having a contract with CompuCredit or providing services to or for the benefit of CompuCredit, with the exception of any of the Bank Parties. In the event the FDIC accepts this CONSENT AGREEMENT and issues the ORDER, except for any actions against any of the CompuCredit Parties, it is agreed that the FDIC shall not initiate any further legal action, except an action to enforce the terms of the ORDER, against any of the Bank Parties based on the Release Violations. Neither this CONSENT AGREEMENT nor the ORDER, if issued, shall constitute a release of any of the CompuCredit Parties.

(b) Except as provided herein, the Respondent agrees and acknowledges that the terms and provisions of this CONSENT AGREEMENT and the acceptance by the FDIC of this CONSENT AGREEMENT and the issuance of the ORDER shall not in any way bar, estop or otherwise prevent the FDIC from taking any other action against any of the Bank Parties, or any of the Respondent's current or former institution-affiliated parties.

(c) The FDIC expressly reserves all rights against the CompuCredit Parties. Nothing in this CONSENT AGREEMENT or the ORDER shall require the FDIC or any other party to reduce, compromise, or otherwise limit any claims against any of the CompuCredit Parties.

(d) Nothing in this CONSENT AGREEMENT or the ORDER shall require the FDIC or any other party to reduce, compromise, or otherwise limit any claims because of any contractual or other commitments of the Bank to indemnify, defend, or hold harmless any of the CompuCredit Parties.

13. The FDIC and the Respondent agree that entering into this CONSENT AGREEMENT shall not constitute an admission of liability by the Respondent for the transactions and practices that form the basis of the ORDER.

14. The Respondent hereby agrees and acknowledges that the terms and provisions of this CONSENT AGREEMENT and the acceptance by the FDIC of this CONSENT AGREEMENT and the issuance of the ORDER shall not bar, estop or otherwise prevent any other federal or state agency or department from taking any action against any of the Bank Parties, or any of the Respondent's current or former institution-affiliated parties. Except as expressly provided herein, the Respondent reserves all of its rights with respect to the assertion of any claims, in any form, by any individual, or federal or state agency, department or entity.

15. The Respondent hereby waives:

(a) all defenses and counterclaims of any kind to the NOTICE and in this proceeding;

(b) a public hearing for the purpose of taking evidence on such alleged charges;

(c) the filing of proposed findings of fact and conclusions of law;

(d) the issuance of a recommended decision by an administrative law judge;

(e) the filing of exceptions and briefs with respect to such recommended decision; and

(f) judicial review of the ORDER as provided by section 8(h) of the Act, 12 U.S.C. § 1818(h), or any other challenge to the validity of the ORDER.

Dated this 3d day of October, 2008.

FDIC
LEGAL DIVISION

BY: _____
A.T. Dill, III
Assistant General Counsel

FIRST BANK OF DELAWARE
WILMINGTON, DELAWARE

BY: _____
Harry D. Madonna, Esq.
Director

_____
William W. Batoff
Director

_____
Alonzo J. Primus, CPA
Director

_____
Lyle W. Hall Jr., CPA
Director

_____
Harris Wildstein, Esq.
Director
Comprising the Board of
Directors of
First Bank of Delaware
Wilmington, Delaware

EXHIBIT A

1. Amended and Restated Affinity Card Agreement dated as of March 13, 2006 between CompuCredit Corporation and First Bank of Delaware;

2. Amended and Restated Installment Loan Marketing and Servicing Agreement dated as of September 20, 2006 (made effective as of August 23, 2006) between Noble Consumer Lending Services, LLC and First Bank of Delaware;

3. Credit Card Marketing and Servicing Agreement dated as of August 31,2005 between First Bank of Delaware and CARDS Credit Services, LLC;

4. Credit Card Marketing Agreement dated as of February 28, 2006 by and among Continental Finance Company, LLC, Continental Sub-Prime Purchasing, LLC and First Bank of Delaware, and the Amended and Restated Receivables Purchase Agreement dated as of May 17, 2006 by and among First Bank of Delaware, Continental Finance Company, LLC, and Continental Sub-Prime Purchasing, LLC;

5. Credit Card Marketing Agreement dated as of January 18, 2007 between Accucredit Associates, LLC and First Bank of Delaware and the Receivables Purchase Agreement dated January 17, 2007 between Accucredit Associates, LLC and First Bank of Delaware;

6. Credit Card Marketing Agreement dated as of September 29, 2006 between E-Duction, Inc. and First Bank of Delaware and the Receivables Purchase Agreement dated September 29, 2006 between First Bank of Delaware and E-Duction Receivables Funding I, LLC;

7. Installment Loan Marketing and Servicing Agreement dated as of November 1, 2006 between Avante Teladvance, Inc. d/b/a Check 'n Go Online and First Bank of Delaware;

8. Consumer Loan Marketing, Origination, and Sale Agreement dated as of January 15, 2007 between CashCall, Inc. and First Bank of Delaware;

9. Marketing and Servicing Agreement dated as of January 23, 2007 between TC Loan Service, LLC d/b/a ThinkCash and First Bank of Delaware and the Master Participation Agreement dated as of January 23, 2007 between TC Financial, LLC and First Bank of Delaware;

10. Program Administration Agreement dated as of November 1, 2006, between First Bank of Delaware and Fortris Financial, LLC and PF Participation Funding Trust; Master Participation Agreement dated as of November 1, 2006 between First Bank of Delaware and Fortris Financial, LLC and PF Participation Funding Trust; and the Sub-Servicing Agreement dated as of November 1, 2006 between Fortris Financial, LLC and First Bank of Delaware;

11. Premium Finance Program Agreement dated as of August 23, 2006 between First Delaware Services LLC and First Bank of Delaware;

12. Processor Sponsorship and Services Agreement dated as of April 17, 2006 between Card Express, Inc. and First Bank of Delaware;

13. Processor Sponsorship and Services Agreement dated as of August 26, 2005 between TSYS Prepaid, Inc. and First Bank of Delaware;

14. Processor Sponsorship and Services Agreement dated as of April 5, 2006 between ECOM Financial Corp. and First Bank of Delaware;

15. Program Management Agreement dated July 30, 2004 between Financial Services International, Inc. and First Bank of Delaware;

16. Processor Servicing Agreement dated as of October 5, 2004 between Lynk Systems, Inc. and First Bank of Delaware;

17. Bank Sponsorship and Services Agreement dated as of January 3, 2007 between Payoneer, Inc. and First Bank of Delaware.

EXHIBIT B

1. Amended and Restated Affinity Card Agreement dated as of March 13, 2006 between CompuCredit Corporation and First Bank of Delaware.

EXHIBIT C

1. Marketing provider Selling Source, Inc.
2. Marketing provider Quasar Corporate Services, Inc.
3. Credit and debit card processor TSYS Inc.
4. Credit and debit card processor First Data Resources
5. Credit and debit card processor Fidelity National Information Services
6. Credit and debit card processor Ecommlink
7. Credit and debit card processor I2c Inc.
8. Customer service and collection provider First Center, LLC
9. Customer service and collection provider Cardworks Inc.
10. Credit scoring provider Transunion
11. Credit scoring provider DataX
12. Data hosting facilities provider Hosted Solutions
13. Data hosting facilities provider Rackspace
14. Scoring and credit analysis provider Austin Logistics
15. Scoring and credit analysis provider Scoring Solutions
16. Marketing provider Tailwind Marketing, LLC
17. Technology provider Protective Draft Credit, LLC
18. Software provider TC Decision Sciences, LLC
19. Marketing provider Data Processing Systems, LLC
20. Loan servicing provider Capture Resources, LLC

EXHIBIT B

Gmail by Google

REDACTED

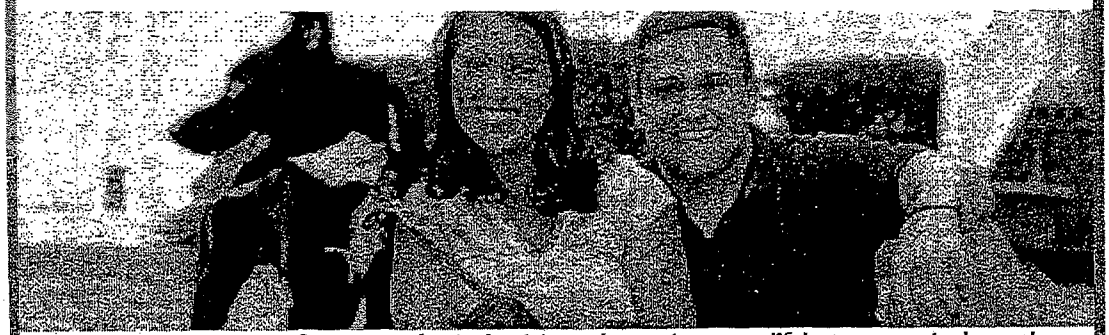
Payday Loan Information for

1 message

ThinkCash <info@ourfinancialtimes.com> **Wed, Jul 28, 2010 at 11:37 AM**
Reply-To: info@ourfinancialtimes.com
To: REDACTED

Cant view this email click here to view in a web browser.

ThinkCash
by FIRST BANK OF DELAWARE



You can depend on us for convenient short term loans to cover life's unexpected needs. We invite you to apply anytime. Get from $250 up to $2,500 with no paperwork*, no standing in line, and no hassle*!

Just apply at www.thinkcash.com and you can be approved in seconds, and have cash in your account as soon as the next banking day*.

Get Started Today!

We're here when you need us, and invite you to rejoin the thousands of customers who have received the help they need from First Bank of Delaware.

Your ThinkCash & First Bank of Delaware Teams

support@FBDLoans.com
(866) 420-7157
M-F: 8am to 10pm ET
Sat: 9am to 5pm ET
First Bank of Delaware
Customer Support
PO Box 37727
Philadelphia, PA 19101

EXHIBIT C

ThinkCash

plain green

Welcome back!

As a returning customer, we have some *exciting news* to share. ThinkCash customers are now to be serviced at PlainGreenLoans.com.

Here are a few things you need to know:

1. You don't need to take any action
2. Continue to use your ThinkCash email address and password
3. From now on, just login to PlainGreenLoans.com to view your account

You will be redirected to the site in 10 seconds, or you can click below.

Who is Plain Green Loans? Why is ThinkCash no longer servicing my account? Click here to view answers to frequently asked questions.

[1]

ThinkCash plain green

WHY IS THINKCASH NO LONGER SERVICING MY LOAN?

ThinkCash is no longer offering loans. Instead, Plain Green Loans is here to help you with the same prompt, friendly customer service you've come to expect.

WHO IS PLAIN GREEN LOANS?

Plain Green Loans offers installment loans up to $2,500 to cover life's unexpected expenses. We service thousands of customers just like you. To learn more, visit PlainGreenLoans.com.

WHAT DO I NEED TO DO TO ACCESS MY ACCOUNT?

It's easy - you can access your loan details by logging in to PlainGreenLoans.com using the same email address and password you used for your ThinkCash account.

IF I STILL HAVE SOME QUESTIONS ON MY LOAN, WHO DO I CONTACT?

Plain Green Loans is here to assist you with any questions! You can email support@plaingreenloans.com or call (866) 420-7157. Customer support representatives are available Monday - Friday 8am to 10pm ET, and on Saturdays from 9am to 5pm ET.

plain green

How It Works | Loan Cost & Terms | My Account | Contact Us

Been here before? login

GET STARTED TODAY!

First Name

Last Name

E-mail Address

State Promo Code

Apply NOW

have a question?
call 1.866.420.7157

HOW DOES IT WORK? WHY A PLAIN GREEN LOAN? PLAIN GREEN LOAN vs. LATE FEES

Our cash loans are as easy as 123

GET STARTED TODAY > >

1. apply online
With our plain and simple online application, it's quick, secure and confidential.

2. get an answer in seconds*
No waiting and no guessing. We'll tell you how much you're approved for in moments.

3. get cash as soon as tomorrow!
If approved, your loan funds will be deposited as early as the next business day (for transactions completed by 6 p.m. ET)*.

FAQs | About Us | Financial Tips | Security | Privacy | Disclosures | Site Map

[1]

*Plain Green, LLC is a tribal lending entity wholly owned by the Chippewa Cree Tribe of the Rocky Boy's Indian Reservation, Montana, a sovereign nation located within the United States of America, and is operating within the Tribe's Reservation. Applications processed and approved before 6 p.m. ET are typically funded the next business day. In some cases, we may not be able to verify your application information and may ask you to provide certain documents. Maximum loan amount for initial loan is $1,000.00. Refer to Loan Cost & Terms for additional details. Complete disclosures of APR, fees and payment terms are provided within the Loan Agreement.

Please note: This is an expensive form of credit. Plain Green loans are designed to help you meet your short-term borrowing needs. Appropriate emergencies might be a car repair, medical care for you or your family, or travel expenses in connection with your job. This service is not intended to provide a solution for longer-term credit or other financial needs. Alternative forms of credit may be less expensive and more suitable for your financial needs. Alternative sources you could consider include: a credit card cash advance; personal loans; home equity line of credit; existing savings; or borrowing from a friend or relative.

EXHIBIT D

THIS AGREEMENT SHALL NOT CONSTITUTE A "NEGOTIABLE INSTRUMENT"

CONSUMER LOAN AGREEMENT
LOAN NUMBER: [redacted]

Plain Green, LLC
93 Mack Road, Suite 600
PO Box 270
Box Elder, MT 59521

BORROWER'S INFORMATION:

Lender: Plain Green, LLC

Borrower's Name:
[redacted]

Origination Date: 5/25/2012
This is the date you signed and submitted this loan agreement to the lender.

Borrower's ID:
[redacted]

Effective Date: 5/30/2012
The date you begin to pay interest on the loan.

Borrower's Address:
[redacted] Ave
[redacted], PA [redacted]

Final Payment Due Date:
7/19/2013

Borrower's Bank and Account Number for ACH Transfers (the "Bank Account"):
[redacted]

This Loan Agreement (the "Agreement") is subject solely to the exclusive laws and jurisdiction of the Chippewa Cree Tribe of the Rocky Boy's Indian Reservation, Montana ("Chippewa Cree"). In this Agreement, "you" and "your" refer to the Borrower identified above. "We", "us", "our", and Lender refer to **Plain Green, LLC**, a lender authorized by the laws of the Chippewa Cree. "Loan" means this consumer installment loan. By executing this Agreement, you hereby acknowledge and consent to be bound to the terms of this Agreement, consent to the sole subject matter and personal jurisdiction of the Chippewa Cree Tribal Court, and further agree that no other state or federal law or regulation shall apply to this Agreement, its enforcement or interpretation.

TRUTH IN LENDING DISCLOSURES: The disclosures below are provided to you so that you may compare the cost of this loan to other loan products you might obtain in the United States. Our inclusion of these disclosures does not mean that we or any subsequent holder of this Agreement consent to application of state or federal law to us, to the Loan, or this Agreement.

TRUTH-IN-LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	**FINANCE CHARGE** The dollar amount the credit will cost you.	**Amount Financed** The amount of credit provided to you or on your behalf.	**Total of Payments** The amount you will have paid after you have made all payments as scheduled.
279.22%	**$2,715.47**	**$1,200.00**	**$3,915.47**

Your payment schedule (the "Payment Schedule") will be:

Number of Payments	Amount of Payments	When Payments Are Due (each, a "Payment Due Date")
29	$130.53	6/8/2012, 6/22/2012, 7/6/2012, 7/20/2012, 8/3/2012, 8/17/2012, 8/31/2012, 9/14/2012, 9/28/2012, 10/12/2012, 10/26/2012, 11/9/2012, 11/23/2012, 12/7/2012, 12/21/2012, 1/4/2013, 1/18/2013, 2/1/2013, 2/15/2013, 3/1/2013, 3/15/2013, 3/29/2013, 4/12/2013, 4/26/2013, 5/10/2013, 5/24/2013, 6/7/2013, 6/21/2013, 7/5/2013
1	$130.10	7/19/2013

PREPAYMENT: If you pay off the Loan early, you will not have to pay a penalty, and you may be entitled to a refund of part of the finance charge.

SECURITY INTEREST: If you have chosen the ACH Debit Authorization option, your ACH authorization is security for this loan.

See the Loan Agreement for any additional information about nonpayment, default, any required repayment in full before the scheduled date and prepayment penalties.

Itemization of Amount Financed:	**$1,200.00**
Amount given to you directly:	**$1,200.00**

PROMISE TO PAY: You promise to pay to the order of Lender or any registered assignee of this Agreement the principal sum of $1,200.00 plus interest from the date of this Loan at the rate of 279.9915% per year until this Loan is repaid in full. You promise to pay these amounts on the dates listed in the Payment Schedule above. You also promise to pay to us or to any subsequent holder of this Agreement any other fees provided for under this Agreement.

PAYMENTS: You promise to pay the amount of the Total of Payments shown above on or before the Payment Due Date. If you have chosen the ACH Debit Authorization option, you must make arrangements with us by 5:00 PM Eastern Time, on the business day prior to the Payment Due Date, so an authorized ACH entry is not initiated. If you choose to mail a payment, (i) all payments shall be mailed to PO Box 270, Box Elder, MT 59521, (ii) payment must reach this address by the Payment Due Date, and (iii) you should notify us prior to 5:00 PM Eastern Time the business day prior to Payment Due Date so an authorized ACH entry is not initiated prior to receipt of the payment. In addition, you agree that we cannot make and have not made the Loan contingent upon your obtaining any other product or service from us or anyone else. If you have chosen to receive your loan proceeds via check please mail your payments by the dates indicated within "When Payments Are Due" section of this Agreement to 93 Mack Road, Suite 600, PO Box 270, Box Elder, MT 59521.

CALCULATION OF INTEREST AND PAYMENTS: The interest charged hereunder is calculated using the simple interest method and has been computed upon the basis that you will pay all installments on the scheduled Payment Dates. Interest shall not be payable in advance or compounded.

WHEN YOU BEGIN PAYING INTEREST: You begin to pay us interest on the Loan on the date the proceeds of the Loan are deposited into your Bank Account, or, if you elect to receive Loan proceeds by check through the mail, the date we issue the check (the "Effective Date"). You will be charged interest on the unpaid amount of the Loan each day from the Effective Date until the Loan is paid in full. In calculating your payments, we have assumed you will make each payment on the day and in the amount due. If any payment is received after the payment due date, you must pay any additional interest that accrues after such date. If any payment is made before the payment due date, the interest due will be reduced. The amount of this decrease or increase in interest due will be reflected in the final payment that is due. Time is of the essence, which means that there are no grace periods for when payments must be made. If any payment is due on a day on which your bank is not open, then such payment shall be due on the next day upon which your bank is open.

VERIFICATION: You authorize us to verify the information you provided to us in connection with your Loan application. You give us consent to obtain information about you from a consumer reporting agency or other sources. We reserve the right to withhold funding of this Loan, at any time prior to disbursement, to allow us to verify the information you have provided to us.

ACH AUTHORIZATION TO CREDIT BANK ACCOUNT: Unless the proceeds of this Agreement are applied to any outstanding loan balance that you may owe to us, and you do not elect to receive the Loan proceeds by check through regular mail, you authorize us and our agents to initiate an Automated Clearing House ("ACH") credit entry to your Bank Account to disburse the proceeds of this Loan.

ACH AUTHORIZATION TO DEBIT BANK ACCOUNT: Unless you chose to mail to us a check or money order as payment for this Loan, you authorize us, and our agents, successors, employees, and registered assigns to withdraw

money from your Bank Account for each payment you owe us, including any returned payment charges and the total amount you owe if you do not pay us when you agreed in this Agreement. You agree we can withdraw money from your Bank Account (called an 'ACH debit entry') on each scheduled payment date shown on the Payment Schedule above. This right to withdraw money from your Bank Account will remain in full force until the earlier of the following occurs: (i) you pay us everything that you owe us under this Agreement or (ii) you tell us or the institution holding your Bank Account (the "Paying Bank") that we can no longer withdraw money from your Bank Account in enough time to let the Paying Bank or us stop taking the money out of your Bank Account. You acknowledge and agree that this ACH Authorization to Debit Bank Account inures to the benefit of Plain Green, LLC, its affiliates, agents, employees, successors, and registered assigns.

NOTICE OF VARYING AMOUNTS: For those customers who have chosen the ACH Debit Authorization, please note that you have the right to receive notice of all withdrawals from your Bank Account by an ACH Debit that vary in amount. However, by agreeing to let us withdraw the money from your Bank Account, you agree we only have to tell you the range of withdrawals that we can make. The range of withdrawals will be either an amount equal to your installment payment or an amount equal to the outstanding balance under the Loan (which may be greater than or less than an installment payment based upon your payment history), plus a returned payment fee as specified below. For any withdrawal outside of this specified range, we will send you a notice. Therefore, by signing this Agreement below, you are choosing to only receive notice when a withdrawal exceeds the amount in the specified range. You authorize us to vary the amount of the amount of any withdrawal as needed to repay installments due on the Loan as modified by any partial prepayments you make.

TERMINATING ACH DEBIT AUTHORIZATION: For those customers who have chosen the ACH Debit Authorization, the ACH debit authorization will remain in full force and effect until the earlier of the following occurs: (i) you satisfy all of your payment obligations under this Agreement or (ii) you tell us or the Paying Bank that we can no longer withdraw money from your Bank Account in enough time to let the Paying Bank or us stop taking the money out of your Bank Account. Terminating your ACH authorization does not relieve you of your obligation to pay your Loan in full.

REMOTELY CREATED CHECK AUTHORIZATION: If you terminate any previous ACH Debit Authorization you provided to us or we do not receive a payment by the Payment Due Date, you authorize us and our agents, successors and assigns to create and submit remotely created checks for payment to us in the amount of each payment owing under this Agreement, including any returned payment charges or other amounts owing to us upon acceleration of this Loan as a result of your Default. Your typed signature below shall constitute your authorization to us to authenticate remotely created checks, which are also known as demand drafts, telechecks, preauthorized drafts, or paper drafts. If you believe we charged your Bank Account in a manner not contemplated by this authorization, then please contact us. You authorize us to vary the amount of any preauthorized payment by remotely created check as needed to repay installments and any other payments due under this Agreement.

PAYMENT BY CHECK OR MONEY ORDER: You may pay each payment owing under this Agreement by check or money order.

CHECK CONVERSION NOTIFICATION: When you provide a check as payment, you agree we can either use information from your check to make a one-time electronic withdrawal from your Bank Account or to process the payment as a check transaction. When we use information from your check to make a withdrawal from your Bank Account, funds may be withdrawn from your Bank Account as soon as the same day we receive your payment and you will not receive your check back from your financial institution. For questions, please call our customer service phone number: (866) 420-7157.

PAYMENT APPLICATION: Lender will apply your payments in the following order: (1) to any fees due, (2) to earned but unpaid interest, and (3) to principal amounts outstanding.

SECURITY INTEREST DISCLOSURE: To the extent that your agreement to have us withdraw money from your Bank Account is deemed a security interest under the law of the Chippewa Cree Tribe, you hereby grant to us a security interest in such withdrawal authorization using the ACH system.

PREPAYMENT: You may prepay all or part of the amount you owe us at any time without penalty. If you do so, you must pay the interest accrued on your Loan and all other amounts due up to the date of your payment.

REFINANCE POLICY: We, in our sole discretion, will determine whether your Loan may be refinanced.

RETURNED PAYMENT FEE: If any payment made by you on this Loan is not honored or cannot be processed for any reason, including not enough money in your Bank Account, you agree to pay us a fee of $30.00. You authorize us and our agents to make a one-time withdrawal from your Bank Account to collect this fee, if you have also selected the ACH Debit Authorization. Your financial institution may also impose a fee.

DEFAULT: You will have broken your promise you made to us in this Agreement (each a "Default") if: (a) you provide false or misleading information about yourself, your employment, or your financial condition prior to entering into this Agreement, (b) if you fail to make a payment by the due date or if your payment is returned to us for any reason, or (c) if you file bankruptcy or become a debtor under the Federal Bankruptcy Laws.

CONSEQUENCES OF DEFAULT: Should you not do the things you agreed to under this Agreement, we may, at our option, do any one or more of the following things: (a) require you to immediately pay us everything you owe us; (b) withdraw money from your Bank Account that was not available when we tried to withdraw it at an earlier time, if you have selected the ACH Debit Authorization; and (c) pursue all legally available means to collect what you owe us. In the event we declare all amounts owed under this Agreement immediately due because you did not pay us, then you further authorize us and our agents to withdraw money from your Bank Account in the full amount due under this Agreement, if you have selected the ACH Debit Authorization. By choosing any one of more of these, we do not give up our right to use another way to collect the money you owe us later. We may decide not to use any of the ways described above to get

back the money that you owe us. If so, we do not give up our right to consider what you said you would do to make payment(s) and, if you fail to make those payment(s), we will consider you to be in Default.

CREDIT REPORTING: We may report information about your Loan to credit bureaus. Late payments, missed payments, or other things you do may be reflected on your credit report.

RIGHT TO CANCEL: YOU MAY CANCEL THIS LOAN, WITHOUT COST TO YOU OR FURTHER OBLIGATION TO US, BY TELEPHONING TOLL-FREE 866-420-7157 BY 5:30 P.M. EASTERN TIME ON THE FIRST BANKING DAY AFTER THE EFFECTIVE DATE. YOU CAN CANCEL ONLY IF YOU SEND US BACK THE MONEY FROM THE LOAN WE PUT IN YOUR BANK ACCOUNT, RETURN THE LOAN PROCEEDS CHECK MAILED TO YOU OR WE ARE ABLE TO WITHDRAW THE AMOUNT OF YOUR LOAN FROM YOUR BANK ACCOUNT.

BORROWER'S BANK CHARGES: You will not hold us or our agents responsible for any fees you must pay as a result of any check or withdrawal request being presented at your bank in connection with this Agreement.

TRANSFER OF RIGHTS AND MAINTENANCE OF REGISTER: We may assign or transfer this Agreement, or any of our rights hereunder, to another person or entity without notice or consent from you. Regardless of any transfer, this Agreement shall remain exclusively subject to the laws and courts of the Chippewa-Cree Tribe. Plain Green, LLC, (the "Registrar") acting solely for this purpose as your irrevocably appointed agent, shall maintain at an office located in the United States a copy of each assignment of this Agreement delivered to it and a register (the "Register") for the recordation of the names and addresses of the original owner and assignees, and the amounts of principal and interest owing to each from time to time pursuant to the terms of this Loan. The Register may be in electronic form. The entries of the Register shall be conclusive, and you, the Registrar, the Lender and all of its assignees shall treat each person whose name is recorded in the Register pursuant to these terms as the owner of such principal and interest payments for all purposes of this Agreement, notwithstanding notice to the contrary. The name of the owner in the Register shall be available to you by written request to the Registrar at any reasonable time and from time to time upon reasonable prior notice. In addition to the foregoing, the Registrar shall include on the Register the names and addresses of those persons holding participation interests in the Loan of which it has notice. Any fees and expenses of the Registrar for its services shall be charged to the registered owner of the loan and not to you.

WAIVER OF JURY TRIAL AND ARBITRATION.

RIGHT TO OPT OUT. IF YOU DO NOT WISH YOUR ACCOUNT TO BE SUBJECT TO THIS AGREEMENT TO ARBITRATE, YOU MUST ADVISE US IN WRITING AT 93 MACK ROAD, SUITE 600, PO BOX 270, BOX ELDER, MT 59521 OR VIA E-MAIL AT SUPPORT@PLAINGREENLOANS.COM. YOU MUST CLEARLY PRINT OR TYPE YOUR NAME AND ACCOUNT NUMBER OR SOCIAL SECURITY NUMBER AND STATE THAT YOU REJECT ARBITRATION. YOU MUST GIVE WRITTEN NOTICE; IT IS NOT SUFFICIENT TO TELEPHONE US. WE MUST RECEIVE YOUR LETTER OR E-MAIL WITHIN SIXTY (60) DAYS AFTER THE DATE YOUR LOAN FUNDS OR YOUR REJECTION OF ARBITRATION WILL NOT BE EFFECTIVE. IN THE EVENT YOU OPT OUT OF THIS AGREEMENT TO ARBITRATE, ANY DISPUTES HEREUNDER SHALL NONETHELESS BE GOVERNED UNDER THE LAWS OF THE CHIPPEWA CREE TRIBE AND MUST BE BROUGHT WITHIN THE COURT SYSTEM THEREOF.

PLEASE READ THIS PROVISION OF THE AGREEMENT CAREFULLY. Unless you exercise your right to opt-out of arbitration in the manner described above, any dispute you have with Lender or anyone else under this Agreement will be resolved by binding arbitration. Arbitration replaces the right to go to court, including the right to have a jury, to engage in discovery (except as may be provided in the arbitration rules), and to participate in a class action or similar proceeding. In arbitration, a dispute is resolved by an arbitrator instead of a judge or jury. Arbitration procedures are simpler and more limited than court procedures. Any arbitration will be limited to addressing your dispute individually and will not be part of a class-wide or consolidated arbitration proceeding.

Agreement to Arbitrate. You agree that any Dispute (defined below) will be resolved by arbitration in accordance with Chippewa Cree tribal law.

Arbitration Defined. Arbitration is a means of having an independent third party resolve a Dispute. A "Dispute" is any controversy or claim between you and Lender, its marketing agent, collection agent, any subsequent holder of this Note, or any of their respective agents, affiliates, assigns, employees, officers, managers, members or shareholders (each considered a "Holder" for purposes of this Agreement). The term Dispute is to be given its broadest possible meaning and includes, without limitation, all claims or demands (whether past, present, or future, including events that occurred prior to the opening of this Account), based on any legal or equitable theory (tort, contract, or otherwise), and regardless of the type of relief sought (i.e. money, injunctive relief, or declaratory relief). A Dispute includes, by way of example and without limitation, any claim arising from, related to or based upon marketing or solicitations to obtain the loan and the handling or servicing of your account whether such Dispute is based on a tribal, federal or state constitution, statute, ordinance, regulation, or common law, and including any issue concerning the validity, enforceability, or scope of this loan or the Agreement to Arbitrate.

You acknowledge and agree that by entering into this Arbitration Provision:

(a) YOU ARE GIVING UP YOUR RIGHT TO HAVE A TRIAL BY JURY TO RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES;

(b) YOU ARE GIVING UP YOUR RIGHT TO HAVE A COURT RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES; and

(c) YOU ARE GIVING UP YOUR RIGHT TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, AND/OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT FILED AGAINST US AND/OR RELATED THIRD PARTIES.

Choice of Arbitrator. Any party to a Dispute, including a Holder or its related third parties, may send the other party

written notice by certified mail return receipt requested at the address appearing at the top of this Agreement of their intent to arbitrate and setting forth the subject of the dispute along with the relief requested, even if a lawsuit has been filed. Regardless of who demands arbitration, you shall have the right to select any of the following arbitration organizations to administer the arbitration: the American Arbitration Association (1-800-778-7879) http://www.adr.org; JAMS (1-800-352-5267) http://www.jamsadr.com; or an arbitration organization agreed upon by you and the other parties to the Dispute. The arbitration will be governed by the chosen arbitration organization's rules and procedures applicable to consumer disputes, to the extent that those rules and procedures do not contradict either the law of the Chippewa Cree Tribe or the express terms of this Agreement to Arbitrate, including the limitations on the Arbitrator below. The party receiving notice of Arbitration will respond in writing by certified mail return receipt requested within twenty (20) days. You understand that if you demand Arbitration, you must inform us of your demand and of the arbitration organization you have selected. You also understand that if you fail to notify us, then we have the right to select the arbitration organization. Any arbitration under this Agreement may be conducted either on tribal land or within thirty miles of your residence, at your choice, provided that this accommodation for you shall not be construed in any way (a) as a relinquishment or waiver of the Chippewa Cree's Tribes sovereign status or immunity, or (b) to allow for the application of any law other than the law of the Chippewa Cree Tribe.

Cost of Arbitration. We will pay the filing fee and any costs or fees charged by the arbitrator regardless of which party initiates the arbitration. Except where otherwise provided by the law of the Chippewa Cree Tribe, each party will be responsible for its own attorneys' fees and other expenses. Unless prohibited by law, the arbitrator may award fees, costs, and reasonable attorneys' fees to the party who substantially prevails in the arbitration.

Waiver of Jury Trial and Waiver of Ability to Participate in a Class Action. YOU HEREBY AGREE THAT YOU ARE WAIVING YOUR RIGHT TO A JURY TRIAL, TO HAVE A COURT DECIDE YOUR DISPUTE, AND YOU ARE WAIVING YOUR ABILITY TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, TO PARTICIPATE IN A CLASS ACTION LAWSUIT, OR IN ANY OTHER REPRESENTATIVE CAPACITY FOR OTHERS IN THE ARBITRATION, AND TO CERTAIN DISCOVERY AND OTHER PROCEDURES THAT WOULD BE AVAILABLE IN A LAWSUIT. The arbitrator has the ability to award all remedies available under the Chippewa Cree Tribe's tribal law, whether at law or in equity, to the prevailing party, except that the parties agree that the arbitrator has no authority to conduct class-wide proceedings and will be restricted to resolving the individual Disputes between the parties. The validity, effect, and enforceability of this waiver of class action lawsuit and class-wide arbitration is to be determined solely by a court of competent jurisdiction located within the Chippewa Cree Tribe, and not by the arbitrator. If the court refuses to enforce the class-wide arbitration waiver, or if the arbitrator fails or refuses to enforce the waiver of class-wide arbitration, the parties agree that the Dispute will proceed in tribal court and will be decided by a tribal court judge, sitting without a jury, under applicable court rules and procedures and may be enforced by such court through any measures or reciprocity provisions available.

Applicable Law and Judicial Review. THIS AGREEMENT TO ARBITRATE IS MADE PURSUANT TO A TRANSACTION INVOLVING THE INDIAN COMMERCE CLAUSE OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA, AND SHALL BE GOVERNED BY THE LAW OF THE CHIPPEWA CREE TRIBE. The arbitrator will apply the laws of the Chippewa Cree Tribe and the terms of this Agreement, including the Agreement to Arbitrate. The arbitrator must apply the terms of this Agreement to Arbitrate, including without limitation the waiver of class-wide arbitration. The arbitrator may decide, with or without a hearing, any motion that is substantially similar to a motion to dismiss for failure to state a claim or a motion for summary judgment. If allowed by statute or applicable law, the arbitrator may award statutory damages and/or reasonable attorneys' fees and expenses. The arbitrator will make written findings and the arbitrator's award may be filed with the tribal court. The arbitration award will be supported by substantial evidence and must be consistent with this Agreement and applicable law or may be set aside by the tribal court upon judicial review.

Other Provisions. This Agreement to Arbitrate will survive: (i) termination or changes in this Agreement, the Account, or the relationship between us concerning the Account; (ii) the bankruptcy of any party; and (iii) any transfer, sale or assignment of my Note, or any amounts owed on my account, to any other person or entity. This Agreement to Arbitrate benefits and is binding upon you, your respective heirs, successors and assigns. It also benefits and is binding upon us, our successors and assigns, and related third parties. The Agreement to Arbitrate continues in full force and effect, even if your obligations have been paid or discharged through bankruptcy. The Agreement to Arbitrate survives any termination, amendment, expiration, or performance of any transaction between you and us and continues in full force and effect unless you and we otherwise agree in writing. If any of this Agreement to Arbitrate is held invalid, the remainder shall remain in effect.

GOVERNING LAW. This Agreement and the Agreement to Arbitrate are governed by the Indian Commerce Clause of the Constitution of the United States of America and the laws of the Chippewa Cree Tribe. We do not have a presence in Montana or any other state of the United States of America. Neither this Agreement nor the Lender is subject to the laws of any state of the United States.

TELEPHONE CALLS. You hereby agree that in the event we need to contact you to discuss your account or the repayment of your Loan, we may call you at any number, including any cell phone number you have provided, and that we may leave an autodialed or prerecorded message or use other technology (including, but not limited to, SMS messaging or other text messaging) to contact or to communicate with you.

VERIFICATION. You authorize us to verify all of the information you have provided in obtaining approval of this Loan.

This Agreement includes a Waiver of Jury Trial and Arbitration Provision that may be enforced by you and us. By signing this Agreement you agree that it was filled in before you did so and that you have received a completed copy of it. **You further agree that you have read and understand all of the terms of this Agreement, including the part entitled "Waiver of Jury Trial and Arbitration Provision."**

By electronically signing this Agreement you certify that the information given in connection with this Agreement is true and correct. You authorize us to verify the information given in connection with this Agreement, and you give us consent to obtain information about you from a consumer reporting agency or other sources. ***You acknowledge, represent and warrant that (a) you have read, understand, and agree to all of the terms and conditions of this Agreement, including the Disclosures and the Arbitration Agreement and Waiver of Jury Trial, (b) this Agreement contains all of***

the terms of the agreement between you and us and that no representations or promises other than those contained in this Agreement have been made, (c) you specifically authorize withdrawals and deposits to and from your Bank Account as described in this Agreement, if you have selected the ACH Debit Authorization, (d) you are not a debtor under any proceeding in Bankruptcy and have no intention to file a petition for relief under any chapter of the United States Bankruptcy Code, (e) this Agreement was filled in before you signed it, and (f) you have the ability to print or retain a completed copy of this Agreement. You further acknowledge that we may withhold funding of your Loan until we check to make sure all the information you gave us on your application is true and we decide whether you meet our requirements to receive the Loan.

☑ By checking here you authorize us to verify all of the information that you have provided us, including past and/or current information. If there is any missing or erroneous information in or with your loan application regarding your Bank Account (including without limitation your bank, bank routing number, or account number), then you authorize us to verify and correct such information. You agree that your ACH Authorization is subject to our approving this Agreement.

Please review and select one of these funding options:

◉ **ELECTRONIC (as soon as the next business day):** By checking here, you authorize us to effect ACH debit and credit entries for this loan, you also agree to the ACH Authorizations set forth in this Agreement. You acknowledge and agree that this ACH Authorization to Debit Bank Account inures to the benefit of Plain Green, LLC, its affiliates, agents, employees, successors, and registered assigns. Check this box if you agree to the ACH Authorizations in this Agreement.

○ **POSTAL MAIL (up to 7 to 10 days):** By checking here, you request Loan proceeds be distributed to you by check and delivered by regular mail through the United States Postal System. If you elect to receive your proceeds by mail, you must also make your payments by mail. You should allow 7 to 10 days for delivery of the Loan proceeds, and be aware interest begins accruing on the date Lender issues the check for the Loan proceeds.

By: Plain Green, LLC	Your Full Name:	Type 'I Agree':	Date:
Billi A. Morsette	[redacted]	*I Agree*	**5/25/2012**

Billi Anne Raining Bird-Morsette, CEO

EXHIBIT E

THIS AGREEMENT SHALL NOT CONSTITUTE A "NEGOTIABLE INSTRUMENT"

CONSUMER LOAN AGREEMENT
LOAN NUMBER: [redacted]

Great Plains Lending, LLC
Otoe-Missouria Indian Reservation
Red Rock, OK 74651

BORROWER'S INFORMATION:

Lender: Great Plains Lending, LLC

Origination Date: 7/21/2012
This is the date you signed and submitted this loan agreement to the lender.

Effective Date: 7/24/2012
The date you begin to pay interest on the loan.

Final Payment Due Date:
1/4/2013

Borrower's Name:
[redacted]

Borrower's ID:
[redacted]

Borrower's Address:
[redacted] Ave
[redacted], PA 19320

Borrower's Bank and Account Number for ACH Transfers (the "Bank Account")
[redacted] [redacted]

This Loan Agreement (the "Agreement") is subject solely to the exclusive laws and jurisdiction of the Otoe-Missouria Tribe of Indians, a federally recognized Indian Tribe. In this Agreement, "you" and "your" refer to the Borrower identified above. "We", "us", "our", and "Lender" refer to **Great Plains Lending, LLC**, a lender authorized by the laws of the Otoe-Missouria Tribe. "Loan" means this consumer installment loan. By executing this Agreement, you hereby acknowledge and consent to be bound to the terms of this Agreement, consent to the sole subject matter and personal jurisdiction of the Otoe-Missouria Tribe of Indians Tribal Court, and further agree that no other state or federal law or regulation shall apply to this Agreement, its enforcement or interpretation.

TRUTH IN LENDING DISCLOSURES: The disclosures below are provided to you so that you may compare the cost of this loan to other loan products you might obtain in the United States. Our inclusion of these disclosures does not mean that we or any subsequent holder of this Agreement consent to application of state or federal law to us, to the loan, or this Agreement.

TRUTH-IN-LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you.	Amount Financed The amount of credit provided to you or on your behalf.	Total of Payments The amount you will have paid after you have made all payments as scheduled.
448.77%	$797.14	$600.00	$1,397.14

Your payment schedule (the "Payment Schedule") will be:

Number of Payments	Amount of Payments	When Payments Are Due (each, a "Payment Due Date")
11	$116.44	8/3/2012, 8/17/2012, 8/31/2012, 9/14/2012, 9/28/2012, 10/12/2012, 10/26/2012, 11/9/2012, 11/23/2012, 12/7/2012, 12/21/2012
1	$116.30	1/4/2013

PREPAYMENT: If you pay off the Loan early, you will not have to pay a penalty, and you may be entitled to a refund of part of the finance charge.

SECURITY INTEREST: If you have chosen the ACH Debit Authorization option, your ACH authorization is security for this loan.

See the Loan Agreement for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment penalties.

Itemization of Amount Financed:	**$600.00**
Amount given to you directly:	**$600.00**

PROMISE TO PAY: You promise to pay to the order of Lender or any registered assignee of this Agreement the principal sum of $600.00 plus interest from the date of this Loan at the rate of 450.0085% per year until this loan is repaid in full. You promise to pay these amounts on the dates listed in the Payment Schedule above. You also promise to pay to us or to any subsequent holder of this Agreement any other fees provided for under this Agreement.

PAYMENTS: You promise to pay the amount of the Total of Payments shown above on or before the Payment Due Date. If you have chosen the ACH Debit Authorization option, you must make arrangements with us by 5:00 PM Eastern Time, on the business day prior to the Payment Due Date, so an authorized ACH entry is not initiated. If you choose to mail a payment, (i) all payments shall be mailed to 2274 S. 1300 East, Suite G-15 #374, Salt Lake City, UT 84106 for forwarding to and receipt and processing on the Otoe-Missouria Indian reservation, (ii) payment must reach this address by the Payment Due Date, and (iii) you should notify us prior to 5:00 PM Eastern Time the business day prior to Payment Due Date so an authorized ACH entry is not initiated prior to receipt of the payment. In addition, you agree that we cannot make and have not made the Loan contingent upon your obtaining any other product or service from us or anyone else. If you have chosen to receive your loan proceeds via check please mail your payments by the dates indicated within "When Payments Are Due" section of this agreement to 2274 S. 1300 East, Suite G-15 #374, Salt Lake City, UT 84106 for forwarding to and receipt and processing on the Otoe-Missouria Indian reservation.

CALCULATION OF INTEREST AND PAYMENTS: The interest charged hereunder is calculated using the simple interest method and has been computed upon the basis that you will pay all installments on the scheduled Payment Dates. Interest shall not be payable in advance or compounded.

WHEN YOU BEGIN PAYING INTEREST: You begin to pay us interest on the Loan on the date the proceeds of the Loan are deposited into your Bank Account, or, if you elect to receive Loan proceeds by check through the mail, the date we issue the check (the "Effective Date"). You will be charged interest on the unpaid amount of the Loan each day from the Effective Date until the Loan is paid in full. In calculating your payments, we have assumed you will make each payment on the day and in the amount due. If any payment is received after the payment due date, you must pay any additional interest that accrues after such date. If any payment is made before the payment due date, the interest due will be reduced. The amount of this decrease or increase in interest due will be reflected in the final payment that is due. Time is of the essence, which means that there are no grace periods for when payments must be made. If any payment is due on a day on which your bank is not open, then such payment shall be due on the next day upon which your bank is open.

VERIFICATION: You authorize us to verify the information you provided to us in connection with your Loan application. You give us consent to obtain information about you from a consumer reporting agency or other sources. We reserve the right to withhold funding of this Loan, at any time prior to disbursement, to allow us to verify the information you have provided to us.

ACH AUTHORIZATION TO CREDIT BANK ACCOUNT: Unless the proceeds of this Agreement are applied to any outstanding loan balance that you may owe to us, and you do not elect to receive the Loan proceeds by check through regular mail, you authorize us and our agents to initiate an Automated Clearing House ("ACH") credit entry to your Bank Account to disburse the proceeds of this Loan.

ACH AUTHORIZATION TO DEBIT BANK ACCOUNT: Unless you chose to mail to us a check or money order as payment for this Loan, you authorize us, and our agents, successors, employees, and registered assigns to withdraw money from your Bank Account for each payment you owe us, including any returned payment charges and the total amount you owe if you do not pay us when you agreed in this Agreement. You agree we can withdraw money from your Bank Account (called an 'ACH debit entry') on each scheduled payment date shown on the Payment Schedule above. This right to withdraw money from your Bank Account will remain in full force until the earlier of the following occurs: (i) you pay us everything that you owe us under this Agreement or (ii) you tell us or the institution holding your Bank Account (the "Paying Bank") that we can no longer withdraw money from your Bank Account in enough time to let the Paying Bank or us stop taking the money out of your Bank Account. You acknowledge and agree that this ACH Authorization to Debit Bank Account inures to the benefit of Great Plains, LLC, its affiliates, agents, employees, successors, and registered assigns.

NOTICE OF VARYING AMOUNTS: For those customers who have chosen the ACH Debit Authorization, please note that you have the right to receive notice of all withdrawals from your Bank Account by an ACH Debit that vary in amount. However, by agreeing to let us withdraw the money from your Bank Account, you agree we only have to tell you the range of withdrawals that we can make. The range of withdrawals will be either an amount equal to your installment payment or an amount equal to the outstanding balance under the Loan (which may be greater than or less than an installment payment based upon your payment history), plus a returned payment fee as specified below. For any withdrawal outside of this specified range, we will send you a notice. Therefore, by signing this Agreement below, you are choosing to only receive notice when a withdrawal exceeds the amount in the specified range. You authorize us to vary the amount of the amount of any withdrawal as needed to repay installments due on the Loan as modified by any partial prepayments you make.

TERMINATING ACH DEBIT AUTHORIZATION: For those customers who have chosen the ACH Debit Authorization, the ACH debit authorization will remain in full force and effect until the earlier of the following occurs: (i) you satisfy all of your payment obligations under this Agreement or (ii) you tell us or the Paying Bank that we can no longer withdraw money from your Bank Account in enough time to let the Paying Bank or us stop taking the money out of your Bank Account. Terminating your ACH authorization does not relieve you of your obligation to pay your Loan in full.

REMOTELY CREATED CHECK AUTHORIZATION: If you terminate any previous ACH Debit Authorization you provided to us or we do not receive a payment by the Payment Due Date, you authorize us and our agents, successors and assigns to create and submit remotely-created checks for payment to us in the amount of each payment owing under this Agreement, including any returned payment charges or other amounts owing to us upon acceleration of this Loan as a result of your Default. Your typed signature below shall constitute your authorization to us to authenticate remotely created checks, which are also known as demand drafts, telechecks, preauthorized drafts, or paper drafts. If you believe we charged your Bank Account in a manner not contemplated by this authorization, then please contact us. You authorize us to vary the amount of any preauthorized payment by remotely created check as needed to repay installments and any other payments due under this Agreement.

PAYMENT BY CHECK OR MONEY ORDER: You may pay each payment owing under this Agreement by check or money order.

CHECK CONVERSION NOTIFICATION: When you provide a check as payment, you agree we can either use information from your check to make a one-time electronic withdrawal from your Bank Account or to process the payment as a check transaction. When we use information from your check to make a withdrawal from your Bank Account, funds may be withdrawn from your Bank Account as soon as the same day we receive your payment and you will not receive your check back from your financial institution. For questions, please call our customer service phone number: (877) 836-1506.

PAYMENT APPLICATION: Lender will apply your payments in the following order: (1) to any fees due, (2) to earned but unpaid interest, and (3) to principal amounts outstanding.

SECURITY INTEREST DISCLOSURE: To the extent that your agreement to have us withdraw money from your Bank Account is deemed a security interest under the law of the Otoe-Missouria Tribe of Indians, you hereby grant, mortgage, assign, transfer, deliver, pledge, bargain, sell and convey to us a continuing security interest in such withdrawal authorization using the ACH system.

PREPAYMENT: You may prepay all or part of the amount you owe us at any time without penalty. If you do so, you must pay the interest accrued on your Loan and all other amounts due up to the date of your payment.

REFINANCE POLICY: We, in our sole discretion, will determine whether your Loan may be refinanced.

RETURNED PAYMENT FEE: If any payment made by you on this Loan is not honored or cannot be processed for any reason, including not enough money in your Bank Account, you agree to pay us a fee of $30.00. You authorize us and our agents to make a one-time withdrawal from your Bank Account to collect this fee, if you have also selected the ACH Debit Authorization. Your financial institution may also impose a fee.

DEFAULT: You will have broken your promise you made to us in this Agreement (each, a "Default") if: (a) you provide false or misleading information about yourself, your employment or your financial condition prior to entering into this Agreement, (b) if you fail to make a payment by the due date or if your payment is returned to us for any reason, or (c) if you file bankruptcy or become a debtor under the Federal Bankruptcy Laws.

CONSEQUENCES OF DEFAULT: Should you not do the things you agreed to under this Agreement, we may, at our option, do any one or more of the following things: (a) require you to immediately pay us everything you owe us; (b) withdraw money from your Bank Account that was not available when we tried to withdraw it at an earlier time, if you have selected the ACH Debit Authorization; and (c) pursue all legally available means to collect what you owe us. In the event we declare all amounts owed under this Agreement immediately due because you did not pay us, then you further authorize us and our agents to withdraw money from your Bank Account in the full amount due under this Agreement, if you have selected the ACH Debit Authorization. By choosing any one of more of these, we do not give up our right to use another way to collect the money you owe us later. We may decide not to use any of the ways described above to get back the money that you owe us. If so, we do not give up our right to consider what you said you would do to make payment (s) and, if you fail to make those payment(s), we will consider you to be in Default.

CREDIT REPORTING: We may report information about your Loan to credit bureaus. Late payments, missed payments, or other things you do may be reflected on your credit report.

RIGHT TO CANCEL: YOU MAY CANCEL THIS LOAN, WITHOUT COST TO YOU OR FURTHER OBLIGATION TO US, BY TELEPHONING TOLL-FREE 877-836-1506 BY 5:30 P.M. EASTERN TIME ON THE FIRST BANKING DAY AFTER THE EFFECTIVE DATE. YOU CAN CANCEL ONLY IF YOU SEND US BACK THE MONEY FROM THE LOAN WE PUT IN YOUR BANK ACCOUNT, RETURN THE LOAN PROCEEDS CHECK MAILED TO YOU OR WE ARE ABLE TO WITHDRAW THE AMOUNT OF YOUR LOAN FROM YOUR BANK ACCOUNT.

BORROWER'S BANK CHARGES: You will not hold us or our agents responsible for any fees you must pay as a result of any check or withdrawal request being presented at your bank in connection with this Agreement.

TRANSFER OF RIGHTS AND MAINTENANCE OF REGISTER: We may assign or transfer this Agreement, or any of our rights hereunder, to another person or entity without notice or consent from you. Regardless of any transfer, this Agreement shall remain exclusively subject to the laws and courts of the Otoe-Missouria Tribe of Indians. Great Plains Lending, LLC, (the "Registrar") acting solely for this purpose as your irrevocably appointed agent, shall maintain at an office located in the United States a copy of each assignment of this Agreement delivered to it and a register (the "Register") for the recordation of the names and addresses of the original owner and assignees, and the amounts of principal and interest owing to each from time to time pursuant to the terms of this Loan. The Register may be in electronic form. The entries of the Register shall be conclusive, and you, the Registrar, the Lender and all of its assignees shall treat each person whose name is recorded in the Register pursuant to these terms as the owner of such principal and interest payments for all purposes of this Agreement, notwithstanding notice to the contrary. The name of the owner in the Register shall be available to you by written request to the Registrar at any reasonable time and from time to time upon reasonable prior notice. In addition to the foregoing, the Registrar shall include on the Register the names and addresses of those persons holding participation interests in the Loan of which it has notice. Any fees and expenses of the Registrar for its services shall be charged to the registered owner of the loan and not to you.

WAIVER OF JURY TRIAL AND ARBITRATION.

RIGHT TO OPT OUT. IF YOU DO NOT WISH YOUR ACCOUNT TO BE SUBJECT TO THIS AGREEMENT TO ARBITRATE, YOU MUST ADVISE US IN WRITING AT 2274 S. 1300 EAST, SUITE G-15 #374, SALT LAKE CITY, UT 84106 OR VIA E-MAIL AT SUPPORT@GREATPLAINSLENDING.COM. YOU MUST CLEARLY PRINT OR TYPE YOUR NAME AND ACCOUNT NUMBER OR SOCIAL SECURITY NUMBER AND STATE THAT YOU REJECT ARBITRATION. YOU MUST GIVE WRITTEN NOTICE; IT IS NOT SUFFICIENT TO TELEPHONE US. WE MUST RECEIVE YOUR LETTER OR E-MAIL WITHIN SIXTY (60) DAYS AFTER THE DATE YOUR LOAN FUNDS OR YOUR REJECTION OF ARBITRATION WILL NOT BE EFFECTIVE. IN THE EVENT YOU OPT OUT OF THIS AGREEMENT TO ARBITRATE, ANY DISPUTES HEREUNDER SHALL NONETHELESS BE GOVERNED UNDER THE LAWS OF THE OTOE-MISSOURIA TRIBE OF INDIANS AND MUST BE BROUGHT WITHIN THE COURT SYSTEM THEREOF.

PLEASE READ THIS PROVISION OF THE AGREEMENT CAREFULLY. UNLESS YOU EXERCISE YOUR RIGHT TO OPT-OUT OF ARBITRATION IN THE MANNER DESCRIBED ABOVE, ANY DISPUTE YOU HAVE WITH LENDER OR ANYONE ELSE UNDER THIS AGREEMENT

WILL BE RESOLVED BY BINDING ARBITRATION. ARBITRATION REPLACES THE RIGHT TO GO TO COURT, INCLUDING THE RIGHT TO HAVE A JURY, TO ENGAGE IN DISCOVERY (EXCEPT AS MAY BE PROVIDED IN THE ARBITRATION RULES) AND TO PARTICIPATE IN A CLASS ACTION OR SIMILAR PROCEEDING. IN ARBITRATION, A DISPUTE IS RESOLVED BY AN ARBITRATOR INSTEAD OF A JUDGE OR JURY. ARBITRATION PROCEDURES ARE SIMPLER AND MORE LIMITED THAN COURT PROCEDURES. ANY ARBITRATION WILL BE LIMITED TO ADDRESSING YOUR DISPUTE INDIVIDUALLY AND WILL NOT BE PART OF A CLASS-WIDE OR CONSOLIDATED ARBITRATION PROCEEDING.

AGREEMENT TO ARBITRATE. YOU AGREE THAT ANY DISPUTE (DEFINED BELOW) WILL BE RESOLVED BY ARBITRATION IN ACCORDANCE WITH THE LAW OF THE OTOE-MISSOURIA TRIBE OF INDIANS.

Arbitration Defined. Arbitration is a means of having an independent third party resolve a Dispute. A "Dispute" is any controversy or claim between you and Lender, its marketing agent, collection agent, any subsequent holder of this Note, or any of their respective agents, affiliates, assigns, employees, officers, managers, members or shareholders (each considered a "Holder" for purposes of this Agreement). The term Dispute is to be given its broadest possible meaning and includes, without limitation, all claims or demands (whether past, present or future, including events that occurred prior to the opening of this Account), based on any legal or equitable theory (tort, contract, or otherwise), and regardless of the type of relief sought (i.e. money, injunctive relief or declaratory relief). A Dispute includes, by way of example and without limitation, any claim arising from, related to or based upon marketing or solicitations to obtain the loan and the handling or servicing of your account whether such Dispute is based on a tribal, federal or state constitution, statute, ordinance, regulation, or common law, and including any issue concerning the validity, enforceability, or scope of this loan or the Agreement to Arbitrate.

You acknowledge and agree that by entering into this Arbitration Provision:

(a) YOU ARE GIVING UP YOUR RIGHT TO HAVE A TRIAL BY JURY TO RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES;

(b) YOU ARE GIVING UP YOUR RIGHT TO HAVE A COURT RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES; and

(c) YOU ARE GIVING UP YOUR RIGHT TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, AND/OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT FILED AGAINST US AND/OR RELATED THIRD PARTIES.

Choice of Arbitrator. Any party to a Dispute, including a Holder or its related third parties, may send the other party written notice by certified mail return receipt requested at the address appearing at the top of this Agreement of their intent to arbitrate and setting forth the subject of the dispute along with the relief requested, even if a lawsuit has been filed. Regardless of who demands arbitration, you shall have the right to select any of the following arbitration organizations to administer the arbitration: the American Arbitration Association (1-800-778-7879) http://www.adr.org; JAMS (1-800-352-5267) http://www.jamsadr.com; or an arbitration organization agreed upon by you and the other parties to the Dispute. The arbitration will be governed by the chosen arbitration organization's rules and procedures applicable to consumer disputes, to the extent that those rules and procedures do not contradict either the law of the Otoe-Missouria Tribe or the express terms of this Agreement to Arbitrate, including the limitations on the Arbitrator below. The party receiving notice of Arbitration will respond in writing by certified mail return receipt requested within twenty (20) days. You understand that if you demand Arbitration, you must inform us of your demand and of the arbitration organization you have selected. You also understand that if you fail to notify us, then we have the right to select the arbitration organization. Any arbitration under this Agreement may be conducted either on tribal land or within thirty (30) miles of your residence, at your choice, provided that this accommodation for you shall not be construed in any way (a) as a relinquishment or waiver of the sovereign status or immunity of the Otoe-Missouria Tribe of Indians, or (b) to allow for the application of any law other than the law of the Otoe-Missouria Tribe of Indians.

Cost of Arbitration. We will pay the filing fee and any costs or fees charged by the arbitrator regardless of which party initiates the arbitration. Except where otherwise provided by the law of the Otoe-Missouria Tribe of Indians, each party will be responsible for its own attorneys' fees and other expenses. Unless prohibited by law, the arbitrator may award fees, costs, and reasonable attorneys' fees to the party who substantially prevails in the arbitration.

Waiver of Jury Trial and Waiver of Ability to Participate in a Class Action. YOU HEREBY AGREE THAT YOU ARE WAIVING YOUR RIGHT TO A JURY TRIAL, TO HAVE A COURT DECIDE YOUR DISPUTE, AND YOU ARE WAIVING YOUR ABILITY TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, TO PARTICIPATE IN A CLASS ACTION LAWSUIT OR IN ANY OTHER REPRESENTATIVE CAPACITY FOR OTHERS IN THE ARBITRATION, AND TO CERTAIN DISCOVERY AND OTHER PROCEDURES THAT WOULD BE AVAILABLE IN A LAWSUIT. The arbitrator has the ability to award all remedies available under the law of the Otoe-Missouria Tribe of Indians, whether at law or in equity, to the prevailing party, except that the parties agree that the arbitrator has no authority to conduct class-wide proceedings and will be restricted to resolving the individual Disputes between the parties. The validity, effect and enforceability of this waiver of class action lawsuit and class-wide arbitration is to be determined solely by a court of competent jurisdiction located within the Otoe-Missouria Tribe of Indians, and not by the arbitrator. If the court refuses to enforce the class-wide arbitration waiver, or if the arbitrator fails or refuses to enforce the waiver of class-wide arbitration, the parties agree that the Dispute will proceed in tribal court and will be decided by a tribal court judge, sitting without a jury, under applicable court rules and procedures and may be enforced by such court through any measures or reciprocity provisions available.

Applicable Law and Judicial Review. THIS AGREEMENT TO ARBITRATE IS MADE PURSUANT TO A TRANSACTION INVOLVING THE INDIAN COMMERCE CLAUSE OF THE CONSTITUTION OF THE UNITED STATES OF AMERICA, AND SHALL BE GOVERNED BY THE LAW OF THE OTOE-MISSOURIA TRIBE OF INDIANS. The arbitrator will apply the laws of the Otoe-Missouria Tribe of Indians and the terms of this Agreement, including the Agreement to Arbitrate. The arbitrator must apply the terms of this Agreement to Arbitrate, including without limitation the waiver of class-wide arbitration. The arbitrator may decide, with or without a hearing, any motion that is substantially similar to a motion to dismiss for failure to state a claim or a motion for summary judgment. If allowed by statute or applicable law, the arbitrator may award statutory damages and/or reasonable attorneys' fees and expenses. The arbitrator will make written findings and the arbitrator's award may be filed with the tribal court. The arbitration award will be supported by substantial evidence and must be consistent with this Agreement and applicable law or may be set aside by the tribal court upon judicial review.

Other Provisions. This Agreement to Arbitrate will survive: (i) termination or changes in this Agreement, the Account, or the

relationship between us concerning the Account; (ii) the bankruptcy of any party; and (iii) any transfer, sale or assignment of my Note, or any amounts owed on my account, to any other person or entity. This Agreement to Arbitrate benefits and is binding upon you, your respective heirs, successors and assigns. It also benefits and is binding upon us, our successors and assigns, and related third parties. The Agreement to Arbitrate continues in full force and effect, even if your obligations have been paid or discharged through bankruptcy. The Agreement to Arbitrate survives any termination, amendment, expiration, or performance of any transaction between you and us and continues in full force and effect unless you and we otherwise agree in writing. If any of this Agreement to Arbitrate is held invalid, the remainder shall remain in effect.

GOVERNING LAW. This Agreement and the Agreement to Arbitrate are governed by the Indian Commerce Clause of the Constitution of the United States of America and the laws of the Otoe-Missouria Tribe of Indians. We do not have a presence in Oklahoma or any other state of the United States of America. Neither this Agreement nor the Lender is subject to the laws of any state of the United States.

TELEPHONE CALLS. You hereby agree that in the event we need to contact you to discuss your account or the repayment of your Loan, we may call you at any number, including any cell phone number you have provided, and that we may leave an autodialed or prerecorded message or use other technology (including, but not limited to, SMS messaging or other text messaging) to contact or to communicate with you.

VERIFICATION. You authorize us to verify all of the information you have provided in obtaining approval of this Loan.

This Agreement includes a Waiver of Jury Trial and Arbitration Provision that may be enforced by you and us. By signing this Agreement you agree that it was filled in before you did so and that you have received a completed copy of it. **You further agree that you have read and understand all of the terms of this Agreement, including the part entitled "Waiver of Jury Trial and Arbitration Provision."**

By electronically signing this Agreement you certify that the information given in connection with this Agreement is true and correct. You authorize us to verify the information given in connection with this Agreement, and you give us consent to obtain information about you from a consumer reporting agency or other sources. ***You acknowledge, represent and warrant that: (a) you have read, understand, and agree to all of the terms and conditions of this Agreement, including the Disclosures and the Arbitration Agreement and Waiver of Jury Trial, (b) this Agreement contains all of the terms of the agreement between you and us and that no representations or promises other than those contained in this Agreement have been made, (c) you specifically authorize withdrawals and deposits to and from your Bank Account as described in this Agreement, if you have selected the ACH Debit Authorization, (d) you are not a debtor under any proceeding in Bankruptcy and have no intention to file a petition for relief under any chapter of the United States Bankruptcy Code, (e) this Agreement was filled in before you signed it, and (f) you have the ability to print or retain a completed copy of this Agreement. You further acknowledge that we may withhold funding of your loan until we check to make sure all the information you gave us on your application is true and we decide whether you meet our requirements to receive the Loan.***

☑ By checking here you authorize us to verify all of the information that you have provided us, including past and/or current information. If there is any missing or erroneous information in or with your loan application regarding your Bank Account (including, without limitation, your bank, bank routing number, and/or account number), then you authorize us to verify and correct such information. You agree that your ACH Authorization is subject to our approving this Agreement.

Please review and select one of these funding options:

◉ **ELECTRONIC (as soon as the next business day):** By checking here, you authorize us to effect ACH debit and credit entries for this loan, you also agree to the ACH Authorizations set forth in this Agreement. You acknowledge and agree that this ACH Authorization to Debit Bank Account inures to the benefit of Great Plains Lending, LLC, its affiliates, agents, employees, successors, and registered assigns. Check this box if you agree to the ACH Authorizations in this Agreement.

◎ **POSTAL MAIL (up to 7 to 10 days):** By checking here, you request Loan proceeds be distributed to you by check and delivered by regular mail through the United States Postal System. If you elect to receive your proceeds by mail, you must also make your payments by mail. You should allow 7 to 10 days for delivery of the Loan proceeds, and be aware interest begins accruing on the date Lender issues the check for the Loan proceeds.

By: Great Plains Lending, LLC

Your Full Name:	Type 'I Agree':	Date:
[redacted]	*I Agree*	**7/21/2012**

EXHIBIT F

MOBILOANS

www.mobiloans.com
151 Melacon Road
Marksville, LA 71351

Important Note: This statement represents the activity and status of your account as of the day the statement was generated. For the most up-to-date look at your activity, please log into your account at mobiloans.com.

Account Holder:	[redacted]	**Email:**	[redacted]
Statement Date:	08/04/2013	**Account Number:**	[redacted]
Billing Cycle:	07/19/2013 - 08/04/2013	**Payment Due Date:**	08/19/2013
Current Balance:	$590.00	**Minimum Payment Due:**	$190.00

Transaction History

Transaction Date	Description	Deposits/Fees	Payments/Credits
08/04/2013	Payment - Thank you (Checking Account)		($90.00)
08/04/2013	Fixed Finance Charge	$65.00	

Summary of Fees

Date	Fee Description	Amount
08/04/2013	Fixed Finance Charge	$65.00

Fee Totals	Amount
Total fees charged this billing cycle	$65.00
Total fees charged 2013	$510.00

Minimum Payment Due

Due Date	Principal	Fees/Charges	Total
08/19/2013	$100.00	$90.00	$190.00

Summary

Previous Balance	(+) Deposits/Fees	(-) Payments/Credits	(=) New Balance
$615.00	$65.00	($90.00)	$590.00

Calculation of Minimum Payment Due: *Your Minimum Payment Due is a payment of 10% of the outstanding Mobiloans Cash balance resulting from your most recent Mobiloans Cash draw plus accrued fees and fixed finance charges.*

Automatic Payments: *Your Mobiloans Cash comes with AutoPay. If you don't schedule or make a payment by your Payment Due Date, we will automatically deduct the minimum payment from your designated bank account on your Payment Due Date.*

Billing Rights Summary: *To access information on your rights to dispute transactions and how to exercise those please view the Billing Rights section of your Terms & Conditions.*

If you think there is an error on your statement, write to Mobiloans Customer Service at: MobiLoans, LLC, 151 Melacon Road, Marksville, LA 71351 or contact us electronically at http://www.mobiloans.com.

View Your Agreement: *Your entire Mobiloans Cash Agreement can be viewed by logging onto your account at www.mobiloans.com.*

Mobiloans Credit
Agreement and Terms and Conditions
Effective August 23, 2013

MOBILOANS, LLC IS AN ENTITY OWNED AND OPERATED BY THE TUNICA-BILOXI TRIBE OF LOUISIANA. THE CREDIT ISSUED TO YOU AND INFORMATION PROVIDED UNDER THIS AGREEMENT BY MOBILOANS IS DONE SO SOLELY UNDER THE PROVISIONS OF LAWS OF THE TUNICA-BILOXI TRIBE OF LOUISIANA AND APPLICABLE FEDERAL LAW.

This Mobiloans Credit Agreement and Terms and Conditions (these "Terms and Conditions" or this "Agreement") govern your Mobiloans Credit Account. In this Agreement, "you" and "your" refer to those persons who have applied for and been approved for Mobiloans Credit. "We", "us", and "our" refer to Mobiloans, LLC, a tribal lending entity wholly owned by the Tunica-Biloxi Tribe of Louisiana, a sovereign nation located within the United States of America and is operating within the Tunica-Biloxi Reservation. "Tribe" or "Tribal" refers to the Tunica-Biloxi Tribe of Louisiana. Each loan made by us hereunder is being made from the Tunica-Biloxi Reservation. **These Terms and Conditions contain an arbitration provision. Unless you act promptly to reject the arbitration provision, it will have a substantial effect on your rights in the event of a dispute.**

You should review these Terms and Conditions to fully understand how Mobiloans Credit works. If you have questions, you may contact Customer Support at 877-836-1518. You should retain a copy of these Terms and Conditions for your records.

HIGH COST CREDIT DISCLOSURE: MOBILOANS CREDIT IS AN EXPENSIVE FORM OF CREDIT. MOBILOANS CREDIT IS DESIGNED TO HELP CUSTOMERS MEET THEIR SHORT-TERM BORROWING NEEDS. THIS SERVICE IS NOT INTENDED TO PROVIDE A SOLUTION FOR LONGER-TERM CREDIT OR OTHER FINANCIAL NEEDS. ALTERNATIVE FORMS OF CREDIT MAY BE LESS EXPENSIVE AND MORE SUITABLE FOR YOUR FINANCIAL NEEDS.

Truth-in-Lending Disclosures

Interest Rate and Finance Charges	
Annual Percentage Rate on Mobiloans Credit advanced	**0%**
Minimum Charge - Fixed Finance Charge	Each Billing Cycle you will be charged a Fixed Finance Charge of:

If your principal balance as of the last day of your prior Billing Cycle was at or below	...your Fixed Finance Charge will be:
$0	No charge
$100	**$10**
$200	**$25**
$300	**$35**
$400	**$45**
$600	**$65**
$900	**$95**
$1,200	**$105**
$1,500	**$135**

Fees	
Cash Advance Fee	**$3.00** for each **$20.00** of Mobiloans Cash advanced, **for draws of up to $500** **$2.00** for each **$20.00** of Mobiloans Cash advanced, **for draws over $500**

How We Will Calculate Your Balance

To calculate the balance of your Account, at the beginning of each Billing Cycle we subtract all payments and credits made to your Account. Then we will add to your existing unpaid balance the applicable Fixed Finance Charge, the amount of any Mobiloans Cash draws made

since your last Periodic Statement, and any applicable Cash Advance Fees for draws of Mobiloans Cash advanced during that Billing Cycle.

Billing Disputes: Information on your rights to dispute transactions and how to exercise those rights is provided in these Terms and Conditions.

See Section VI for further details on costs and charges and Section X and Section XV for further details on balance calculations and billing disputes.

I. Definitions

"Account" and "Mobiloans Credit Account" mean your Mobiloans Credit relationship established under this Agreement.

"Application" or "Mobiloans Credit Application" means each initial and supplemental credit application you submitted to Lender to in connection with establishing your Mobiloans Credit Account with Lender.

"AutoPay" means the automatic payment of the Minimum Payment Amount from your designated Demand Deposit Account.

"Billing Cycle" means the interval between the days or dates of regular periodic statements. All Pay Frequencies have two Billing Cycles per month.

"Business Day" means any day a bank in Louisiana is open for business not including weekends or bank holidays.

"Cash Advance Fee" means the nonrefundable fee charged for each draw on your Mobiloans Credit account, regardless of the time the Mobiloans Cash you receive from that draw is outstanding.

"Credit Limit" means the maximum amount you can borrow under your Mobiloans Credit Account.

"Demand Deposit Account" means a bank checking account you have identified for distribution of Mobiloans Cash and/or collection of payments due pursuant to the terms of this Agreement.

"Due Date" means the date reflected on your periodic statement on which your payment is due.

"Fixed Finance Charge" means a minimum charge, calculated on a tiered level based upon the unpaid balance in your Mobiloans Credit Account and charged to your Account each Billing Cycle that you have an unpaid balance.

"Lender" means Mobiloans, LLC, a Tribal entity wholly owned and operated by the Tunica-Biloxi Tribe of Louisiana possessing the inherent characteristics and immunities of the Tribal government.

"Minimum Payment Amount" means the minimum payment you agree to make each Billing Cycle, consisting of the Minimum Principal Amount and accrued fees and Fixed Finance Charges.

"Minimum Principal Amount" means that portion of your Minimum Payment Amount that is applied to the outstanding principal balance of your Mobiloans Credit Account.

"Mobiloans Cash" means the amount of cash you receive from a draw under your Mobiloans Credit Account.

"Mobiloans Credit" means the line of credit governed by this Agreement that allows eligible customers to receive short-term cash draws under this Agreement.

"Pay Date" means the date that you submitted in your initial or updated Mobiloans Credit Application as the date on which you are paid wages or receive other sources of income or benefits.

"Pay Frequency" means the frequency you receive your income payments which are either, weekly, bi-weekly, semi-monthly, or monthly. If your Pay Frequency is weekly, your Pay Dates are considered to be bi-weekly for determining your Billing Cycle under this Agreement. If your Pay Frequency is monthly, your Pay Dates are considered to be semi-monthly for determining your Billing Cycle under this agreement. All Pay Frequencies have two Billing Cycles and are required to remit two Minimum Payment Amounts per month.

"Periodic Statement" means the written statement issued for each Billing Cycle that describes, among other things, Mobiloans Cash transactions, accrued Fees and Finance Charges, payments made, other credits, balances that are past due, your previous balance, your new balance and your payment Due Date for that Billing Cycle.

"Tribal Law" means any law or regulation duly enacted by the Tunica-Biloxi Tribe of Louisiana, a sovereign nation located within the United States of America.

II. Eligibility for Mobiloans Credit

You may be eligible for Mobiloans Credit if you meet certain eligibility criteria established by us, which may change from time to time at our sole discretion. As of the date of this Agreement, the eligibility criteria are as follows:

- You have a regular source of income or benefits deposited to a qualified Demand Deposit Account;
- You are at least 18 years old (or at least 19 years old if you are a resident of Alabama or Nebraska);

- You meet credit underwriting standards established by the Lender;
- You have identified a qualified Demand Deposit Account on the Application;
- You authorize the Lender to initiate automated transfers from your qualified Demand Deposit Account(s) to repay amounts owed under this Agreement or you enroll for payments by mail, as described below;
- Your qualified Demand Deposit Account(s) are not frozen or subject to legal process (such as a garnishment order); and
- You are not in default of this Agreement.

III. Establishing your Mobiloans Credit Account

Upon approval and verification by Lender of the information you submitted on your Application, your Mobiloans Credit Account will be established. Your Mobiloans Credit Account will be terminated if you do not request Mobiloans Cash for a period of 12 consecutive months. By applying for and using your Mobiloans Credit, you acknowledge that you have received a copy of this Agreement and that you understand and accept its terms and conditions. Access to Mobiloans Cash is subject to the eligibility criteria provided in this Agreement and your compliance with the terms of this Agreement.

You can obtain your current Credit Limit by: (a) logging in to your Mobiloans Account online at http://www.mobiloans.com; (b) calling Customer Support at 877-836-1518; or (c) writing Mobiloans Customer Support at Mobiloans, LLC, P.O. Box 1409, Marksville, LA 71351.

IV. Accessing your Account and Receiving Mobiloans Cash

You may request Mobiloans Cash online at http://www.mobiloans.com. Aggregate Mobiloans Cash requests may not exceed your Credit Limit, and individual draws are limited to the availability under your Account. Proceeds deposited to a qualified Demand Deposit Account will be affected via ACH. If your request was received by 4:00 PM Central Time, your requested Mobiloans Cash may be available on the next day your financial institution holding your Demand Deposit Account is open for business. If you do not authorize electronic payments from your Demand Deposit Account and instead elect to make payments by mail, you will receive your Mobiloans Cash by check in the mail. Whether you receive your Mobiloans Cash by check or ACH, always check with your financial institution to accurately determine when the money will be available for use.

You may cancel a request for Mobiloans Cash at no cost to you by calling Customer Support at 877-836-1518 prior to 4:00 PM Central Time on the same day you made the request and, if you already received your Mobiloans Cash, you return the received Mobiloans Cash immediately as instructed by Customer Support. In the event that your draw of Mobiloans Cash will be funded by check and you desire to cancel your request, (a) if we have not mailed the check representing the Mobiloans Cash to you or (b) if you have not cashed the check representing the Mobiloans Cash, then we will cancel the check and your obligations in respect of that draw of Mobiloans Cash will be canceled.

Draw Restrictions: As noted above, aggregate Mobiloans Cash requests may not exceed your Credit Limit, and individual draws are limited to the availability under your Account. Additional draws may be restricted if you have not made one or more required Minimum Periodic Payments in full and on time, if we have reduced your Credit Limit as described in Section V or if your Account is not otherwise in good standing. In addition, if you have had an outstanding principal balance of Mobiloans Cash on your Account for at least 12 consecutive months, then you may not obtain additional Mobiloans Cash until you pay down the balance of your Mobiloans Credit Account to $0. Once you have brought your Account balance to $0, your ability to draw Mobiloans Cash will be reinstated. See Section VIII below for further information on this paydown requirement and the reinstatement of your ability to draw Mobiloans Cash.

V. Credit Limit

Your Credit Limit is the maximum amount that you may borrow under your Mobiloans Credit Account. Your Credit Limit is assigned by the Lender and is between $20 and $1,500. This Credit Limit is subject to change with changes in your Demand Deposit Account status and/or underwriting eligibility. We reserve the right, at any time, and upon notice when required by Tribal Law or applicable federal law, to adjust your Credit Limit based on your use of Mobiloans Credit, your payment history with us and other factors, at the Lender's sole discretion. We may reduce your Credit Limit to $0 at any time. We reserve the right to review your credit status at any time, including after obtaining credit reports and other credit information we believe to be relevant. We may modify your Credit Limit or cancel your Account at any time based on this information.

VI. Costs and Charges

Cash Advance Fee

We charge a Cash Advance Fee for each draw on your Mobiloans Credit Account, regardless of the period of time for which the Mobiloans Cash you receive from that draw is outstanding. The Cash Advance Fee is a **FINANCE CHARGE**. The Cash Advance Fee is assessed each time a draw is requested, and there is no grace period within which you may repay an advance and avoid payment of the related Cash Advance Fee. The amount of the Cash Advance Fee that will be assessed on a draw of Mobiloans Cash is as follows:

Fees	
Cash Advance Fee	**$3.00** for each **$20.00** of Mobiloans Cash advanced, **for draws of up to $500** **$2.00** for each **$20.00** of Mobiloans Cash advanced, **for draws**

	over $500

Interest Rate and Fixed Finance Charge

The interest rate applied to the unpaid principal balance of Mobiloans Cash advanced under your Mobiloans Credit Account is 0%.

A Fixed Finance Charge will be assessed at the beginning of any Billing Cycle based on the unpaid principal balance of Mobiloans Cash at the end of each prior Billing Cycle in accordance with the table below. The Fixed Finance Charge is a **FINANCE CHARGE**. Unless you pay your entire outstanding balance by the applicable Due Date specified in your Periodic Statement, there is no grace period within which you will not be charged a Fixed Finance Charge.

Interest Rate and Finance Charges	
Annual Percentage Rate on Mobiloans Credit advanced	**0%**
Minimum Charge - Fixed Finance Charge	Each Billing Cycle you will be charged a Fixed Finance Charge of:

If your principal balance as of the last day of your prior Billing Cycle was at or below	...your Fixed Finance Charge will be:
$0	No charge
$100	**$10**
$200	**$25**
$300	**$35**
$400	**$45**
$600	**$65**
$900	**$95**
$1,200	**$105**
$1,500	**$135**

How we will calculate your balance: To calculate the balance of your Account, at the beginning of each Billing Cycle we subtract all payments and credits made to your Account. Then we will add to your existing unpaid balance the applicable Fixed Finance Charge, the amount of any Mobiloans Cash draws made since your last Periodic Statement, and any applicable Cash Advance Fees for draws of Mobiloans Cash advanced during that Billing Cycle.

Billing Disputes: Information on your rights to dispute transactions and how to exercise those rights is provided in these Terms and Conditions.

See Section X and Section XV for further details on balance calculations and billing disputes.

VII. Your Promise to Pay

You promise to pay the total of all outstanding Mobiloans Cash along with all accrued Fees and Finance Charges as described in this Agreement. To the extent permitted by Tribal Law or applicable federal law, you also promise to pay all costs and fees, including reasonable attorneys' fees, which we incur in collection or enforcement of the Agreement.

You agree to make the Minimum Payment Amount shown on each Periodic Statement on or before the applicable Due Date for such payment. The Minimum Payment Amount consists of the Minimum Principal Payment and accrued Fees and Finance Charges as described in this Agreement. Payments are credited to your Account effective as of the day they are received.

You may experience a delay between the date of your payment and the time you are able to take additional Mobiloans Cash while we verify that sufficient funds are available and/or we receive credit for any payments drawn on another depository institution. This action will not result in more cost to you, but it may delay the availability and/or amount of your future Mobiloans Cash.

There is no grace period for repayment.

If you fail to pay the Minimum Payment Amount on or before the applicable Due Date, an AutoPay payment will automatically be deducted by us from your Demand Deposit Account (see Section VIII below) if you have authorized the AutoPay feature. Any amount that is electronically transferred directly into the Demand Deposit Account will be eligible to be used as repayment of your outstanding Mobiloans

Cash balances at the time of the transfer.

To minimize the amount of Finance Charges you may incur, you are encouraged to pay your Mobiloans Cash balances in full on or before the applicable Due Date. You also may make payments toward your unpaid balance at any time without penalty.

Calculation of Minimum Principal Amount

If the Mobiloans Cash balance is up to and including $400, the Minimum Principal Amount you are required to pay is $20, and if the Mobiloans Cash balance exceeds $400, the Minimum Principal Amount you are required to pay is equal to 5% of outstanding Mobiloans Cash balance.

VIII. Payment Options

Payments in Full and Partial Payments: You may pay your outstanding balance in full at any time. We also accept partial payments as further described in this Section VIII.

AutoPay: If you do not pay in full by scheduling an electronic payment to us or we do not receive a payment in full by mail prior to the Due Date, if you have enrolled in the AutoPay feature, we will process the AutoPay payment as a convenience for you. AutoPay is the automatic payment of the Minimum Payment Amount specified in the applicable Periodic Statement. If you elect to make AutoPay payments via ACH, we will debit your Demand Deposit Account for the amount of one AutoPay payment on the applicable Due Date.

Borrower-Scheduled Electronic Payments: You may schedule an electronic payment at any time up to the full amount of the outstanding balance of your Mobiloans Credit Account prior to the applicable Due Date. You may schedule these payments online at http://www.mobiloans.com, by calling Customer Support at 877-836-1518 or by mail. We must receive your scheduled payment request by 4:00 p.m. Central Time on the Business Day prior to the applicable Due Date. Any debit to a Demand Deposit Account will be processed via ACH and will take at least one (1) Business Day to process. Depending on the amount and timing of the early or partial payment, such payments may not reduce the Fees or Fixed Finance Charges that may accrue. See Section VI and Section VII above.

Payments by Mail: Extension of Mobiloans Credit is not conditioned on your repayment by electronic means of the amounts you owe Lender. You may make payments by mail, using certified check or money order payable to "Mobiloans, LLC", and any such payment must be received by 4:00 p.m. Central Time on the Business Day prior to the applicable payment Due Date. As noted in Section IV above, if you do not authorize electronic payments from your Demand Deposit Account and instead elect to make payments by mail, you will receive each draw of Mobiloans Cash by check in the mail.

Required Paydown to $0 after 12 Months with an Outstanding Principal Balance of Mobiloans Cash: As described in Section IV, if you have had an outstanding principal balance of Mobiloans Cash on your Mobiloans Credit Account for at least 12 consecutive months, then your ability to initiate additional draws of Mobiloans Cash will be restricted until such time as you pay down the balance of your Mobiloans Credit Account to $0. Repayment of your outstanding balance to $0 can be made by paying the Minimum Payment Amount over a maximum of 20 Billing Cycles. You can pay off the outstanding balance in full or over a shorter time frame by scheduling additional electronic payments, sending additional payments by mail, paying more than the Minimum Payment Amount or just remitting a payment in full. Once you have paid in full the outstanding balance of your Account, your ability to make draws of Mobiloans Cash up to your Credit Limit will be reinstated. Depending on the method by which you make the final payment that brings your Account balance to $0, it may take one to three Business Days to process the payment and reinstate your ability to make draws of Mobiloans Cash.

IX. Application of Payments

All payments received (whether electronically or otherwise) will be applied first to any accrued and unpaid Fees and Finance Charges, and then to the outstanding principal balance of your Mobiloans Credit Account.

X. Balance Computation Method

At the beginning of each Billing Cycle we subtract all payments and credits made to your Account. Then we will add to your existing unpaid balance the applicable Fixed Finance Charge, the amount of any Mobiloans Cash draws made since your last Periodic Statement, and any applicable Cash Advance Fees for draws of Mobiloans Cash advanced during that Billing Cycle. See Section VI above for more details about Fees and Finance Charges.

XI. Servicing Your Account

In connection with the servicing of your Mobiloans Credit Account, you hereby authorize us to contact you, including the use of an autodialer, text messaging (if you have opted-in to text messaging in your Application), or prerecorded message, at any phone number you have provided to us in your Application or otherwise, including mobile phone numbers, and at any address we have for you in our records or from other public and nonpublic databases we may lawfully access. Where allowed by law, we also may contact other individuals who may be able to provide updated employment, location, and contact information for you.

XII. Default

We may declare you to be in default of this Agreement at any time if: (a) you fail to comply with the terms of this Agreement, including your repayment obligations with respect to borrowings under your Mobiloans Credit Account; (b) we discover that any information you have provided to us is false or misleading in any material respect; (c) you have exceeded the limitations regarding the usage of your Mobiloans Credit Account as set forth in this Agreement; (d) you have not provided us with information we may request from time to time to satisfy our obligations to comply with the Bank Secrecy Act or other statutes or regulations that apply to us; or (e) anything else happens that causes us in our sole discretion to reasonably believe that the prospect of your Mobiloans Credit Account being repaid is impaired. In the event of default, we may suspend or terminate your right to access your Mobiloans Credit Account and to receive draws of Mobiloans Cash, and we may require you to repay at once the amount of all outstanding Mobiloans Cash and accrued Fees and Finance

Charges.

Upon the occurrence of any event of default, we may debit your Demand Deposit Account and apply any current or future funds available in your Demand Deposit Account(s) towards the repayment of any amounts past due and owed under this Agreement.

XIII. Periodic Statements

Not less than once each Billing Cycle during which there is (i) one or more Mobiloans Cash transactions, (ii) a payment is received, or (iii) there is an outstanding balance owing on your Mobiloans Credit Account, we will make available to you electronically, or if you specifically request, by mail, a Periodic Statement reflecting, among other things, Mobiloans Cash transactions, accrued Fees and Finance Charges, payments made, other credits, balances that are past due, your previous balance, and your new balance. In addition, we will provide you from time to time with any other disclosures or information required by this Agreement, Tribal law and applicable federal law.

Your Periodic Statements will be generated fourteen (14) days prior to the applicable Due Date for such Billing Cycle. A notification will be emailed to the email account you have on file in your Account, and your statement will be available electronically at http://www.mobiloans.com. You may choose not to receive your statements electronically. If you choose to receive paper statements, please notify us in writing within five days of opening your Account by writing to Mobiloans Customer Support at Mobiloans, LLC, P.O. Box 1409, Marksville, LA 71351.

XIV. Billing Rights

YOUR BILLING RIGHTS - KEEP THIS NOTICE FOR FUTURE USE

This notice contains important information about your rights and our responsibilities under Tribal law and applicable federal law.

What To Do If You Find a Mistake on Your Periodic Statement

If you think there is an error on your Periodic Statement, write to Mobiloans Customer Support at Mobiloans, LLC, P.O. Box 1409, Marksville, LA 71351, or contact us electronically at http://www.mobiloans.com.

In your correspondence, give us the following information:

- Account information - your name and Account number;
- Dollar amount - the dollar amount of the suspected error; and
- Description of problem - if you think there is an error on your Periodic Statement, describe what you believe is wrong and why you believe it is a mistake.

You must contact us:

- Within 60 days after the error appeared on your Periodic Statement; and
- At least 3 Business Days before an automated payment is scheduled if you want to stop payment on the amount you think is wrong.

You must notify us of any potential errors in writing or electronically. You may call us, but if you do we are not required to investigate any potential errors and you may have to pay the amount in question.

What Will Happen After We Receive Your Correspondence

When we receive your correspondence, we must do two things:

1. Within 30 days of receiving your correspondence, we must tell you that we received your correspondence. We will also tell you if we have already corrected the error.
2. Within 90 days of receiving your correspondence, we must either correct the error or explain to you why we believe the Periodic Statement is correct.

While we investigate whether or not there has been an error:

- We cannot try to collect the amount in question, or report you as delinquent on that amount.
- The charge in question may remain on your Periodic Statement, and we may continue to charge Finance Charges on that amount in accordance with this Agreement.
- While you do not have to pay the amount in question, you are responsible for the remainder of the outstanding balance of your

Account.

- We can apply any unpaid amount against your Credit Limit.

After we finish our investigation, one of two things will happen:

1. *If we made a mistake:* You will not have to pay the amount in question or any interest or other fees related to that amount.

2. *If we do not believe there was a mistake:* You will have to pay the amount in question, along with applicable Finance Charges on that amount in accordance with this Agreement. We will send you a statement of the amount you owe and the date payment is due. We may then report you as delinquent if you do not pay the amount we think you owe.

If you receive *our* explanation but still believe your Periodic Statement is wrong, you must write to us within 10 days telling us that you still refuse to pay. If you do so, we cannot report you as delinquent without also reporting that you are questioning your Periodic Statement. We must tell you the name of anyone to whom we reported you as delinquent, and we must let those organizations know when the matter has been settled between us.

If we do not follow all of the rules above, you do not have to pay the first $50 of the amount you question even if your Periodic Statement is correct.

XV. Change in Terms

We reserve the right to change the terms of this Agreement at any time with notice to you as required by Tribal Law and applicable federal law. Such changes may apply to Mobiloans Credit and any current amounts of outstanding Mobiloans Cash as well as to future Mobiloans Cash balances. By continuing to use the Mobiloans Credit service, you are accepting the change in terms, or you may decline the change in terms by no longer using Mobiloans Credit prior to the effective date of the change or by requesting that access to your Mobiloans Credit Account be discontinued. If you discontinue access, you will still be required to repay all amounts that you owe on your Mobiloans Credit Account pursuant to the continuing terms of the Agreement.

XVI. Transfer of Rights; Maintenance of Register

We may assign or transfer this Agreement, or any of our rights hereunder, to another person or entity without notice or consent from you. Regardless of any transfer, this Agreement shall remain exclusively subject to the laws and courts of the Tribe. As an integral component of accepting this Agreement, you irrevocably consent to the jurisdiction of the Tribal courts for the purposes of this Agreement. Mobiloans, LLC, (the "Registrar") acting solely for this purpose as your irrevocably appointed agent, shall maintain at an office located within the geographic boundaries of the United States a copy of each assignment of this Agreement delivered to it and a register (the "Register") for the recordation of the names and addresses of the original owner and assignees, and the amounts of the principal, interest, fees, charges and other amounts owing to each from time to time pursuant to the terms of this Agreement. The Register may be in electronic form. The entries of the Register shall be conclusive, and you, the Registrar, the Lender and all of its assignees shall treat each person whose name is recorded in the Register pursuant to these terms as the owner of such principal, interest, fees, charges and other amounts for all purposes of this Agreement and any rights hereunder, notwithstanding notice to the contrary. The name of the owner in the Register shall be available to you by written request to the Registrar at any reasonable time and from time to time upon reasonable prior notice. In addition to the foregoing, the Registrar shall include on the Register the names and addresses of those persons holding participation interests in the receivables outstanding from time to time in the Accounts of which it has notice. Any fees and expenses of the Registrar for its services shall be charged to the registered owner of the loan and not to you.

XVII. Dispute Resolution; Arbitration

Notice of Waiver of Jury Trail and Arbitration Agreement

This Agreement includes a binding Waiver of Jury Trial and Arbitration Agreement. You may opt out of the Waiver of Jury Trial and Arbitration Agreement by following the instructions below.

RIGHT TO OPT OUT. IF YOU DO NOT WISH YOUR ACCOUNT TO BE SUBJECT TO THE FOLLOWING WAIVER OF JURY TRIAL AND ARBITRATION AGREEMENT, YOU MUST ADVISE US IN WRITING AT MOBILOANS, LLC, P.O. BOX 1409, MARKSVILLE, LA 71351 OR VIA EMAIL AT SUPPORT@MOBILOANS.COM. YOU MUST CLEARLY PRINT OR TYPE YOUR NAME AND ACCOUNT NUMBER OR SOCIAL SECURITY NUMBER AND STATE THAT YOU REJECT ARBITRATION. YOU MUST GIVE WRITTEN NOTICE; IT IS NOT SUFFICIENT TO TELEPHONE US. WE MUST RECEIVE YOUR LETTER OR E-MAIL WITHIN SIXTY (60) DAYS AFTER THE DATE YOUR MOBILOANS CREDIT ACCOUNT IS ESTABLISHED OR YOUR REJECTION OF ARBITRATION WILL NOT BE EFFECTIVE. IN THE EVENT YOU OPT OUT OF THE ARBITRATION AGREEMENT, ANY DISPUTES UNDER THIS AGREEMENT OR RELATED TO YOUR MOBILOANS CREDIT ACCOUNT SHALL NONETHELESS BE GOVERNED UNDER THE LAWS OF THE TUNICA-BILOXI TRIBE OF LOUISIANA AND MUST BE BROUGHT WITHIN THE COURT SYSTEM THEREOF, TO WHOSE JURISDICTION YOU IRREVOCABLY CONSENT FOR THE PURPOSES OF THIS AGREEMENT.

WAIVER OF JURY TRIAL AND ARBITRATION AGREEMENT

In this Waiver of Jury Trial and Arbitration Agreement (this "Arbitration Agreement"), "Tribe" or "Tribal" refers to the Tunica-Biloxi Tribe of Louisiana, a sovereign nation located within the United States of America, and "Tribal Law" means any law or regulation duly enacted by the Tunica-Biloxi Tribe of Louisiana.

PLEASE READ THIS WAIVER OF JURY TRIAL AND ARBITRATION AGREEMENT CAREFULLY. Unless you exercise your right to opt-out of arbitration in the manner described above, any dispute you have with Lender, its agents, operator of the website where you submitted your Application, purchaser(s) of any interest in the Agreement or your Account, or anyone else under the Agreement, will be resolved by binding arbitration. Arbitration replaces the right to go to court, including the right to have a jury, to engage in discovery (except as may be provided in the arbitration rules), and to participate in a class action or similar proceeding. In arbitration, a dispute is resolved by an arbitrator instead of a judge or jury. Arbitration procedures are simpler and more limited than court procedures. Any arbitration will be limited to addressing your dispute individually and will not be part of a class-wide or consolidated arbitration proceeding.

Agreement to Arbitrate. You agree that any Dispute (defined below) will be resolved by arbitration in accordance with Tribal Law.

Arbitration Defined. Arbitration is a means of having an independent third party resolve a Dispute. A "Dispute" is any controversy or claim between you and Lender, its marketing agent, collection agent, any subsequent holder of your Mobiloans Credit Account, or any of their respective agents, affiliates, assigns, employees, officers, managers, members or shareholders (each considered a "Holder" for purposes of this Agreement). The term Dispute is to be given its broadest possible meaning and includes, without limitation, all claims or demands (whether past, present, or future, including events that occurred prior to the opening of your Account), based on any legal or equitable theory (tort, contract, or otherwise), and regardless of the type of relief sought (i.e., money, injunctive relief, or declaratory relief). A Dispute includes, by way of example and without limitation, any claim arising from, related to or based upon marketing or solicitations to obtain the loan and the handling or servicing of your account whether such Dispute is based on a Tribal, federal or state constitution, statute, ordinance, regulation, or common law, and including any issue concerning the validity, enforceability, or scope of this loan or the Arbitration Agreement.

You acknowledge and agree that by entering into this Arbitration Agreement:

(a) **YOU ARE GIVING UP YOUR RIGHT TO HAVE A TRIAL BY JURY TO RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES;**

(b) **YOU ARE GIVING UP YOUR RIGHT TO HAVE A COURT RESOLVE ANY DISPUTE ALLEGED AGAINST US OR RELATED THIRD PARTIES; and**

(c) **YOU ARE GIVING UP YOUR RIGHT TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, OR IN ANY OTHER REPRESENTATIVE CAPACITY, AND/OR TO PARTICIPATE AS A MEMBER OF A CLASS OF CLAIMANTS, IN ANY LAWSUIT FILED AGAINST US AND/OR RELATED THIRD PARTIES.**

Choice of Arbitrator. Any party to a Dispute, including a Holder or its related third parties, may send the other party written notice by certified mail return receipt requested at the address appearing at the top of the Agreement of their intent to arbitrate and setting forth the subject of the dispute along with the relief requested, even if a lawsuit has been filed. Regardless of who demands arbitration, you shall have the right to select any of the following arbitration organizations to administer the arbitration: the American Arbitration Association (1-800-778-7879) http://www.adr.org; JAMS (1-800-352-5267) http://www.jamsadr.com; or an arbitration organization agreed upon by you and the other parties to the Dispute. The chosen arbitrator will utilize the rules and procedures applicable to consumer disputes of the chosen arbitration organization, to the extent that those rules and procedures do not contradict either Tribal Law or the express terms of this Arbitration Agreement, including the limitations on the Arbitrator below. The party receiving notice of Arbitration will respond in writing by certified mail return receipt requested within twenty (20) days. You understand that if you demand Arbitration, you must inform us of your demand and of the arbitration organization you have selected. You also understand that if you fail to notify us, then we have the right to select the arbitration organization. Any arbitration under this Agreement may be conducted either on Tribal land or within thirty miles of your residence, at your choice, provided that this accommodation for you shall not be construed in any way (a) as a relinquishment or waiver of the Tribe's sovereign status or immunity, or (b) to allow for the application of any law other than Tribal Law

Cost of Arbitration. We will pay the filing fee and any costs or fees charged by the arbitrator regardless of which party initiates the arbitration. Except where otherwise provided by Tribal Law, each party will be responsible for its own attorneys' fees and other expenses. Unless prohibited by law, the arbitrator may award fees, costs, and reasonable attorneys' fees to the party who substantially prevails in the arbitration.

Waiver of Jury Trial and Waiver of Ability to Participate in a Class Action. YOU HEREBY AGREE THAT YOU ARE WAIVING YOUR RIGHT TO A JURY TRIAL, TO HAVE A COURT DECIDE YOUR DISPUTE, AND YOU ARE WAIVING YOUR ABILITY TO SERVE AS A REPRESENTATIVE, AS A PRIVATE ATTORNEY GENERAL, TO PARTICIPATE IN A CLASS ACTION LAWSUIT, OR IN ANY OTHER REPRESENTATIVE CAPACITY FOR OTHERS IN THE ARBITRATION, AND TO CERTAIN DISCOVERY AND OTHER PROCEDURES THAT WOULD BE AVAILABLE IN A LAWSUIT. The arbitrator has the ability to award all remedies available under the laws of the Tunica-Biloxi Tribe of Louisiana, whether at law or in equity, to the prevailing party, except that the parties agree that the arbitrator has no authority to conduct class-wide proceedings and will be restricted to resolving the individual Disputes between the parties. The validity, effect, and enforceability of this waiver of class action lawsuit and class-wide arbitration is to be determined solely by a court of competent jurisdiction of the Tunica-Biloxi Tribe of Louisiana, and not by the arbitrator. If the court refuses to enforce the class-wide arbitration waiver, or if the arbitrator fails or refuses to enforce the waiver of class-wide arbitration, the parties agree that the Dispute will proceed in Tribal court and will be decided by a Tribal court judge, sitting without a jury, under applicable court rules and procedures and may be enforced by such court through any measures or reciprocity provisions available. As an integral component of accepting this Agreement, you irrevocably consent to the jurisdiction of the Tribal courts for purposes of this Agreement.

Judicial Review. The arbitrator will apply the laws of the Tunica-Biloxi Tribe of Louisiana and the terms of this Agreement, including the Arbitration Agreement. The arbitrator must apply the terms of this Arbitration Agreement, including without limitation the waiver of class-wide arbitration. The arbitrator may decide, with or without a hearing, any motion that is substantially similar to a motion to dismiss for failure to state a claim or a motion for summary judgment. If allowed by statute or applicable law, the arbitrator may award statutory damages and/or reasonable attorneys' fees and expenses. The arbitrator will make written findings and the arbitrator's award may be filed with the Tribal court. The arbitration award will be supported by substantial evidence and must be consistent with this Agreement and applicable law or may be set aside by the Tribal court upon judicial review.

Other Provisions. This Arbitration Agreement will survive: (i) termination or changes in this Agreement, the Account, or the relationship

between us concerning the Account; (ii) the bankruptcy of any party; and (iii) any transfer, sale or assignment of my Note, or any amounts owed on my account, to any other person or entity. This Arbitration Agreement benefits and is binding upon you, your respective heirs, successors and assigns. It also benefits and is binding upon us, our successors and assigns, and related third parties. The Arbitration Agreement continues in full force and effect, even if your obligations have been paid or discharged through bankruptcy. The Arbitration Agreement survives any termination, amendment, expiration, or performance of any transaction between you and us and continues in full force and effect unless you and we otherwise agree in writing. If any of this Arbitration Agreement is held invalid, the remainder shall remain in effect.

GOVERNING LAW. This Arbitration Agreement is governed by the laws of the Tunica-Biloxi Tribe of Louisiana, the Indian Commerce Clause of the United States Constitution, the Federal Arbitration Act ("FAA") and the decisions of the United States Supreme Court interpreting the FAA, and other applicable federal law. We do not have a presence in Louisiana or any other State of the United States of America. Neither this Agreement nor the Lender is subject to the laws of any State of the United States. Although Mobiloans, LLC is voluntarily agreeing to the application of the FAA and relevant judicial interpretations of the FAA to this Arbitration Agreement, such voluntary application does not represent acquiescence by the Tribe of the general application of such law or any other federal law to the Tribe's operations unless such law is expressly applicable thereto.

XVIII. Governing Law

This Agreement is governed by the laws of the Tunica-Biloxi Tribe of Louisiana, the Indian Commerce Clause of the United States Constitution and other applicable federal law. We do not have a presence in Louisiana or any other State of the United States of America. Neither this Agreement nor the Lender is subject to the laws of any State of the United States. Mobiloans, LLC may choose to voluntarily use certain federal laws as guidelines for the provision of services. Such voluntary use does not represent acquiescence of the Tribe to any federal law unless found expressly applicable to Tribal operations offering such services.

XIX. Electronic Signature and Electronic Records

We are required by law to provide you with Periodic Statements and certain other disclosures and notices ("Subsequent Disclosures"). **By checking the "Sign Here" box on the Application, that action will signify your agreement that this Agreement and the Subsequent Disclosures we provide to you constitute electronic records under the Electronic Signatures in Global and National Commerce Act (15 U.S.C. Sections 7001 and following) in a manner consistent with Tribal Law and applicable federal law.**

By checking the "Sign Here" box on your Application, you agree to receive all such disclosures electronically. To access these Subsequent Disclosures, in most cases, we will provide you with such disclosures at our web site or the web sites of our vendors. By checking the box, you acknowledge that you are able to electronically access the Mobiloans website (http://www.mobiloans.com), and to electronically access and print the periodic statements and other Subsequent Disclosures we will be providing to you in connection with your Mobiloans Credit account. We will notify you of Subsequent Disclosures by email and will provide copies of any Subsequent Disclosures to you in electronic form by including them in the email, posting them on the Mobiloans website or by providing a link to them on the website. In order to access, view and retain Subsequent Disclosures in electronic form, you must have a computer with Internet access. The minimum system requirements include software that supports 128-bit security encryption and Adobe Reader® version 9.0.

Your agreement to receive disclosures and notices from us in electronic form does not mean you cannot obtain a paper copy of any such disclosure or notice. If you wish to obtain a paper copy of any document or withdraw your consent to receive Subsequent Disclosures electronically, contact us in writing at Mobiloans Customer Support, Mobiloans, LLC, P.O. Box 1409, Marksville, LA 71351. You will be charged a $5.00 fee for the provision of each paper copy. The same fee will apply to customers who withdraw their consent to receive electronic disclosures and notices.

By checking the "Sign Here" box for Electronic Delivery of Disclosures on your Application, you acknowledge receipt of the Terms and Conditions governing your Mobiloans Credit Account, that you have read and agreed to these Terms and Conditions, and that you agree to receive Subsequent Disclosures from us in electronic form.

XX. Electronic Payment Authorization

Consent to Pre-Authorized Electronic Payments

By submitting the last four digits of your Social Security number in the "Sign Here" box on the Application, I hereby authorize and request Mobiloans, LLC to initiate debits to my Demand Deposit Account for my regularly scheduled AutoPay payments equal to the Minimum Payment Amount disclosed on each Periodic Statement. I further authorize Mobiloans, LLC to initiate ACH debit entries to my Demand Deposit Account for any amount of each AutoPay payment. This authority is to remain in full force and effect until Mobiloans, LLC shall have received written notification from me stating my termination in such time and in such manner as to afford Mobiloans, LLC a reasonable opportunity to act upon such notice.

I hereby acknowledge that I shall have the right to stop payment of an ACH debit entry to my designated Demand Deposit Account by providing notification to Mobiloans, LLC in such time as to afford it with a reasonable opportunity to act upon such order prior to it debiting my Demand Deposit Account as described below. After my Demand Deposit Account has been debited, I may have the right to have the amount of an erroneous debit credited to my Demand Deposit Account, respectively, by Mobiloans, LLC, provided I send written notice of such debit to Mobiloans, LLC.

Right to Stop Preauthorized Payments

If you have authorized us in advance to make a one-time or recurring payment out of your Demand Deposit Account, you can stop any of these payments by calling us at 877-836-1518 or writing to us at Mobiloans Customer Support, Mobiloans, LLC, P.O. Box 1409, Marksville, LA 71351, in time for us to receive your request by 4:00 pm Central Time at least two Business Days before the applicable date. If

you call, we may also require you to put your request in writing and send it to us within 14 days after you call.

If you order us to stop one of these payments by 4:00 pm Central Time at least two Business Days before the applicable Due Date, and we do not do so, we will be liable for your losses or damages.

Error Resolution

In case of errors or questions about an AutoPay or electronic payment, call us at 877-836-1518 or write to us at Mobiloans Customer Support, Mobiloans, LLC, P.O. Box 1409, Marksville, LA 71351. We must hear from you no later than 60 days after we sent the FIRST Periodic Statement on which the problem or error appeared.

- Tell us your name and account number;
- Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information; and
- Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 Business Days.

We will determine whether an error occurred within 10 Business Days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 Business Days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 Business Days, we may not credit your account.

For errors involving new Accounts (Accounts that have been open less than 45 days), we may take up to 90 days to investigate your complaint or question. For new Accounts, we may take up to 20 Business Days to credit your Account for the amount you think is in error.

We will tell you the results within 3 Business Days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of the documents that we used in our investigation. If you need more information about our error-resolution procedures, call us at 877-836-1518 or write to us at Mobiloans Customer Support, Mobiloans, LLC, P.O. Box 1409, Marksville, LA 71351.

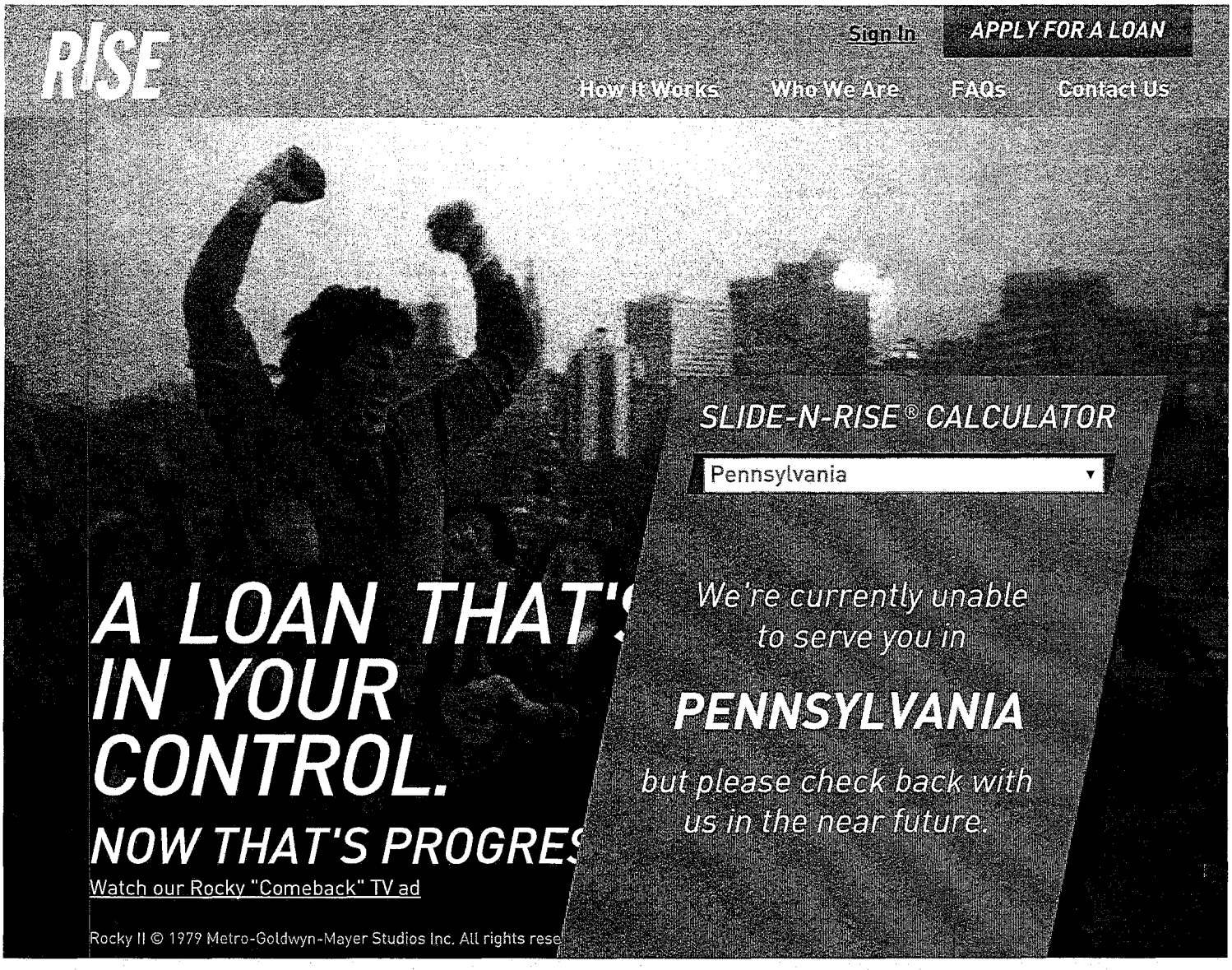
By submitting the last four digits of your Social Security number in the Terms and Conditions section of the Application you acknowledge that you are not required to consent to receive funds or repay your loan by an ACH transaction crediting or debiting to your Demand Deposit Account. If you authorize us to effect ACH debit entries to your Demand Deposit Account for this line of credit, by submitting the last four digits of your Social Security number you also agree that the Electronic Payment Authorization set forth in this agreement is to remain in full force and effect unless you terminate such authority. If you terminate such authority, you agree to provide us with another means of payment acceptable to us in our sole discretion.

EXHIBIT G

RISE

Sign In APPLY FOR A LOAN

How It Works Who We Are FAQs Contact Us



HOW WE'RE DIFFERENT

RATES
Decrease Over Time

Rates decrease over time with on-time payments.

Choose Your Own
TERMS

With flexible payment scheduling you can choose your terms.

FREE
Credit Score Plus

RISE is all about putting you in control. Our Credit Score Plus tracks credit activity and gives you the tools to monitor your credit. Sign up for Credit Score Plus

RISE TACKLES THE TOUGH QUESTIONS ABOUT CONSUMER INSTALLMENT

LOANS. Read more

**RISE* and its affiliates offer installment loans and credit services only to residents in those states where permitted by law. To obtain a loan, you must apply online and have a valid checking account and email address. Applications processed and approved before 6 p.m. ET are typically funded the next business day. In some cases, we may not be able to verify your application information and may ask you to provide certain documents. Refer to Loan Cost & Terms for additional details. Complete disclosures of APR, fees and payment terms are provided within the Loan Agreement.

Important Disclosures:

Rates may decrease over time based on (i) a history of successful, on-time payments that may qualify you for larger loan amounts with lower rates and (ii) earning points that may qualify you for discounts in the *RISE* Rewards Program. The *RISE* Rewards Program is not available in every state; eligibility for the Rewards Program is subject to *RISE*'s discretion. Reduced rates and choosing your own terms vary by state.

Loan approvals and the amount of any loan for which you may be approved are subject to minimum income requirements and vary by state.

This is an expensive form of credit. *RISE* loans are designed to help you meet your borrowing needs. Appropriate emergencies might be a car repair, medical care for you or your family, or travel expenses in connection with your job. This service is not intended to provide a solution for all credit or other financial needs. Alternative forms of credit, such as a credit card cash advance, personal loan, home equity line of credit, existing savings or borrowing from a friend or relative, may be less expensive and more suitable for your financial needs. Refinancing may be available and is not automatic. Refinancing your loan will extend the term of the loan and result in additional interest charges. Late fees and non-sufficient funds/returned item fees may apply as described in your Loan Agreement. We will never charge you any "hidden fees" that are not fully disclosed in the Loan Agreement or the Loan Cost & Terms. If you don't make a payment on time we will attempt to contact you via one or more authorized methods. All of our collections methods will be in accordance with the guidelines of the federal Fair Debt Collection Practices Act (FDCPA). Because we may report your payment history to one or more credit bureaus, late or non-payment of your loan may negatively impact your credit rating. If you fail to repay your loan in accordance with its terms, we may place your loan with or sell your loan to a third-party collection agency or other company that acquires and/or collects delinquent consumer debt.

First time *RISE* customers typically qualify for an installment loan of $500 to $5,000 with APRs that range from 363.97% to 124.67% respectively for bi-weekly payments (though higher amounts may be available in certain states). For example, a $700 loan in Idaho repaid in 14 bi-weekly payments of $113.41 (last payment amount varies), including $887.74 of interest, has an APR of 349.02%.

The foregoing is an example only — loan amounts, loan repayment terms and applicable finance charges vary by state and are governed by your loan agreement and relevant state law. Please see Loan Cost & Terms for more details.

Policy on Responsible Lending PRL

LEARN HOW TO IDENTIFY & STOP FRAUD

EXHIBIT H

Think Finance

Overview Careers **Products** Employee Insights

think FINANCE

Welcome to Think Finance Products

Twenty years after the rise of the modern Internet, the infrastructure is finally in place for software to transform industries at a global scale. The cost of delivering online services is a small fraction of what it was ten years ago. Two billion consumers worldwide use
... more

5 Products

4 Recommendations

Think Finance Products

Filter by: All Products Sort by: Hottest

Mobiloans

2 recommendations

Mobiloans can be a great way to handle cash emergencies and avoid more expensive bank fees. Once you're approved for a Mobiloans line of credit, you can request cash at any time by logging into Mobiloans.com. Your line of credit will be there when you need it. Cash from your Mobiloans line of...

Plain Green

Be the first to recommend

At Think Finance, we're passionate about providing better financial products to underbanked consumers. We call it Banking for the Rest of Us ™. Customers in need of emergency cash can apply online in minutes, get an answer in seconds, and get cash as soon as the next day. Customers choose Plain...

Great Plains Lending

1 recommendation

Up to $500 on Your First Loan and even more at lower rates on future loans! We offer from $200 to $500 for your first loan, and up to $1,000 on subsequent loans. What's great? Unlike many other emergency cash alternatives, as you become eligible for larger future loans, you'll qualify for lower...

Presta

1 recommendation

Presta is the newest way to get today's hottest electronics. Get the brands you want with low payments, no money down and no long-term commitment when you open a Presta Lease . Purchase account. It's like magic. But it's Presta!

PayDay One

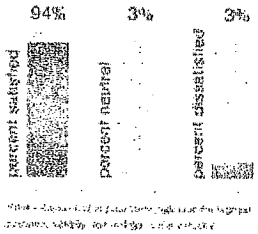
Be the first to recommend

Let's face it – everyone can use a little extra cash from time to time. That's why we're here. At PayDay One, we've created a better way for you to get the cash you need to pay bills, avoid bounced checks, or cover unexpected expenses. Apply now and you can have $100 to $1000 in your bank account...

think

think outside the box

Think Finance develops next generation financial solutions to meet the unique needs of underbanked consumers



Consumers in the U.S. and abroad are frustrated with today's financial services products. Limited access, hidden fees and poor customer service have become the norm — especially for underbanked consumers. Across high consumers demand products that fit their lifestyle and deliver more value.

Think Finance is at the forefront of this movement — we've developed a technology platform for next generation financial services, focused squarely on the unique needs of underserved consumers.

The Think Finance technology platform powers some of the most innovative financial products available today. Some of these products are delivered directly to consumers by Think Finance, and some are offered or issued by financial partners such as banks or non-bank lenders who license our technology to create and deliver leading products for underserved consumers. Together we're delivering new levels of access, convenience, and value to those who need it most.

Products powered by the Think Finance Platform

Products owned or issued by Think Finance

presta | monthloans | PayDayOne

Products owned or issued by financial partners

plain green | MOBILOANS | GreatPlainsLending | Spendable

EXHIBIT I

GreatPlainsLending

YOU'RE PRE-QUALIFIED!

Get **$1,000** as soon as tomorrow* with no hassle and you don't need perfect credit.

[redacted]

Go to greatplainslending.com
Expiration date: 9/29/12

Dear [redacted]

Life is unpredictable. But you can rely on the team at Great Plains Lending if the unexpected arises.

Whether it's a car repair, medical bill, or other unforeseen expense, Great Plains offers short-term installment loans that can be deposited in your account as soon as tomorrow!* We don't require perfect credit or home ownership. And, this letter verifies your pre-qualified status for a **$1,000 loan** without hassle or delay. Just visit **greatplainslending.com** and apply by **9/29/12.**

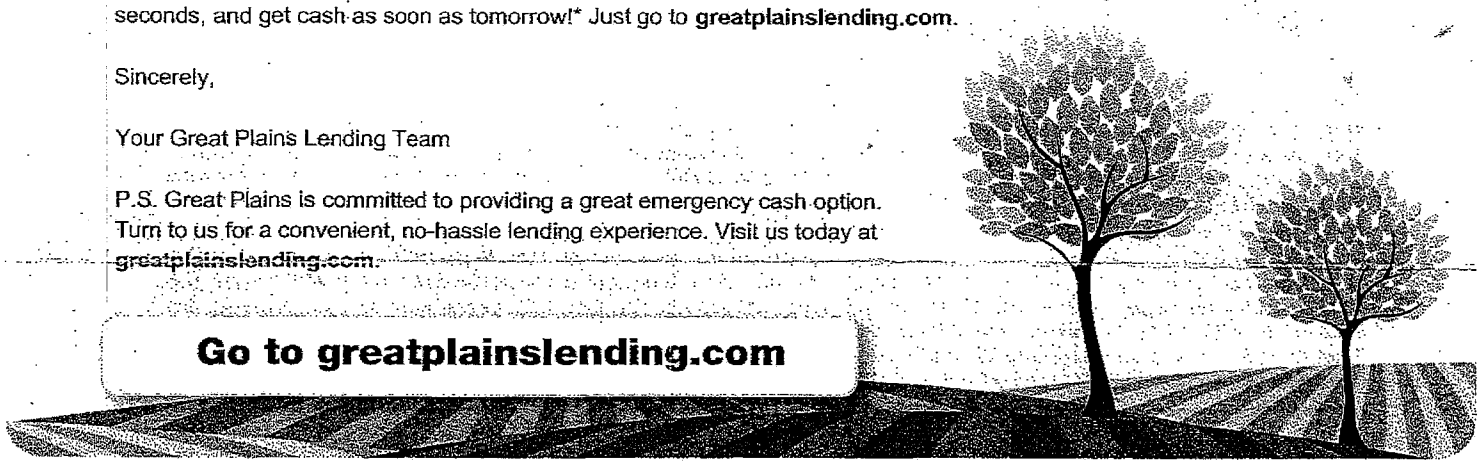
At Great Plains, we believe you should not have to deal with the threat of late fees or bounced checks. We provide competitive rates and simple terms, so you have a better alternative than a payday loan. The interest on an initial Great Plains installment loan is **up to 27% lower** than fees you'd pay on a payday loan.† Plus, as you build a successful payment record, you'll be eligible for larger loan amounts (up to $1,500!), and lower rates.** And, with Great Plains, there are no prepayment penalties.

When you need money fast, turn to Great Plains — it's quick, easy and 100% confidential. You'll get an answer in seconds, and get cash as soon as tomorrow!* Just go to **greatplainslending.com.**

Sincerely,

Your Great Plains Lending Team

P.S. Great Plains is committed to providing a great emergency cash option. Turn to us for a convenient, no-hassle lending experience. Visit us today at **greatplainslending.com.**



Go to greatplainslending.com

You can choose to stop receiving "prescreened" offers of credit from this and other companies by calling toll free 1-888-567-8688. See PRESCREEN & OPT-OUT NOTICE on the other side for more information about prescreened offers.

This offer is made based on information retrieved as of June 11, 2012. Subsequent events or changes in your information, such as your moving to another state or applying for a loan from us in the interim period, may impact your eligibility for this offer. If you have any questions, please call us at 1-877-836-1506.

*Great Plains Lending, LLC is a tribal lending entity wholly owned by the Otoe-Missouria Tribe of Indians, a sovereign nation located within the United States of America, and is operating within the boundaries of the Otoe-Missouria Reservation. Applications processed and approved before 6 p.m. ET are typically funded the next business day. In some cases, we may not be able to verify your application information and may ask you to provide certain documents. Maximum loan amount for initial loan is $1,000. Refer to Loan Cost & Terms for additional details. Complete disclosures of APR, fees and payment terms are provided within the Loan Agreement. The Annual Percentage Rate (APR) for an example loan of $1,000 is 349.05% with 24 bi-weekly payments of $141.11; pricing in effect as of July 9, 2012.

**A successful payment is made on time, for the full amount due, and is not returned unpaid (i.e. for insufficient funds).

†Please see reverse side for additional information on competitor comparisons.

Please note: This is an expensive form of credit. Great Plains loans are designed to help you meet your short-term borrowing needs. Appropriate emergencies might be a car repair, medical care for you or your family, or travel expenses in connection with your job. This service is not intended to provide a solution for longer-term credit or other financial needs. Alternative forms of credit may be less expensive and more suitable for your financial needs. Alternative sources you could consider include: a credit card cash advance; personal loans; home equity line of credit; existing savings; or borrowing from a friend or relative.

†First time Great Plains Lending customers typically qualify for an installment loan of $100 to $1,000 with an APR of 349.05% to 448.78%, or 27% less than the average 611.96% APR for a payday loan. For example, a $500 loan from Great Plains at 448.78% APR would require 12 bi-weekly installment payments of $101.29. After the 12th successful payment, your loan would be paid in full. An average payday loan of $500 with an APR of 611.96% and a fourteen (14) day term would require one payment of $617.36. Average payday loan pricing is based on Texas-originated loans facilitated by Credit Service Organizations/Credit Access Businesses such as CashNet USA® (864.30%), CheckmGo® (661.75%), MyCashNow (485.45%), DiscountAdvances.com (456.25%) and Ace Cash Express® (792.05%) as of April 16, 2012.

PRESCREEN & OPT-OUT NOTICE:
This "prescreened" offer of credit is based on information in your credit report indicating that you meet certain criteria. This offer is not guaranteed if you do not continue to meet the criteria used for this "prescreened" offer of credit or: (A) you are below the age required to create a valid contract (18 years of age or 19 years of age in Alabama and Nebraska); (B) you have moved beyond our service area or have an existing loan with us; or (C) the information you submit in connection with accepting this "prescreened" offer of credit is not complete or verifiable. If you do not want to receive prescreened offers of credit from this and other companies, call the consumer reporting agencies toll-free at 1-888-5OPT-OUT (1-888-567-8688), or visit the website at www.optoutprescreen.com; or write: TransUnion Opt-Out Request, P.O. Box 505, Woodlyn, PA 19094-0505.

EXHIBIT J

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF BANKING

COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF BANKING, BUREAU OF COMPLIANCE, INVESTIGATION AND LICENSING, Petitioner, v. SELLING SOURCE, LLC d/b/a MONEY MUTUAL, Respondent.	:	Docket No.: 100286 (ENF-C&D)

CONSENT AGREEMENT AND ORDER

The Commonwealth of Pennsylvania acting through the Department of Banking ("Department") Bureau of Compliance, Investigation and Licensing ("Bureau") enters into this Consent Agreement and Order ("Order") with Selling Source, LLC and PartnerWeekly, LLC, a subsidiary of Selling Source, to resolve all issues arising from an Order issued by the Bureau on December 3, 2010, Docket No. 100286 (ENF-C&D).

In the Order, the Bureau asserts that Selling Source, LLC violated the Consumer Discount Company Act ("CDCA"), 7 P.S. §6201, *et. seq.* and the Loan Interest Protection Law ("LIPL"), 41 P.S. §101, *et. seq.* Selling Source, LLC and PartnerWeekly, LLC deny that they violated the CDCA and the LIPL as set forth in the Bureau's Order, deny that the Department has jurisdiction over their activities and admit to no wrongdoing. The parties to the above-captioned matter, in lieu of litigation, hereby stipulate that the following statements are true and correct in settlement of the above-captioned matter and, intending to be legally bound, hereby agree to the terms of this Consent Agreement and Order ("Order").

BACKGROUND

1. The Department is the Commonwealth of Pennsylvania's administrative agency authorized and empowered to administer and enforce the CDCA and LIPL.

2. The Bureau is primarily responsible for administering and enforcing the CDCA and LIPL.

3. Selling Source, LLC ("Selling Source"), a Delaware limited liability company with its principal place of business in Las Vegas, Nevada, is a holding company that owns other legal entities that engage in Internet marketing including technology and analytical services to customers in a wide variety of industries.

4. One of the legal entities owned by Selling Source is PartnerWeekly, LLC ("PartnerWeekly"), a Nevada company also with its principal place of business in Las Vegas.

5. PartnerWeekly is engaged in the business of marketing and generating Internet leads for sale to lenders (also referred to as "customers").

6. PartnerWeekly generates leads for sale to lenders through its website located at www.moneymutual.com (the "Website").

7. On December 3, 2010, the Bureau issued the Order against Selling Source asserting that it violated Section 3.B of the CDCA, 7 P.S. § 6203.B, and Section 201(a) of the LIPL, 41 P.S. § 201(a).

8. Section 3.B of the CDCA provides that,

> Any person who shall hold himself out as willing or able to arrange for or negotiate such loans of twenty-five thousand dollars ($25,000), or less where the interest, discount, bonus, fees, fines, commissions or other considerations in the aggregate exceeds the interest that the lender would otherwise be permitted by law to charge or who solicits prospective borrowers of such loans. . . . shall be deemed to be engaged in the business contemplated by this act.

7 P.S. § 6203.B.

9. Section 201(a) of the LIPL provides, in relevant part that, "the maximum lawful rate of interest for the loan or use of money in an amount of fifty thousand dollars ($50,000) or less . . . .shall be six per cent per annum." 41 P.S. § 201(a).

10. Thus, the Department requires any person who shall "hold himself out as willing or able to arrange for" or who "solicits prospective borrowers" that are Pennsylvania residents to obtain loans that meet the parameters of the CDCA and LIPL be licensed as a consumer discount company in Pennsylvania.

11. The Bureau averred in its December 3rd Order that Selling Source engaged in unlicensed activity by assisting lenders to make payday loans to Pennsylvania residents through its marketing and internet activities; the lenders that Selling Source assisted were not licensed in Pennsylvania as consumer discount companies and charged in excess of 6% for the loans made to Pennsylvania residents.

12. Upon notice of the December 3, 2010 Order, Selling Source immediately contacted the Bureau to cooperate in its investigation and amicably resolve any open questions concerning PartnerWeekly's activities and the nature of its business.

13. Selling Source and PartnerWeekly contend that neither Selling Source nor PartnerWeekly has any significant contacts with the Commonwealth of Pennsylvania.

14. Selling Source and PartnerWeekly deny any violation of either the CDCA or the LIPL and admit no wrongdoing.

15. Selling Source and PartnerWeekly contend that there is no basis for jurisdiction over them in the Commonwealth of Pennsylvania and that the CDCA and LIPL cannot be enforced against them consistent with the requirements of the Constitution of the United States of America and the Constitution of the Commonwealth of Pennsylvania.

16. In lieu of going to a hearing on the matter, the parties have agreed to resolve this matter amicably.

17. By agreeing to this Order, Selling Source and its subsidiary PartnerWeekly do not admit to violating any Pennsylvania law or to any wrongdoing; rather Selling Source and PartnerWeekly seek to cooperate with the Department and, to demonstrate good faith, agree to comply with the terms set forth below.

18. This Order resolves all issues involved in the *Commonwealth of Pennsylvania, Department of Banking, Bureau of Compliance, Investigation and Licensing v. Selling Source, LLC d/b/a Money Mutual*, Docket No. 100286 (ENF-C&D).

RELIEF

19. Penalty. PartnerWeekly agrees to pay the Department $40,000.00 to cover, *inter alia*, the costs of the Department's investigation and commencement of this litigation. The payment shall be due and payable to the Department within 30 days of the Effective Date of this Order as defined in Paragraph 26. The payment shall be remitted by certified check or money order made payable to the Pennsylvania Department of Banking and forwarded to 17 N. Second Street, Suite 1300, Harrisburg, PA 17103.

20. Corrective Action.

(a) Prohibit Advertisements to Pennsylvania Residents. PartnerWeekly will block Pennsylvania residents from accessing the Website. Furthermore, PartnerWeekly will not specifically target Pennsylvania residents in its advertisements.

(b) Disclaimers. PartnerWeekly will certify that the Website and print advertisements have a clear and prominent caveat that explicitly states its products are not available to Pennsylvania residents, and its television advertisements will have a clear and prominent caveat that explicitly states its products will not be available in all states.

(c) Letter to Customers. PartnerWeekly, by way of letter, will notify its existing customers as of the date of this Order that leads from

Pennsylvania residents will not be provided. Further, PartnerWeekly will notify its prospective customers that it cannot provide leads to Pennsylvania residents.

(d) Certification. PartnerWeekly will certify to the Department when letters to the existing customers pursuant to Subparagraph(c) have been sent. PartnerWeekly will disclose to the Department the number of letters sent to its customers.

FURTHER PROVISIONS

21. Consent and Jurisdiction. Selling Source and PartnerWeekly hereby knowingly, willingly, voluntarily and irrevocably consent to the entry of this Order, and agree that they understand all of the terms and conditions contained herein. Selling Source and PartnerWeekly take the position that they are not subject to jurisdiction in Pennsylvania and nothing in this Order shall be construed as an admission to the contrary. Selling Source and PartnerWeekly, however, acknowledge that they are subject to jurisdiction in Pennsylvania for the sole purpose of enforcing this Order, if necessary. Moreover, Selling Source and PartnerWeekly, by voluntarily entering into this Order, waive any right to hearing or appeal concerning the terms, conditions and/or penalties set forth in this Order.

22. Publication and Release. The Department will publish this Order pursuant to its authority pursuant to its authority in Section 302.A(5) of the Department of Banking Code. 71 P.S. § 733-302.A.(5).

23. Entire Agreement. This Order contains the whole agreement between the parties. There are no other terms, obligations, covenants, representations, statements, conditions, or otherwise, of any kind whatsoever concerning this Order. This Order may be amended in writing by mutual agreement by the parties.

24. Binding Nature. The Department, Selling Source and PartnerWeekly intend to be and are legally bound by the terms of this Order.

25. Counsel. This Order is entered into by the parties upon full opportunity for legal advice from legal counsel.

26. Effectiveness. Selling Source and PartnerWeekly stipulate and agree that this Order shall become effective on the date that the Bureau executes the Order.

27. Other Enforcement Action.

(a) The Department reserves all of its rights, duties, and authority to enforce all statutes, rules and regulations under its jurisdiction against Selling Source and PartnerWeekly in the future regarding all matters not resolved by this Order.

(b) Selling Source and PartnerWeekly acknowledges and agrees that this Order is only binding upon the Department and not any other local, state or federal agency, department or office regarding matters within this Order.

28. Authorization. The parties below are authorized to execute this Order and legally bind their respective parties.

29. Counterparts. This Order may be executed in separate counterparts and by facsimile or email.

30. Titles. The titles used to identify the paragraphs of this document are for the convenience of reference only and do not control the interpretation of this document.

WHEREFORE, in consideration of the foregoing, including the recital paragraphs, the Commonwealth of Pennsylvania, Department of Banking, Bureau of Compliance, Investigation and Licensing and Selling Source, LLC and PartnerWeekly, LLC do hereby execute this Consent Agreement and Order.

FOR THE COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF BANKING, BUREAU OF COMPLIANCE, INVESTIGATION AND LICENSING

By:_____
Ryan Walsh, Administrator
Bureau of Compliance, Investigation and Licensing
Department of Banking

Dated: February 18, 2011

SELLING SOURCE, LLC
PARTNERWEEKLY, LLC

By:_____
Frank A. Mayer, III, Esquire
Richard P. Eckman, Esquire
Stephen G. Harvey, Esquire
PEPPER HAMILTON LLP
3000 Two Logan Square
Eighteenth & Arch Streets
Philadelphia, PA 19103
(215) 981-4000
Counsel for PartnerWeekly, LLC, Selling Source, LLC

Dated: 2/18/2011

EXHIBIT K

MoneyMutual®
Designed With You In Mind

Need Help? Call Now **800-741-3300**

Hello, Irv!

MoneyMutual was unable to match you with a participating lender in our network due to either your state of residency or the inability to meet certain lender requirements. However, we invite you to take advantage of an opportunity with our partner Plain Green Loans for your short-term financial needs.

Please click the button below to complete the loan process with Plain Green Loans. For your safety & security, Plain Green Loans may require some information you previously provided.

*Additional disclosures apply. For more information, click "Apply Now" or visit www.plaingreenloans.com.

MoneyMutual is NOT a lender.

Exhibit B

THE COURT OF COMMON PLEAS OF PHILADELPHIA COUNTY
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

COMMONWEALTH OF PENNSYLVANIA by Attorney General KATHLEEN G. KANE Plaintiff vs. THINK FINANCE, INC., et al.	:	November Term, 2014 No. 1359

Defendants

Acceptance of Service by Defendant Financial U, LLC.

I accept service of the Complaint, with Notice of Defend, on behalf of **Defendant Financial U, LLC** and certify that I am authorized to do so.

Dated: 12/15/14

James R. McGuire
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105

sf-3487654

Exhibit C

CONSENT AND JOINDER TO REMOVAL OF ACTION

Defendants Selling Source, LLC, and PartnerWeekly, LLC, d/b/a MoneyMutual.com hereby consent to and join Defendants Think Finance, Inc., TC Loan Service, LLC, and Financial U, LLC's removal of the action entitled *Commonwealth of Pennsylvania v. Think Finance Inc., et al.,* case number 141101359, from the Court of Common Pleas of Philadelphia County, First Judicial District of Pennsylvania, to the United States District Court for the Eastern District of Pennsylvania.

Dated: December 16, 2014

DAVIS, PARRY & TYLER, P.C.

By: George Parry
George Parry

Attorneys for Defendants
SELLING SOURCE, LLC and
PARTNERWEEKLY, LLC, d/b/a
MONEYMUTUAL.COM

CONSENT AND JOINDER TO REMOVAL OF ACTION

Defendant National Credit Adjusters, LLC, hereby consent to and join Defendants Think Finance, Inc., TC Loan Service, LLC, and Financial U, LLC's removal of the action entitled *Commonwealth of Pennsylvania v. Think Finance Inc., et al.*, case number 141101359, from the Court of Common Pleas of Philadelphia County, First Judicial District of Pennsylvania, to the United States District Court for the Eastern District of Pennsylvania.

Dated: December 16, 2014

By: _____
Mark Fletchall

General Counsel of Defendant
NATIONAL CREDIT ADJUSTERS, LLC

CONSENT AND JOINDER TO REMOVAL OF ACTION

Defendants Elevate Credit, Inc., and Kenneth E. Rees hereby consent to and join Defendants Think Finance, Inc., TC Loan Service, LLC, and Financial U, LLC's removal of the action entitled *Commonwealth of Pennsylvania v. Think Finance Inc., et al.,* case number 141101359, from the Court of Common Pleas of Philadelphia County, First Judicial District of Pennsylvania, to the United States District Court for the Eastern District of Pennsylvania.

Dated: December 15, 2014

MONTGOMERY, MCCRAKEN, WALKER & RHOADS, LLP

By: _____
Richard L. Scheff

Attorneys for Defendants
ELEVATE CREDIT, INC., AND
KENNETH E. REES

CONSENT TO REMOVAL OF ACTION

Defendants William Weinstein, Weinstein, Pison and Riley, PS, and Cerastes, LLC hereby consent to Defendants Think Finance, Inc., TC Loan Service, LLC, and Financial U, LLC's removal of the action entitled *Commonwealth of Pennsylvania v. Think Finance Inc., et al.,* case number 141101359, from the Court of Common Pleas of Philadelphia County, First Judicial District of Pennsylvania, to the United States District Court for the Eastern District of Pennsylvania.

Respectfully submitted,

BLANK ROME LLP

Dated: December 16, 2014

By: _____

JAMES T. SMITH
BRIAN S. PASZAMANT
JOHN P. WIXTED
Pa. ID. Nos. 39933, 78410, and 309044
One Logan Square
130 North 18th Street
Philadelphia, PA 19103-6998
Telephone No. (215) 569-5500
Fax No. (215) 569-5555

Attorneys for Defendants William Weinstein; Weinstein, Pison and Riley, PS; and Cerastes, LLC

CERTIFICATE OF SERVICE

I, Arleigh P. Helfer III, hereby certify that on December 17th, 2014, I caused a true and correct copy of the foregoing Notice of Removal to be served upon the following:

By Hand Delivery

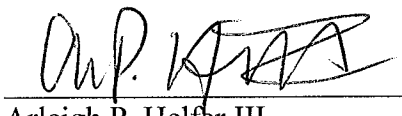
Irv Ackelsberg
Howard I. Langer
John J. Grogan
Edward A. Diver
Peter Leckman
Langer Grogan & Diver, P.C.
1717 Arch Street, Suite 4130
Philadelphia, PA 19103
Counsel for Plaintiff

By First Class Mail

Kathleen G. Kane
James A. Donahue III
Saverio P. Mirarchi
Office of Attorney General, Bureau of Consumer Protection
21 South 12th Street, 2nd Floor
Philadelphia, PA 19107
Counsel for Plaintiff

George Parry
James Nesland
Davis, Parry & Tyler
1525 Locust Street, 14th Floor
Philadelphia, PA 19102-3732
Counsel for Defendants Selling Source, LLC, and Partner Weekly, LLC, d/b/a MoneyMutual.com

James T. Smith
Brian S. Paszamant
John P. Wixted
Blank Rome LLP
One Logan Square
130 North 18th Street
Philadelphia, PA 19103-6998
Counsel for Defendants William Weinstein, Weinstein, Pison and Riley, PS and Cersastes, LLC



Arleigh P. Helfer III

JS 44 (Rev. 12/12)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS
Commonwealth of Pennsylvania by Attorney General Kathleen G. Kane
21 South 12th Street, 2nd Floor
Philadelphia, PA 19107

(b) County of Residence of First Listed Plaintiff Philadelphia
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
See attachment

DEFENDANTS
See attachment.

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*
See attachment.

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

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- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

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- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

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- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
12 U.S.C. § 1831d

Brief description of cause:
Usurious lending and unfair or deceptive conduct related to business activity

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY *(See instructions)*:

JUDGE _____ DOCKET NUMBER _____

DATE 12/17/2014

SIGNATURE OF ATTORNEY OF RECORD

sf-3486517

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

JS 44 Reverse (Rev. 12/12)

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) **Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) **County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) **Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. **Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)

III. **Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. **Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. **Origin.** Place an "X" in one of the six boxes.
Original Proceedings. (1) Cases which originate in the United States district courts.
Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

VI. **Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

VII. **Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. **Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

ATTACHMENT TO CIVIL COVER SHEET

I(a)
Defendants:

THINK FINANCE, INC., TC LOAN SERVICE, LLC, ELEVATE CREDIT, INC., FINANCIAL U, LLC and KENNETH E. REES
4150 International Plaza, Suite 400
Fort Worth, Texas 76109-4819

WILLIAM WEINSTEIN, WEINSTEIN, PINSON AND RILEY, PS, and CERASTES, LLC
2001 Western Avenue, Suite 430
Seattle, Washington 98121-3132

NATIONAL CREDIT ADJUSTERS, LLC
327 W. 4th Avenue
Hutchinson, Kansas 67501

SELLING SOURCE, LLC and PARTNERWEEKLY, LLC, d/b/a MONEYMUTUAL.COM
325 E. Warm Springs Road
Las Vegas, Nevada 89119-4238

-and-

other JOHN DOE persons or entities
Defendant.

I(c)

Counsel for Plaintiff

Kathleen G. Kane
James A. Donahue III
Saverio P. Mirarchi (PA I.D. No. 88616)
Office of Attorney General, Bureau of Consumer Protection
21 South 12th Street, 2nd Floor
Philadelphia, PA 19107
(215) 560-2414

Irv Ackelsberg (PA I.D. No. 23813)
Howard I. Langer
John J. Grogan
Edward A. Diver
Peter Leckman
Langer Grogan & Diver, P.C.
1717 Arch Street, Suite 4130
Philadelphia, PA 19103
(215) 320-5660

Counsel for Defendants Think Finance, LLC, TC Loan Service, LLC, and Financial U, LLC

Ira Neil Richards (PA I.D. No. 50879)
Stephen Fogdall (PA I.D. No. 87444)
Arleigh P. Helfer III (PA I.D. No. 84427)
Schnader Harrison Segal & Lewis LLP
1600 Market St., Suite 3600
Philadelphia, PA 19103
(215) 751-2503

Counsel for Defendants Selling Source, LLC, and PartnerWeekly, LLC, d/b/a MoneyMutual.com

George Parry
James Nesland
Davis, Parry & Tyler
1525 Locust Street, 14th Floor
Philadelphia, PA 19102-3732
(215) 732-3755 (ext. 207)

Counsel for Defendants William Weinstein, Weinstein, Pison and Riley, PS, and Cerastes, LLC

James T. Smith (PA I.D. No. 39933)
Brian S. Paszamant (PA I.D. No. 78410)
John P. Wixted (PA I.D. No. 309044)
Blank Rome LLP
One Logan Square
130 North 18th Street
Philadelphia, PA 19103-6998
(215) 569-5500

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: Commonwealth of Pennsylvania, 21 South Street, 2nd Floor, Philadelphia, PA, 19107

Address of Defendant: See attachment.

Place of Accident, Incident or Transaction: The complaint alleges harm to Pennsylvania citizens, including to residents of Philadelphia County, as a result of loans made by non-parties to the action over the internet.

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?
(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a)) Yes☐ No☒

Does this case involve multidistrict litigation possibilities? Yes☐ No☒

RELATED CASE, IF ANY:
Case Number: _____ Judge _____ Date Terminated: _____

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court? Yes☐ No☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court? Yes☐ No☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court? Yes☐ No☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual? Yes☐ No☒

CIVIL: (Place ✔ in ONE CATEGORY ONLY)

A. *Federal Question Cases*:
1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases
(Please specify) Banking and Indian Commerce Clause

B. *Diversity Jurisdiction Cases*:
1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases
(Please specify) _____

ARBITRATION CERTIFICATION
(*Check Appropriate Category*)

I, Arleigh P. Helfer III, counsel of record do hereby certify:

☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of $150,000.00 exclusive of interest and costs;

☒ Relief other than monetary damages is sought.

DATE: 12/17/2014 Attorney-at-Law PA I.D. No. 84427 Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 12/17/2014 Attorney-at-Law PA I.D. No. 84427 Attorney I.D.#

CIV. 609 (5/2012)

ATTACHMENT TO DESIGNATION FORM

Defendants:

THINK FINANCE, INC., TC LOAN SERVICE, LLC, ELEVATE CREDIT, INC., FINANCIAL U, LLC and KENNETH E. REES
4150 International Plaza, Suite 400
Fort Worth, Texas 76109-4819

WILLIAM WEINSTEIN, WEINSTEIN, PINSON AND RILEY, PS and CERASTES, LLC
2001 Western Avenue, Suite 430
Seattle, Washington 98121-3132

NATIONAL CREDIT ADJUSTERS, LLC
327 W. 4th Avenue
Hutchinson, Kansas 67501

SELLING SOURCE, LLC and PARTNERWEEKLY, LLC, d/b/a MONEYMUTUAL.COM
325 E. Warm Springs Road
Las Vegas, Nevada 89119-4238

-and-

other JOHN DOE persons or entities
Defendant.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

COMMONWEALTH OF PENNSYLVANIA, by Attorney General KATHLEEN G. KANE, Plaintiff, V.	:	CIVIL ACTION
THINK FINANCE, INC., et al., Defendants	:	NO. 14-7139

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:

(a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )

(b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )

(c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )

(d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )

(e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) (X)

(f) Standard Management – Cases that do not fall into any one of the other tracks. ( )

December 17, 2014	Arleigh P. Helfer III	Attorney for Think Finance, Inc., TC Loan Service, LLC, and Financial U
Date	**Attorney-at-law**	
215-751-2430	215-751-2205	ahelfer@schnader.com
Telephone	**FAX Number**	**E-Mail Address**

(Civ. 660) 10/02

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, by Attorney General KATHLEEN G. KANE, Plaintiffs, v. THINK FINANCE, INC., TC LOAN SERVICE, LLC, ELEVATE CREDIT, INC., FINANCIAL U, LLC and KENNETH E. REES,WILLIAM WEINSTEIN, WEINSTEIN, PINSON AND RILEY, PS and CERASTES, LLC, NATIONAL CREDIT ADJUSTERS, LLC, SELLING SOURCE, LLC and PARTNERWEEKLY, LLC, d/b/a MONEYMUTUAL.COM, and other JOHN DOE person or entities, Defendants.	Civil Action No.

DECLARATION OF IRA N. RICHARDS IN SUPPORT OF DEFENDANTS' NOTICE OF REMOVAL

I, Ira N. Richards, hereby declare:

1. I am an attorney licensed to practice law in the State of Pennsylvania and am admitted to practice before this Court. I am a partner with the law firm of Schnader Harrison Segal & Lewis LLP, counsel of record for defendants Think Finance, Inc., TC Loan Service, LLC, and Financial U, LLC. I submit this declaration in support of Think Finance, Inc., TC Loan Service, LLC, and Financial U, LLC's Notice of Removal, filed concurrently with this declaration. I make this declaration based on personal knowledge, except where otherwise indicated. If called as a witness, I would testify to the facts listed below.

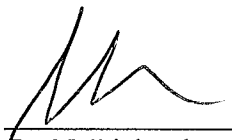
2. Attached hereto as Exhibit A is a true and correct copy of a webpage, as of December 11, 2014, from the Federal Deposit Insurance Corporation's (FDIC) website entitled "FDIC: Confirmation & Report Selection," available at https://www2.fdic.gov/idasp/main.asp (change "Institution Status" to "All" and then search for "First Bank of Delaware").

3. Attached hereto as Exhibit B is a true and correct copy of the Order to Cease and Desist, Order for Restitution, and Order to Pay from *In the Matter of First Bank of Delaware, Wilmington, Delaware*, FDIC-07-256b and FDIC-07-257k.

4. Attached hereto as Exhibit C is a true and correct copy of Chapter XIV of a pdf document from the FDIC entitled "*Credit Card Activities Manual*," as of December 11, 2014, and available at https://www.fdic.gov/regulations/examinations/credit_card/pdf_version/ch14.pdf.

5. Attached hereto as Exhibit D is a true and correct copy of Chapter XIX of a pdf document from the FDIC entitled "*Credit Card Activities Manual*," as of December 11, 2014, and available at https://www.fdic.gov/regulations/examinations/credit_card/pdf_version/ch19.pdf.

I declare under penalty of perjury that the foregoing is true and correct and that this Declaration was executed in Philadelphia, Pennsylvania, on this 16th day of December, 2014.



Ira N. Richards

EXHIBIT A

Key demographic information as of December 4, 2014

First Bank of Delaware

1000 Rocky Run Parkway
Wilmington,DE 19803

FDIC Certificate #:	34929	Date Established:	6/1/1999
Bank Charter Class:	Federal Reserve Non-member	Date of Deposit Insurance:	6/1/1999
Primary Federal Regulator:	Federal Deposit Insurance Corporation		
Primary Internet Web Address:	Web site not available.		

This is an inactive institution.

Inactive as of:	November 16, 2012
Closing history:	This institution was involved in a **Voluntary Liquidation and Closing**.
Acquiring institution:	This action did not result in a new institution.

Information Gateway;

ID Report Selections: Assets and Liabilities

Report Date: September 30, 2012

More Information

- Current List of Offices not available
- Compare to Peer Group(s)
- FFIEC Call/TFR Report ***9/30/2012 Latest Available***
- FFIEC Uniform Bank Performance Report (UBPR)
- FDIC/OTS Summary of Deposits
- Bank Holding Company Ownership and Affiliates not available
- Regional Economic Conditions (FDIC RECON)
- Organization Hierarchy from the Federal Reserve System
- FDIC CRA ratings
- Consumer Assistance from Primary Federal Regulator

Press for description

EXHIBIT B

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

In the Matter of FIRST BANK OF DELAWARE WILMINGTON, DELAWARE (INSURED STATE NONMEMBER BANK)	ORDER TO CEASE AND DESIST, ORDER FOR RESTITUTION, AND ORDER TO PAY FDIC-07-256b FDIC-07-257k

FIRST BANK OF DELAWARE, Wilmington, Delaware (Bank), having received a NOTICE OF CHARGES FOR AN ORDER TO CEASE AND DESIST AND FOR RESTITUTION; NOTICE OF ASSESSMENT OF CIVIL MONEY PENALTIES; FINDINGS OF FACT AND CONCLUSIONS OF LAW; ORDER TO PAY; AND NOTICE OF HEARING issued by the Federal Deposit Insurance Corporation (FDIC) on June 10, 2008 detailing the violations of law and/or regulations and unsafe or unsound banking practices alleged to have been committed by the Bank, and having been advised of its right to a hearing with respect to the foregoing under sections 8(b) and 8(i)(2) of the Federal Deposit Insurance Act (Act), 12 U.S.C. §§ 1818(b) and (i)(2), and the FDIC Rules of Practice and Procedure, 12 C.F.R. Part 308, and having waived those rights, entered into a STIPULATION AND CONSENT TO THE ISSUANCE OF AN ORDER TO CEASE AND DESIST,

ORDER FOR RESTITUTION, AND ORDER TO PAY (CONSENT AGREEMENT) with a representative of the Legal Division of the FDIC, dated October 3, 2008, whereby, solely for the purpose of this proceeding and without admitting or denying the alleged violations of law and/or regulations and unsafe or unsound banking practices, the Bank consented to the issuance of an ORDER TO CEASE AND DESIST, ORDER FOR RESTITUTION, AND ORDER TO PAY (ORDER) by the FDIC.

The FDIC considered the matter and determined that it has reason to believe that the Bank committed violations of law and/or regulations and engaged in unsafe or unsound banking practices, including, but not limited to, violations of section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1) (Section 5) and operating the Bank without effective oversight and supervision of the Bank's consumer lending programs.

The FDIC, therefore, accepts the CONSENT AGREEMENT and issues the following:

ORDER TO CEASE AND DESIST

IT IS HEREBY ORDERED, 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, cease and desist from the following violations of law and/or

regulations and from engaging in the following unsafe or unsound banking practices:

(a) operating in violation of Section 5;

(b) operating the Bank's National Consumer Products Division (NCP Division) without effective oversight by the Bank's board of directors (Board) and supervision by senior management of the lending programs offered, marketed, administered, processed, serviced and/or collected by third-parties pursuant to arrangements or agreements with the Bank including, but not limited to, those third-party arrangements and agreements identified in Exhibit "A" of the CONSENT AGREEMENT (all collectively referred to in this ORDER as "third-party lending programs"); and any vendor, servicer or third party providing one or more of these functions or services material to the Bank's third-party lending programs (all collectively referred to in this ORDER as "third-party provider");

(c) operating the Bank's NCP Division with an inadequate system of internal controls, management information system, and internal audit system with regard to the size of the NCP Division and the nature, scope and risks of the third-party lending programs and third-party providers, in contravention of

the Standards for Safety and Soundness contained in Appendix A to Part 364, 12 C.F.R. Part 364;

(d) operating the Bank's NCP Division with an inadequate compliance management system to ensure compliance with Section 5 and other federal consumer protection laws and regulations; and

(e) operating the Bank with inadequate capital planning in relation to the risk considerations and/or factors prescribed by the *Interagency Expanded Guidance for Subprime Lending Programs* (FIL-9-2001, issued January 31, 2001) and the FDIC's *Credit Card Activities Manual*, Chapter XIV.

IT IS FURTHER ORDERED that the Bank, its institution-affiliated parties, and its successors and assigns, take affirmative action as follows:

I. TERMINATION OF THIRD-PARTY LENDING PROGRAMS AND RELATIONSHIPS WITH THIRD-PARTY PROVIDERS

Within sixty (60) days of the effective date of this ORDER, the Bank shall develop and submit to the Regional Director of the FDIC's New York Regional Office (Regional Director), for her non-objection in accordance with paragraph XIII.A of this ORDER, a comprehensive plan, with timelines, for the termination of all relationships with third-party providers and the termination of

all third-party lending programs or any agreements or arrangements with third-party providers that exhibit the characteristics of a "Rent-a-BIN" or "Rent-a-ICA" arrangement, as referred to in the FDIC's *Credit Card Activities Manual*, except for those third-party lending programs and third-party providers specifically identified in Exhibit "B" of the Consent Agreement. The plan shall provide for these terminations within one hundred and twenty (120) days of the effective date of this ORDER. Upon termination of each third-party lending program and/or the relationship with a third-party provider, the Bank shall provide written notification to the Regional Director apprising her of the date the third-party lending program or the relationship with the third-party provider was terminated.

II. NCP DIVISION PLANS

A. Consultant:

1. Within thirty (30) days of the effective date of this ORDER, the Bank shall retain an independent third-party consultant (Consultant) acceptable to the Regional Director with appropriate expertise and qualifications to assist the Bank with the preparation of a comprehensive strategic plan and an operating plan for the Bank's NCP Division (NCP Division Plans) as well as the assessment of management and staff needs within the NCP Division required by Article III and the Capital Plan

required by Article IV of this ORDER.

2. The Bank shall provide the Regional Director with a copy of the proposed engagement letter or contract with the Consultant for her review and non-objection. The contract or engagement letter, at a minimum, should include:

a. a description of the work to be performed under the contract or engagement letter;

b. the responsibilities of the Consultant;

c. identification of the professional standards covering the work to be performed;

d. identification of the specific procedures to be used when carrying out the work to be performed;

e. the qualifications of the employee(s) who are to perform the work;

f. the time frame for completion of the work; and

g. a provision for unrestricted access by the FDIC to the Consultant's staff, work papers and other materials prepared in the course of the Consultant's engagement.

B. Strategic Plan:

Within ninety (90) days of the effective date of this ORDER, the Bank shall, with the assistance of the Consultant, develop and submit to the Regional Director, for her non-objection in accordance with paragraph XIII.A of this ORDER, a comprehensive

strategic plan (Strategic Plan) covering an operating period of at least three (3) years. The Strategic Plan shall include, at a minimum:

1. a full and complete description of each and every consumer loan product (Consumer Product) and/or consumer lending activity the Bank will offer or in which the Bank will engage, either within the NCP Division or any other area or division of the Bank;

2. a full and complete list of each third party the Bank plans to utilize in connection with any Consumer Product or consumer lending activity, either within the NCP Division or any other area or division of the Bank;

3. a full and complete description of the function or service each third party will provide in connection with any Consumer Product or consumer lending activity, either within the NCP Division or any other area or division of the Bank; and

4. the planned volume and growth of each of these Consumer Products and/or consumer lending activities either within the NCP Division or any other area or division of the Bank.

C. Operating Plan:

Within ninety (90) days of the effective date of this ORDER, the Bank shall, with the assistance of the Consultant, develop and submit to the Regional Director for her non-objection in accordance with paragraph XIII.A of this ORDER, specific operating policies and procedures (Operating Plan) that appropriately take into account the nature, scope, and risk of each Consumer Product and each consumer lending activity whether offered or engaged in within the NCP Division or any other area or division of the Bank as well as the size of such divisions or areas of the Bank and address the following areas:

1. Internal Control System: The Bank's Internal Control System shall, at a minimum, include policies, procedures and processes that provide for:

a. an organizational structure for the day-to-day operation and oversight of the Bank's Consumer Products and consumer lending activities with (i) clear lines of authority and identification of reporting lines; (ii) clear assignment of responsibility along the lines of authority for assessing and monitoring the compliance of each Consumer Product and each consumer lending activity with all applicable federal consumer protection laws, including Section 5, and all implementing rules and regulations, regulatory guidance, and statements of policy

as well as all applicable policies and procedures of the Bank including, but not limited to, those specific areas of non-compliance noted in the FDIC's Report of Examination dated April 25, 2007 (ROE) and/or the FDIC's Compliance Report of Examination as of April 6, 2006 (Compliance Report); and (iii) clear assignment of responsibility for reporting to the Board the results of the assessment and monitoring activity performed under this subparagraph, including specification of information and data to be reported to the Board on a periodic, but not less than quarterly, basis;

b. initial and periodic, but not less than quarterly, written reports to the Board assessing the strategic, legal, reputational, transactional, compliance, regulatory, accounting and credit risk associated with each Consumer Product and each consumer lending activity; and

c. an adequate number of staff to ensure full and complete compliance with subparagraphs (a) and (b) above.

2. Management Information System: The Bank's management information system (MIS) shall, at a minimum, include policies, procedures and processes that provide for:

a. new or enhanced systems to allow the Bank to appropriately monitor each Consumer Product and each consumer

lending activity for compliance with all applicable federal consumer protection laws and implementing rules and regulations, regulatory guidance, and statements of policy as well as all applicable policies and procedures of the Bank;

b. new or enhanced systems to allow the Bank to access, collect and analyze such data, documentation or other information necessary for effective monitoring of each Consumer Product and each consumer lending activity;

c. new or enhanced systems to allow the Bank to access, collect, and analyze such data, documentation or other information necessary to calculate fee rebates due in the event a loan is prepaid;

d. new or enhanced systems to allow the Bank to access, collect, and analyze such data, documentation or other information necessary to determine whether installment loan products and similar products (ILPs) comply with the guidance set forth in the *FDIC's Supervisory Policy on Predatory Lending* (FIL-6-2007, issued January 22, 2007) including the ability to determine whether a lending transaction represents a fair exchange of value for the borrower and whether the pricing of the loan appropriately reflects the borrower's risk of repayment

and whether it is customary and reasonable under the circumstances; and

e. an adequate number of staff to ensure full and complete compliance with subparagraphs (a) through (d) above.

3. Internal Audit System: The Bank's Internal Audit System shall, at a minimum, include policies, procedures and processes that ensure:

a. adequate monitoring of the Internal Control System through a comprehensive internal audit function;

b. an audit staff comprised of a sufficient number of qualified persons;

c. the independence and objectivity of the internal auditor, the audit staff, and the audit committee;

d. adequate testing and review of MIS for the Bank's NCP Division and/or any other area or division of the Bank offering a Consumer Product or engaging in a consumer lending activity;

e. adequate testing and review of Consumer Products and consumer lending activities such that the scope and testing are adequate to (i) detect substantive deficiencies in the operation of the Bank's Consumer Products and consumer

lending activities; and (ii) determine the level of compliance of the Bank's NCP Division and/or any other area or division of the Bank offering Consumer Products and/or engaging in consumer lending activities with all applicable federal consumer protection laws and all implementing rules and regulations, regulatory guidance, and statements of policy as well as all applicable policies and procedures of the Bank;

f. adequate documentation of tests and findings of any corrective actions;

g. verification and review of management actions to address material weaknesses;

h. tracking of deficiencies and exceptions noted in audit reports with periodic, but not less than quarterly, status reports to the Board with each deficiency and material exception identified, the source of the deficiency or exception and date noted, responsibility for correction assigned, and the date corrective action was taken in the report;

i. review of the effectiveness of the NCP Division's Internal Audit Systems and/or the Internal Audit Systems of any other area or division of the Bank offering

Consumer Products or engaging in consumer lending activities by the Bank's Audit Committee or Board; and

j. an annual audit schedule for the NCP Division and/or any other area or division of the Bank offering Consumer Products or engaging in consumer lending activities approved by the Board with any planned changes to or deviations from the approved audit schedule, its scope, or content requiring the prior written approval of the Board or its Audit Committee appropriately reflected in the minutes of the meeting wherein the change or deviation was approved.

4. Compliance Management System (CMS): The Bank's CMS shall, at a minimum, include policies, procedures and processes that ensure that all Consumer Products and consumer lending activities comply with all applicable federal consumer protection laws, including Section 5, and all implementing rules and regulations, regulatory guidance, and statements of policy and provide for:

a. Bank review, approval (prior to first use and subsequent re-reviews as may be required by, among other things, regulatory guidance and changes in laws and/or regulations), and maintenance of copies of (i) all marketing and solicitation materials, including direct mail or Internet

solicitations, promotional materials, advertising, telemarketing scripts, (ii) other materials provided to consumers and accountholders generated in connection with the administration and servicing of the Consumer Products and consumer lending activities, including accountholder agreements, privacy policies, forms of accountholder statement, and (iii) changes or amendments with respect to the materials described in (i) and (ii);

b. timely and regular 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 the Consumer Products and consumer lending activities (other than routine requests such as to cease and desist collection contact);

c. (i) Bank review and approval of all materials related to customer service and collection activities, including compliance with the guidance set forth in FDIC FIL-52-2006 (issued June 21, 2006), (ii) monitoring of customer service and/or collection calls on a regular basis, (iii) Bank review of service level reports, and (iv) procedures for promptly addressing and resolving customer complaints regarding the

Consumer Products and consumer lending activities, regardless of the source;

d. Bank review of periodic, but not less than quarterly, quality assurance reports, reports on collection results, collector evaluation results, and a summary of disciplinary action reports for each call center;

e. Bank review of all third-party lending program's and third-party providers' credit, fraud, and risk management materials, including policy manuals and practices, to determine compliance with all applicable consumer protection laws;

f. Bank review and approval of all materials in connection with any Consumer Products and consumer lending activities, including arrangements for Consumer Products between third-party providers and any other vendor or party providing material services to the third-party provider; and monitoring periodically, but not less than quarterly, reviews, including the review of quality assurance reports and on-site audits, of all such material service providers;

g. periodic, but not less than quarterly, review by the Bank of all account services materials, including

materials related to customer chargeback and dispute processing, mail forwarding, returned mail and copy requests;

h. Bank review and regular monitoring of all third-party providers' materials relating to suspense item research, general ledger reconcilement and settlement, including daily settlement reports and preparation of monthly settlement reports;

i. Bank review of all materials related to the financial performance of Consumer Products and consumer lending activities and monthly performance monitoring of assets relating to the Consumer Products and consumer lending activities as a whole and by vintage and campaign, including new accounts established, receivables growth or decline, charge-offs, credit risk scores (such as Fair Isaac & Co. (FICO) scores), sources of revenue (annual percentage rates (APRs) and fees), number of accounts receiving credit line increases and decreases, and APR increases or reductions;

j. Bank monitoring of the performance of marketing and solicitation programs for new accounts and enhancement products, including numbers of accounts offered, the products in each campaign and response rate, and production and review of trend analysis;

k. mandatory regular compliance reviews by the Bank, including all policies and procedures, and internal compliance audits and on-site visits to service facilities of all third-party providers;

l. Bank review of all business and strategic plans relating to agreements with third-party providers;

m. Bank maintenance of records of all approved consumer materials, complaints and responses, solicitation materials, administration materials, and service provider agreements, relating to the Bank's Consumer Products and consumer lending activities;

n. Bank maintenance of files documenting the service level standards for those services provided by third-party providers and their service providers, including due diligence reports, monitoring and audit results, and financial materials;

o. Bank scheduling and conducting regular meetings with its third-party providers, for which written minutes will be taken and maintained;

p. Bank monitoring of third-party membership programs, if any;

q. periodic, but not less than quarterly, Bank monitoring of the use and security of confidential and nonpublic personal information;

r. an effective training program that includes regular, specific, comprehensive training in applicable federal consumer protection laws, including Section 5, and all implementing rules and regulations, regulatory guidance and statements of policy, for appropriate Bank personnel; and

s. an appropriate number of compliance personnel with sufficient experience in, and knowledge of, Consumer Products and consumer lending activities and consumer compliance laws and regulations to administer the CMS.

5. Account Management: The Bank's policies, procedures and systems shall ensure compliance with the guidance set forth in the *Account Management and Loss Allowance Guidance for Credit Card Lending* (FIL-2-2003, issued January 8, 2003), and, at a minimum, shall include the following:

a. requirements that minimum payments will preclude negative amortization and will amortize the current balance over a reasonable period of time, consistent with the unsecured nature of the underlying debt and the consumer's documented creditworthiness;

b. establishment of policies and procedures that provide for reasonable control over and timely repayment of amounts that exceed established credit limits; and

c. to the extent that the Bank utilizes any third parties pursuant to contract or otherwise to provide any services for account management and/or account servicing, the Bank shall ensure that all such third parties comply with the requirements of subparagraphs (a) and (b) above.

6. Predatory Lending: The Bank's policies, procedures and systems shall ensure that its ILPs comply with the guidance set forth in the *FDIC's Supervisory Policy on Predatory Lending* (FIL-6-2007, issued January 22, 2007).

III. ASSESSMENT OF MANAGEMENT AND STAFF

A. NCP Division Consultant:

1. Within thirty (30) days of the effective date of this ORDER, the Consultant shall analyze and assess the Bank's management and staffing needs within the NCP Division. The analysis and assessment shall be summarized in a written report to the Board (NCP Division Report), with a copy simultaneously delivered to the Regional Director. At a minimum, the NCP Division Report shall:

a. identify the type and number of Senior

Executive Officers (as that term is defined in 12 C.F.R. § 303.101(b)) and other officer positions needed to appropriately manage and supervise the affairs of the NCP Division, detailing any vacancies and additional needs with appropriate consideration to the size of the NCP Division and the nature, scope and risks of (i) each Consumer Product and/or consumer lending activity; (ii) each third party utilized by the Bank in connection with any Consumer Product and/or consumer lending activity; and (iii) the Bank's remaining third-party providers and make such modifications as are sufficient to retain personnel with adequate experience to oversee the NCP Division;

b. identify the type and number of staff positions needed to implement the plans, policies, procedures and processes required by this ORDER, detailing any vacancies and additional needs;

c. identify the authorities, responsibilities, and accountabilities attributable to each position, as well as the appropriateness of the authorities, responsibilities, and accountabilities, giving due consideration to the relevant knowledge, skills, abilities, and experience of the incumbent, if any, and the existing or proposed compensation; and

d. present a clear and concise description of the

relevant knowledge, skills, abilities, and experience necessary for each position, including delegations of authority and performance objectives.

B. NCP Division Management Plan:

1. Within sixty (60) days of receipt of the NCP Division Report, the Bank will develop a written plan of action (NCP Management Plan) in response to each recommendation contained in the NCP Division Report and a time frame for completing each action. A copy of the NCP Management Plan and any subsequent modification thereto shall be subject to review, comment and non-objection by the Regional Director to ensure that the NCP Management Plan and any subsequent modification comply with the requirements of this ORDER.

2. The NCP Management Plan shall be adopted by the Board and implemented by the Bank in accordance with paragraph XIII.A of this ORDER.

C. Bank Policies and Procedures to Evaluate Performance: Within sixty (60) days of the effective date of this ORDER, the Board shall establish policies and procedures to periodically analyze and assess the performance of management and staff in the performance of their present duties and anticipated duties (Performance Plan). The Performance Plan shall be submitted to

the Regional Director for her review and comment and/or non-objection. At a minimum, the Performance Plan shall:

1. establish policies and procedures to evaluate the current and past performance of management and staff members of the Bank, indicating whether the individuals are competent and qualified to perform present and anticipated duties, adhere to applicable laws and all implementing rules and regulations, regulatory guidance, statements of policy, the Bank's established plans, policies, procedures and processes and operate the Bank in a safe and sound manner;

2. establish policies and procedures to recruit and retain qualified directors, Senior Executive Officers and personnel consistent with the Performance Plan's analysis and assessment of the Bank's management and staffing needs;

3. establish policies and procedures to provide for any additional training and development needs not specifically identified and required by this ORDER, as well as policies and procedures to provide such training and development to the appropriate personnel; and

4. establish policies and procedures that provide for periodic, but not less than annual, review and update of the

Performance Plan.

D. Board and Management Changes:

While this ORDER is in effect, the Bank shall notify the Regional Director in writing of any changes in any of its Senior Executive Officers or Board members. Such notification shall include a description of the background and experience of the proposed officer or Board member and must be provided thirty (30) days prior to the individual(s) assuming the new position(s).

IV. CAPITAL PLAN

Within ninety (90) days of the effective date of this ORDER, the Bank shall, with the assistance of the Consultant retained pursuant to Article II of this ORDER, develop and submit a written capital plan (Capital Plan) to the Regional Director for her non-objection in accordance with paragraph XIII.A of this ORDER. The Capital Plan shall require, at a minimum:

A. specific plans for the maintenance of capital in an amount adequate and appropriate for the Bank taking into consideration its Strategic Plan and consistent with the risk considerations and/or factors prescribed by the *Interagency Expanded Guidance for Subprime Lending Programs* (FIL-9-2001,

issued January 31, 2001) and the FDIC's *Credit Card Activities Manual*, Chapter XIV, Credit Card Issuing Rent-a-BINs;

B. projections for asset growth and capital levels based upon a detailed analysis of the Bank's current and projected assets, liabilities, earnings, fixed assets, and the risks associated with its off-balance sheet activities including, but not limited to, any "Rent-a-BIN", "Rent-a-ICA" or similar activities;

C. projections of the sources and timing of additional capital to meet the Bank's current and future needs;

D. the primary source(s) from which the Bank will obtain capital to meet the Bank's needs;

E. a contingency plan that identifies alternative sources should the primary source(s) under paragraph (D) above be unavailable; and

F. a dividend policy that permits the declaration of a dividend only when the Bank is in compliance with its approved Capital Plan.

V. REVIEW AND UPDATING OF PLANS

A. The Bank shall review and update the Operating and Capital Plans required by Articles II and IV of this ORDER on a quarterly basis, or more frequently if specifically required herein or requested by the Regional Director. Copies of these reviews and updates shall be submitted to the Regional Director for her review and non-objection in accordance with paragraph XIII.A immediately following their completion.

B. The Strategic Plan required by Article II of this ORDER shall be revised and submitted to the Regional Director for her review and non-objection in accordance with paragraph XIII.A of this ORDER forty-five (45) days after the end of each calendar year for which this ORDER is in effect.

VI. AFFIRMATIVE RELIEF

A. Corrective Measures:

Within ninety (90) days of the effective date of this ORDER, the Bank shall take all action necessary to eliminate and/or correct all violations and/or deficiencies noted in the ROE or the Compliance Report, including Section 5, and other federal consumer protection laws and regulations along with all contraventions of the federal banking agency policies and guidelines. In addition, the Bank shall take all necessary

steps to ensure future compliance with all applicable laws and regulations, including Section 5, and all other applicable federal consumer protection laws and all implementing rules and regulations, regulatory guidance, and statements of policy.

B. Compliance:

Within ninety (90) days of the effective date of this ORDER, the Bank shall take all action necessary to comply with the guidance set forth in *Unfair or Deceptive Acts or Practices by State-Chartered Banks* (FIL-26-2004, issued March 11, 2004). At a minimum, the Bank shall not make, directly or indirectly, any misrepresentation, expressly or by implication, about any material term of an offer or extension of credit including, but not limited to, the amount of available credit or the relationship between an offer or extension of credit and a debt repayment plan or the repayment of existing debt, in connection with the advertising, marketing, offering, soliciting, extending, billing or servicing of credit.

C. Disclosures:

The Bank shall, directly or indirectly, disclose as clearly and prominently as, and on the same page as, any representation about credit limits or available credit in any credit card

solicitation:

1. a description of:

a. all initial fees (Initial Fees), as defined below;

b. all other fees imposed for the issuance or availability of a credit card, or imposed based on account activity or inactivity, other than: (i) any fee imposed for an extension of credit in the form of cash; (ii) any fee imposed for a late payment; or (iii) any fee imposed in connection with an extension of credit in excess of the amount of credit authorized to be extended with respect to such account; or (iv) any fee imposed in connection with foreign country transactions or foreign currency exchange;

c. the amount and timing of all such fees; and

d. all other restrictions imposed for the issuance or availability of credit;

2. if the aggregate amount of the Initial Fees or other restrictions that affect initial available credit is material, the amount of credit available upon activation after application of the Initial Fees and other restrictions, *provided*

that if the solicitation offers a credit limit of "up to" a certain amount, the amount of available credit after application of Initial Fees and restrictions shall be expressed as an example of a typical offer of credit;

3. if the effect of the fees described in subparagraph 1.b or the restrictions described in subparagraph 1.d on available credit is material, a description of the effect of such fees or restrictions on available credit.

4. "Initial Fees" shall mean any annual, activation, account opening, membership, periodic, or other fee imposed for the issuance or availability of a credit card at the time the account is opened; *provided* that "Initial Fees" shall not include: (i) any fee imposed for an extension of credit in the form of cash; (ii) any fee imposed for a late payment; or (iii) any fee imposed in connection with an extension of credit in excess of the amount of credit authorized to be extended with respect to such account.

VII. ORDER FOR RESTITUTION AND OTHER RELIEF

IT IS FURTHERED ORDERED that:

A. The Bank shall establish and maintain an account in the amount of $700,000 to ensure the availability of restitution

with respect to categories of consumers, specified by the FDIC, who activated Tribute Little Rock, Imagine Little Rock, Purpose Advantage, and Embrace credit card accounts.

B. Any application of the account shall be made through a cash payment to or at the direction of the FDIC for the purpose of making restitution to consumers.

C. The FDIC may require the account to be applied under the following circumstances:

1. If CompuCredit Corporation, Atlanta, Georgia (CompuCredit) is required by a judgment, order or other agreement with the FDIC or the Federal Trade Commission (FTC), including an order or agreement issued or made pursuant to a settlement arrangement, to pay restitution (Required Restitution) to any consumers who activated Tribute Little Rock, Imagine Little Rock, Purpose Advantage, or Embrace credit card accounts, and CompuCredit defaults, in whole or in part, on its obligation to make the Required Restitution, the FDIC may require the account to be applied to the extent of such default.

2. If the FDIC and/or the FTC are unable to obtain a judgment, order or agreement requiring CompuCredit to pay restitution to any consumers who activated Tribute Little Rock, Imagine Little Rock, Purpose Advantage, and Embrace credit cards, because of a reason other than the merits of their claims

and despite making reasonable efforts to do so, the FDIC may require the account to be applied in full.

III. RESTITUTION PLAN FOR CONTINENTAL FINANCE CARD (CFC) PROGRAM

A. The Bank shall prepare a comprehensive restitution plan (CFC Restitution Plan) for consumers who, during the period from March 2006 to the effective date of this ORDER, applied in response to a communication that solicited applications for a CFC credit card and were approved (CFC Eligible Consumers). The CFC Restitution Plan shall require that the following fees charged to the accounts of CFC Eligible Consumers be credited to the consumer's account, and any resulting credit balance shall be refunded to the consumer in cash:

1. the $89 participation fee charged to those consumers who cancelled their accounts during the first two (2) billing cycles after the account was opened; and

2. for those consumers who accessed the Bank's website and made their first payment to their CFC credit card account online, the first $4 online payment fee.

B. The Bank shall hire a consultant, acceptable to the Regional Director, who may be a certified public accountant (CFC Consultant), who shall review and verify that the Bank accurately identified the CFC Eligible Consumers and correctly

credited the accounts of, and made cash refunds, as appropriate, to CFC Eligible Consumers.

C. The CFC Consultant shall prepare a detailed written report of the processes and procedures by which the Bank determined the restitution amounts described above in paragraphs VIII.A.1 and VIII.A.2. The report shall also include the following: (1) total number of CFC Eligible Consumers, (2) number of CFC Eligible Consumers who received credits and cash refunds, (3) total amount of credits made under the CFC Restitution Plan, and (4) total amount of cash refunds made under the CFC Restitution Plan.

D. Within one hundred and twenty (120) days of the effective date of this Order, the Bank shall implement the CFC Restitution Plan.

E. The report described above in paragraph VIII.C. shall be submitted to the Regional Director for her review and comment and non-objection in accordance with paragraph XIII.A of this ORDER within sixty (60) days after the Bank has completed implementation of the CFC Restitution Plan.

F. The Bank shall retain all records pertaining to the CFC Restitution Plan including, but not limited to: documentation of the processes and procedures used to determine

the CFC Eligible Consumers, the names, contact and account information of the CFC Eligible Consumers, any mailing records, and documentation that the appropriate credits and cash refunds were made.

IX. DIRECTORS' COMPLIANCE COMMITTEE

Within thirty (30) days of the effective date of this ORDER, the Board shall establish a Directors' Compliance Committee (Committee) reporting to the Board and responsible for overseeing the affirmative action required by this ORDER. The Committee shall be comprised of at least three (3) independent directors who shall not be employed in any capacity by the Bank other than as a director. The Committee shall monitor compliance with this ORDER and within ninety (90) days of the effective date of this ORDER, and every sixty (60) days thereafter during the life of this ORDER, shall submit to the Board for consideration at its next regularly scheduled meeting a written report detailing the Bank's compliance with this ORDER, including compliance with the enhanced independent audit program. The Committee's report shall be incorporated into the minutes of the corresponding Board meeting. Nothing herein shall diminish the responsibility of the entire Board to ensure compliance with the provisions of this ORDER.

X. PROGRESS REPORTS

The Bank shall furnish a written progress report to the Regional Director ninety (90) days after the effective date of this ORDER and every ninety (90) days thereafter, detailing the form and manner of all actions taken to secure compliance with this ORDER and the results of such actions. Such reports may be discontinued when the corrections required by this ORDER have been accomplished and the Regional Director has released the Bank in writing from making further reports. Nothing in this Article X shall relieve the Bank from compliance with any other reporting requirements or provisions of this ORDER. All progress reports and other written responses to this ORDER shall be reviewed by the Board and made a part of the minutes of the corresponding Board meeting.

XI. ORDER TO PAY

IT IS FURTHER ORDERED THAT, by reason of the alleged violations of law and/or regulations, and after taking into account the CONSENT AGREEMENT, 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 Bank, and such other matters as justice may require, pursuant to section 8(i)(2) of the Act, 12 U.S.C. § 1818(i)(2),

a civil money penalty of THREE HUNDRED AND FOUR THOUSAND DOLLARS ($304,000) is assessed against the Bank. The Bank shall pay the civil money penalty to the Treasury of the United States. The Bank shall pay such civil money penalty itself, and is prohibited from seeking or accepting indemnification for such payment from any third party.

XII. NOTICE TO SHAREHOLDERS

Within sixty (60) days of the effective date of this ORDER, the Bank shall send to its shareholders or otherwise furnish a description of this ORDER. The 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, Division of Supervision and Consumer Protection, Accounting and Securities Disclosure Section, 550 17th Street, N.W., Washington, D.C. 20429 for review 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.

XIII. MISCELLANEOUS

A. 1. Whenever a provision of this ORDER shall require the Bank to submit a proposed plan, policy, procedure or system; or an enhancement, revision or addition to a plan, policy, procedure, system; or other matter to the Regional Director for her review, comment and/or non-objection, the Bank shall make such submission to the Regional Director at 20 Exchange Place, New York, New York 10005.

2. The Regional Director shall provide comments to the Bank within thirty (30) days of receipt of the proposed plan, policy, procedure or system; or enhancement, revision or addition to the plan, policy, procedure or system; or other matter submitted for her review, comment and/or non-objection.

3. Within thirty (30) days of receipt of comments from the Regional Director, the Bank shall make such modifications as may be necessary to address the Regional Director's comments. If the Bank fails to make such modifications, or otherwise fails to address the Regional Director's comments within such thirty (30) day period, the Bank shall provide to the Regional Director a comprehensive written explanation, developed with its Consultant, of its rationale. Within thirty (30) days of receipt of the Bank's response, the Regional Director shall either (i) provide her non-objection to

the revisions proposed by the Bank; or (ii) provide comments as to her rationale for rejecting the proposed revisions, or such revisions which remain objectionable, and shall direct the Bank to implement the plan, policy, procedure, system, revision, or enhancement as finally approved.

4. The Bank's actions shall be appropriately recorded in the Board meeting minutes. Thereafter, the Bank and its directors, officers and employees shall fully implement and follow the plan, policy, procedure or other matter as adopted and shall ensure full and complete compliance with these plans, policies, procedures or other matters both internally and by any third party utilized by the Bank. It shall remain the responsibility of the Board to fully implement the plans, policies, procedures or other matters as adopted within the specified time frames.

5. If, after a reasonable period of time for implementation, the Bank has not complied with subparagraphs 1-4 above, the Regional Director may provide written notice of her objection(s) to the Bank and require the submission of a plan (Exit Plan) to discontinue its offering of the specified Consumer Product(s) or consumer lending activity. Within thirty (30) days of its receipt of the Regional Director's written

notice, the Bank shall develop and submit its Exit Plan to the Regional Director for her review and non-objection. The Exit Plan shall, at a minimum, provide for the discontinuation of the specified Consumer Product(s) or consumer lending activity within sixty (60) days of the Bank's receipt of the Regional Director's written notice.

6. The Bank shall not acquire any portfolios of consumer credit card accounts from any other insured depository institution or other entity until such time as the Bank has submitted, and the Regional Director has non-objected to, the plans, policies and procedures required under paragraphs I through IV of this Order.

B. The Bank shall use good faith reasonable efforts to cooperate with the FDIC in its pursuit of claims related to Tribute Little Rock, Imagine Little Rock, Purpose Advantage, and Embrace credit card products, including, upon reasonable prior notice and at reasonable times and places, in making its documents and records relating to the claims available to the FDIC (subject to any privilege or other protection available under applicable law) without subpoena and, upon reasonable prior notice and at reasonable times and places, in making its personnel (including officers, directors and employees)

available for interview and/or testimony by deposition or before any authorized tribunal without subpoena. The cooperation shall not require the Bank to waive any applicable privileges. The FDIC may use the documents and testimony in claims related to the Tribute Little Rock, Imagine Little Rock, Purpose Advantage, and Embrace credit card products, including any action brought by the FTC. Prior to their use in a proceeding, the documents and testimony will be kept confidential. Their use in a proceeding will be subject to confidentiality orders issued by the tribunal in which they will be used. The FDIC agrees to provide notice to the Bank if any third party other than the FTC attempts to obtain the documents or testimony.

C. Except for an action to enforce compliance with this ORDER and except for any claims against the CompuCredit Parties, as hereinafter defined, the FDIC shall not commence any action under section 8 of the Act, 12 U.S.C. § 1818, Section 5, or any other statute or regulation, against the Bank, or any of its directors, officers, employees, and agents, or any of the Bank's affiliates, their successors or assigns, or any of their respective directors, officers, employees, and agents (collectively, the Bank Parties), arising out of or related to the Tribute Little Rock, Imagine Little Rock, Purpose Advantage,

and Embrace credit card programs or relating in any manner to the ROE and/or the Compliance Report and related investigations, in each case to the effective date of this ORDER. The CompuCredit Parties shall mean CompuCredit, its officers, directors, employees, subsidiaries, successors and assigns, and any party having a contract with CompuCredit or providing services to or for the benefit of CompuCredit, with the exception of any of the Bank Parties.

D. 1. Except as limited by the CONSENT AGREEMENT and paragraph XIII.C above, 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 any of the Bank Parties or any of the Bank's current or former institution-affiliated parties, or any of their respective directors, officers, employees, and agents.

2. The FDIC expressly reserves all rights against the CompuCredit Parties. Nothing in this ORDER or in the CONSENT AGREEMENT shall require the FDIC or any other party to reduce, compromise, or otherwise limit any claims against the CompuCredit Parties.

3. Nothing in this ORDER or in the CONSENT AGREEMENT shall require the FDIC or any other party to reduce, compromise, or otherwise limit any claims because of any contractual or other commitments of the Bank to indemnify, defend, or hold harmless any of the CompuCredit Parties.

E. Nothing herein shall prevent the FDIC from conducting on-site reviews and/or examinations of the Bank, its affiliates, agents, service providers, and any other institution-affiliated parties of the Bank at any time to monitor compliance with this ORDER.

F. This ORDER shall be effective on the date of issuance.

G. The provisions of this ORDER shall be binding on the Bank, its affiliates, their successors and assigns, and any of their respective directors, officers, employees, and agents, and any of the Bank's current or former institution-affiliated parties, and any of their respective directors, officers, employees, and agents.

H. 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, suspended or terminated in writing by the FDIC.

Pursuant to delegated authority.

Dated at Washington, D.C., this 9TH day of October, 2008.

Christopher J. Spoth
Senior Deputy Director
Division of Supervision and
Consumer Protection

EXHIBIT C

XIV. CREDIT CARD ISSUING RENT-A-BINS

Banks are involved in many business lines that have varying competitive pressures and requirements for success. They are increasingly evaluating each line to determine whether it makes the most of the bank's strengths and is consistent with its strategic plans. As management considers these evaluations, it may decide to stop activities that are not profitable or that are too high-risk for its appetite in order to concentrate on activities that may be more profitable, that it and the bank may be better-suited for, or that are lower-risk. These types of evaluations have led to the development of many variants of the credit card lending model, one of which is a Rent-a-Bank Identification Number (BIN) arrangement. This chapter describes Rent-a-BIN (RAB) models and structures, highlights the risks of issuing RAB arrangements, and discusses risk-mitigating controls that management typically employs. Later sections of the chapter consider topics such as capital and accounting.

RENT-A-BIN MODELS AND STRUCTURES

With a RAB arrangement, a bank allows one or more other entities to conduct credit card activities with or through one of the bank's BINs[8], which is a number assigned by an Association to identify the bank for authorization, clearing, settlement, card issuing, or other processes. In return for allowing the use of its BIN, the bank receives a "rental" fee from that entity, hence the term Rent-a-BIN.

There are essentially two types of RAB arrangements: a credit card issuing RAB and an acquiring RAB. Each has a unique set of risks but both require the bank to have strong vendor-oversight programs. Acquiring RABs, which draw their names from the arrangement's feature of acquiring merchant contracts and cardholder transactions, are addressed in the Merchant Processing chapter, and issuing RABs, which draw their names from the arrangement's feature of issuing credit cards to consumers, are the focus of this chapter.

There are several common features among issuing RABs. In an issuing RAB arrangement a bank (as BIN owner) rents its right to offer credit cards that have the applicable Association's logo to a third party for a fee. The third party generally solicits prospective credit card customers and then provides approved applicants with a credit card. The bank is identified as the issuer of the card while the BIN-renter, or partner, and other sub-contracted participants may not necessarily be apparent to the cardholder. The bank retains its contract with the Association(s) because the Associations only allow insured depository institutions to issue credit cards under their brands. While the bank sheds itself of a majority of the day-to-day operational duties associated with operating the program in most cases, it always retains ultimate responsibility for the program based on its contract with the applicable Association and on it being the issuer of record.

Issuing RABs also have several aspects that vary from arrangement to arrangement. For example, the receivables are usually held by the BIN-renter (partner) or another party. In a few cases the bank might hold a small portion of the receivables or even a majority or all of the receivables. Securitization of the program's receivables (by whichever party has funded those receivables) may or may not be present. In most cases, the partner is unaffiliated with the bank. However, the partner may be an affiliate of the bank or a related interest of an insider of the bank, requiring an additional layer of review. Furthermore, some banks have arrangements with more than one partner for different credit card programs/BINs. Portfolio services such as collections,

[8] As mentioned in an earlier chapter, an ICA is a number assigned by MasterCard and is similar to a BIN that is issued by Visa. ICAs and BINs are collectively referred to as BINs in this manual. This chapter references arrangements involving the Associations; but, similar arrangements may be encountered with other networks going forward, particularly now that Discover and American Express are expanding their bankcard markets.

customer service, and processing, can be performed by the partner or by other third-parties (which, again, may or may not be affiliated with the bank). The bank could even perform select services or processes. In most cases the bank is an issuer only, but it is plausible that it could be both issuing and acquiring, which could complicate matters (refer to the Merchant Processing chapter for information on the acquiring business).

A bank might enter into an issuing RAB to reduce or to limit the level of receivables held on its balance sheet (thus reducing or limiting on-book credit risk) and/or to reduce or limit the operating burden on internal resources while still generating income from credit card activities. While issuing RAB arrangements can be effective means of meeting these goals, they pose a number of risks to the bank, and those risks can be substantial. Problems commonly arise when management is overly focused on apparent returns or cost savings or when it lacks sufficient knowledge about the risks involved with the card products offered, RAB activities, and/or third-party oversight.

A primary concern with RAB arrangements is that the bank may not have sufficient controls over the partner's (or the partner's agent's) actions, particularly solicitation, underwriting, and administration of the credit card relationships. The quality of services provided by the hundreds of third-parties in credit card and related industries, as well as their wherewithal to support the activities, varies widely. If the partner or its agents fail to abide by applicable laws, guidance, and regulations, or if the partner experiences financial difficulties, the bank could be exposed to operation and reputation risks that may result in fines or other monetary losses, funding or liquidity risks if the partner or other receivable-holders are not able to provide funding for new charges that they have committed to fund, and credit risk if the bank must fund the cardholder charges and retain the receivables on its balance sheet. Credit risk, whether from receivables voluntarily retained or that the bank is forced to retain, could be substantial if the bank has not had proper control over the partner's underwriting criteria and the partner solicited and accepted customers with riskier profiles than what the bank would normally accept.

For purposes of this chapter, a simple structure will be used: the bank will be an issuer (and not an acquirer) and will generally be assumed to be contracting with one partner, and that partner will hold all card receivables as well as perform all servicing and processing for the portfolio. However, examiners should keep in mind that a bank may have more than one partner, that the partner might have relationships with more than one bank, that the bank may or may not retain the receivables, and that servicing may be performed by the partner, the bank, or another third-party. Examiners will need to review governing documents for issuing RAB arrangements (normally for those that are material or new) to ascertain the parties involved, the extent of each party's responsibilities, and how and to what degree failure of each party to meet its obligations may impact the bank, whether directly or indirectly. Examiners should also look for evidence identifying whether management has properly addressed the risks from each RAB arrangement.

RESPONSIBILITIES OF BANK MANAGEMENT

Management sometimes assumes that it does not have to carefully monitor the card portfolio, namely when the bank does not hold the receivables. However, in an issuing RAB arrangement, the bank is responsible for the program and its customer relationships regardless of where the receivables reside. Further, the performance of the accounts can substantially impact the risks to the bank. Another misconception is that if a contract is in place between the bank and the partner, the bank is sufficiently protected. Contracts, a necessary component of a successful RAB operation, may not always be iron-clad. For example, the partner's indemnification contribution is only as strong as its financial wherewithal. Further, in some situations the bank might step in and relieve the partner from some of its responsibilities under the contract, thus tainting the contract. As another example, even though the contract might call for the partner to reimburse fines, it is up to the bank to seek that reimbursement and it might elect not do so, perhaps to keep the third party viable or to avoid disruptions to the program. That is not to say that a partner could not also provide services or financial support beyond contract specifications.

Even though the bank might not be directly involved in solicitation, underwriting, and administration processes under the issuing RAB arrangement, it is still the legal owner of the card accounts and relationships. As the BIN-licensee, the bank is responsible to the Association(s) for transactions processed and/or cards issued with its BINs, and, thus, program oversight. Even though contracts between the bank and the partner might direct the partner to assume these and other responsibilities, regulatory agencies and, most likely, the Associations regard the bank as ultimately responsible for the program. Typically the Associations have nominal direct contact with the bank's third parties. Rather, the bank is responsible for managing the third-party relationships, ensuring the third party meets established standards, and looking to the partner for reimbursement or other support provided for in the contract between the bank and the partner. The Association(s) may look to the third party if the bank is unable to meet its obligations.

Rigorous and thorough oversight of issuing RAB arrangements is warranted for management to ensure the risks are appropriately controlled. Issuing RAB relationships should generally be subject to risk management, consumer protection, and other policies and practices consistent with those that would be used if the bank was issuing the cards directly. The assessment of controls, safeguards, and practices for RAB activities is factored into the Management component rating (and other component ratings as applicable).

RISKS

Issuing RABs can be profitable ventures but do entail risks which, if not properly controlled, can quickly erode profitability and/or cause many other problems, some of which could be critical, for the bank. Because the bank does not usually hold the preponderance of the receivables and because third parties are typically conducting most of the portfolio services, the risks may not appear as straightforward as they are with a conventional credit card lending model. The frequency and level of each risk to a RAB bank is influenced by a number of factors, including, but not limited to, the type of card program, the bank's experience with the program or similar programs, and the third party's experience with similar activities. Poor planning, oversight, and control by management and inferior performance or service by the partner are usually the culprits that increase the risks.

Due to the risks involved, RAB arrangements warrant carefully-orchestrated, management-appointed safeguards and controls. Examiners should determine whether management, even if only considering establishing an arrangement, is fully aware of the risks involved. They should look for evidence that management has identified and documented the business's risks as well as the expertise and controls that will be required to manage those risks. A formal risk assessment may be warranted, particularly when proposed RAB activities will be of a substantial volume or would involve higher-risk characteristics, such as subprime lending or new products. Risks with an issuing-RAB arrangement include, but may not be limited to, legal, compliance, and reputation risks; counterparty risk; funding risk; credit risk; and operational risk.

Legal, Compliance, and Reputation Risks

Legal, compliance (consumer or otherwise), and reputation risks are prominent in issuing-RAB arrangements. These risks can be particularly substantial when subprime lending or other high-risk activities are involved. While these three risks often go hand-in-hand, they are not synonymous. These types of risks arise because the bank is responsible for the program, including actions taken (or inaction) by the third-parties involved. The bank cannot effectively detach itself from the credit card activity since the bank's name remains as the card issuer and the bank remains contracted with the Associations. Thus, errors and violations of law or of cardholder agreements, by the bank or its contracted parties, could expose the bank to substantial monetary loss through lawsuits, fines, or other financial burdens. Consumer compliance risks, which can easily translate into safety and soundness risks, can be exacerbated

when the partner's (or its agents') employees interact directly with the bank's customers. For example, if marketing of the card program by the bank, the partner, or a third party is determined to be unfair or deceptive, the bank may be held responsible for any monetary penalties, reimbursements, and any other actions (such as shutting down the program) necessary to promptly address the concerns. As a result, risks to the bank's earnings and capital could ensue. The bank's reputation can also suffer by association with improper or abusive business practices conducted by the partner or its agents. Third parties' decisions may affect a bank's ability to establish new relationships or continue existing relationships, which could impact the bank's strategic objectives.

In general, the bank and its credit card programs must remain compliant with laws, regulations, and guidance including, but not limited to, the *Account Management and Loss Allowance Guidance for Credit Card Lending* (AMG), consumer protection laws, and anti-money laundering laws. The AMG is generally applicable to all insured institutions that offer credit card programs, regardless of whether or not the receivables are held at the bank. Further, banks' obligations to comply with the Associations' standards are not limited by the receivables' place of residence.

The Associations are highly cognizant of their own reputations. If the card program demonstrates increasing or high risk, inadequate controls, or high volumes in relation to the bank's size and resources, the Associations may require the bank to put up additional capital or collateral for the card program, regardless of where the receivables reside and regardless of whether or not a RAB arrangement is involved. Abuses of a bank's Association membership (including of the by-laws and operating regulations thereof) by a partner or its agents could also cause the bank to lose its authority to issue cards under the Associations' brands. Such a loss could impact the bank's reputation, earnings, and liquidity; could ultimately translate into capital problems for the bank; and/or could require substantial revisions to the bank's strategic objectives.

Regulators may also require augmented capital levels. The necessary level of capital is based on a number of factors, as discussed later in this chapter.

Counterparty Risk

Counterparty risk, or default risk, is the risk that the partner will fail to perform on its contractual obligations. It often ties closely to performance of the card portfolio because the partner's earnings and, thus, capital maintenance, formation, and support, is frequently a product of income generated by and costs associated with the program. The partner usually retains most of the program's income and carries most of the costs when it holds most or all of the receivables.

The partner could fail to meet its obligations under the contract(s) governing the RAB arrangement. For example, the partner might fail to fund the receivables, pay the rental fee, comply with established financial covenants and/or portfolio parameters, or maintain sufficient collateral support. As a result, the bank could have to fund the receivables, potentially increasing its liquidity, credit, and other risks. The bank might not be able to offset its oversight, management, or other costs for the program, which could stress the bank's earnings performance and, consequently, capital.

Funding Risk

Funding risk stems from the bank's responsibility to ensure that settlement[9] requirements are met. Funding risk, however, could be considered, in some respects, to be a by-product of

[9] Settlement is the term used to refer to the exchange of the actual funds for the cardholder transactions and associated fees. The issuers normally remit funds, through the Associations, to the acquirer, and the acquirer pays the individual merchants. Settlement is discussed in the Merchant Processing chapter.

counterparty risk. Usually the bank settles directly with the processor, whether or not the bank retains the receivables. Even if the partner or other third party is required by the RAB contract to fund settlement and/or may be able to settle directly with the processor, the bank is ultimately responsible to the Associations for ensuring settlement is met as it is the BIN-licensee and the issuer. Consequently, when funds available from the partner, which are usually influenced heavily by cardholder payments, cannot fully meet settlement requirements, the bank is looked upon to make up the difference.

Further, when the partner possesses the receivables, it could subsequently be selling those receivables via securitization. The securitization vehicle must be maintained whether or not the partner is able to fund or acquire the receivables and sell receivables to the securitization vehicle. Further, poor performance of the securitized portfolio could trigger cash capture or early amortization. In these cases, the trust will use incoming cardholder payments as applicable to fund **spread accounts**, pay off the investor certificates, and so forth. Since those funds will not be available to the partner to fund settlement, the bank could have to furnish funds.

Credit Risk

Credit risk remains at the bank for any receivables it retains. Credit risk also arises, albeit off-balance sheet or contingent, if receivables are held by the partner or another entity. Credit risk could shift to the bank if the receivables-holder cannot fulfill its financial obligations, such as settlement, and could be substantial if the bank has not properly controlled the partner's underwriting criteria and the partner has solicited accounts with risky profiles.

Operational Risk

Operational risk is generally defined as the risk of monetary loss resulting from inadequate or failed internal processes, people, and systems or from external events. Examples include fraud, business disruption, and poor execution of process management and can all have adverse impacts on the bank and its RAB programs. Comprehensive due diligence and contingency planning, including stand-in arrangements, can help limit the level of and impacts from operational risk.

RISK-MITIGATING CONTROLS

Practices and safeguards that management commonly implements to mitigate risks include, but are not limited to, instituting policy controls, performing due diligence procedures, establishing a comprehensive contract between the bank and the partner, and developing detailed contingency plans. Without proper safeguards in place, exposure could be substantial.

Policies

As part of being contractually responsible for and controlling the program, management normally establishes a thorough review and approval process for policies proposed or used by the partner. An effective RAB contract sets forth the bank's expectations regarding the partner's operating policies applicable to the program and provides bank management with the stated authority to periodically review the policies (both prior to and after implementation) to ensure the policies are consistent with the bank's standards and risk tolerances. Examiners should determine whether policy reviews are well-documented and whether a formal agreement process for program policies is used.

Examiners' attention should be directed to situations in which the bank's internal policies fail to specify a system for approving partners and an ongoing program to monitor the partner's financial condition and operating performance as well as portfolio performance. In general, a comprehensive policy designates the criteria for selecting partners, stipulates information that is

required in the RAB contract, and addresses other items, such as limits per RAB relationship and concentration limits.

Examiners' attention should also be directed to cases in which policies (whether the bank's or the partner's) are not consistent with the scale of the activity and the risks it presents. Typically the bank does not diverge from its normal lending practices when participating in RAB relationships. But, if the bank significantly diverges from its normal lending practices, examiners should assess how management has ensured that any eased standards still result in an acceptable level of credit risk and that any elevated risks are appropriately addressed. Failure to adequately control policies used by the partner could result in compliance and legal risks to the bank. Further, it could cause the partner to take on more risk, including credit risk, than it can control, and that risk could fall back on the bank if the partner is unable to meet certain financial obligations.

Due Diligence

Risk exposures generally increase when the bank is contracting with a disreputable or inexperienced partner. As is the case for any third-party arrangement, selecting a competent, qualified, and reputable partner is essential to effectively managing the arrangement's risks. Examiners should look for evidence that the due diligence process is structured to identify qualitative and quantitative aspects, both financial and operational, of the partner and to assess the arrangement's consistency with the bank's strategic goals. To be effective, due diligence should occur before conducting business or contracting with the entity, and at appropriate intervals thereafter, such as when the contract is due for extension or renewal.

Facts should corroborate that, before entering into or re-negotiating a RAB agreement, management ensured that the prospective partner had adequate financial capacity, expertise, infrastructure, technology, and staffing to operate the program soundly. In general, a thorough due diligence process includes documentation of these items:

- Analysis of credible financial information on the entity as well as its principals to verify the entity's viability and capacity to absorb losses.
- Research of background information and reputations of the entity and its ownership. This process may include reviewing business reputation, complaints, and litigation (such as by checking references or contacting attorney generals' offices and Better Business Bureaus). The length of time the entity has been in business is also applicable.
- Performance of a first-hand, on-site evaluation of the entity's business operations, including its premises and relevant records, to ensure it has the proper facilities, equipment, personnel, and so forth.
- Review of the entity's management experience in implementing and supporting the proposed activity as well as other relevant qualifications.
- Evaluation of the entity's business resumption, continuity, recovery, and contingency plans.
- Assessment of the entity's reliance on and success at dealing with sub-contractors, and resolution of which sub-contractors management will conduct due diligence of.
- Determination of whether appropriate insurance coverage is in place.
- Assessment of whether the entity's culture, values, business style, and strategies fit with the bank's culture, values, business style, and strategies.

In-House Expertise

Because of the risks associated with issuing RABs and to ensure the RAB operates successfully, it is imperative that the bank devote knowledgeable staff to oversee the arrangement. Examiners should assess the board of directors' practices for identifying the bank positions needed and clearly assigning responsibility for overseeing the partner and its operations. They should

determine whether the bank has provided adequate personnel and resources to fulfill its obligations in regards to the program and to monitor the partner's activities and portfolio performance. Examiners should look for proof that the bank's designated staff is knowledgeable and experienced with the processor, software programs, and other devices used by the partner and has legal and compliance expertise as well as accounting and technology expertise relevant to credit card lending. If the bank services the portfolio, proof should confirm whether it has adequate resources, expertise, infrastructures, and technology to appropriately provide the contracted services.

Contracts

Contractual responsibilities are fundamental to protecting the bank's interests and to determining the level and type of risks the arrangement brings to the bank. Effective contracts detail each party's responsibilities, specify what activities the partner is permitted to conduct, and are updated as needed. They also address the risk factors identified during the bank's risk assessment and due diligence processes. Normally, bank counsel reviews the proposed contract. Examiners should look for evidence that the contracts are structured to provide for the sound operation of the program as well as compliance with the Associations' standards. The level of protection offered by the contract could be questionable if the bank does not require the partner to consistently abide by its provisions, which normally cover, among other items:

- Financial reporting.
- Covenants and parameters.
- Access to information.
- Materials and program control.
- Settlement reserves (collateral protection).
- Pricing.
- Ability to terminate contract.
- Audit.

Financial reporting:

As noted, the bank is liable for meeting the settlement requirement daily but may look to the partner to supply settlement monies. Further, many RAB contracts contain indemnification provisions, but indemnification by the partner is only as strong as the financial wherewithal of the partner. A partner's financial situation could quickly become stressed, even to the point where it may file bankruptcy or become insolvent, possibly resulting in the bank having to retain the receivables if it had not been doing so already. The bank could possibly also end up having to cover costs, such as if fines or penalties have been imposed, if the partner cannot properly reimburse the bank according to governing contract provisions. As such, contract verbiage normally requires the partner to provide reliable financial information, including balance sheet, earnings, cash flow, and contingent liability information. Examiners' attention should be directed to situations in which the frequency of financial statement submission and review is not commensurate with the risk posed by the program and/or the partner. Partners are typically required to submit financial statements at least quarterly and audited financial statements annually. For higher-risk programs or higher-risk partners, more frequent submission and review may be required. Examiners should see proof that the board of directors has assigned responsibility both for evaluating the financial information and for reporting the findings to the board (or a designated committee) to competent employees. Contracts that require proper financial reporting practices can help the bank mitigate the risk of operating under a contract and program that is not fully supported by the financial wherewithal of the partner.

Covenants and parameters:

Contracts normally contain financial covenants for the partner (such as capital requirements, liquidity expectations, and appropriate settlement reserve balances) as well as card portfolio parameters (such as growth restrictions and performance expectations). The partner is usually required to periodically report and certify compliance with the covenants and parameters, and the contract normally prescribes remedies in the event the covenants and/or parameters are violated. Examiners' attention should focus on situations in which management does not have access to and/or does not review reliable data to monitor and test compliance with the established covenants and parameters. Proper examiner attention should also be given to situations in which review of the partner's budgets and other projections is not occurring. Such reviews help to detect trends that might signal emerging problems with meeting the covenants and parameters in the future. Further, situations in which the partner has violated the covenants or parameters warrant review during the examination.

If the portfolio becomes stressed, the partner (if it holds the receivables) could experience reduced cash flows which may, in turn, affect its ability to meet settlement requirements and, thus, potentially require the bank to provide funding. Portfolio deterioration could lead to a weakening of the partner's overall financial condition since a substantial portion of its earnings performance usually depends on the portfolio. Further, portfolio deterioration could signal ineffective servicing and management of the portfolio by the partner or other contracted servicers and could eventually entice the partner to use overly aggressive collection or other questionable servicing techniques, which could exacerbate compliance and legal risks. If the partner does not maintain appropriate capital or other financial measures, it may not be able to make good on its indemnification obligations and may not be able to fund the receivables. Thus, if contracts do not establish financial covenants for the partner as well as portfolio performance parameters for the portfolio, the bank is left with the risk that the partner may not be able to properly perform its contracted obligations, such as purchasing receivables, paying the rental fee, and so forth.

Access to information:

To ensure that management can assess the partner's policies and practices for compliance with laws, rules, regulations, safe and sound business practices, and the Associations' rules, the contract ordinarily provides management with ready access to such policies and procedures. Examiners should confirm whether procedures have been established to notify the bank when service disruptions, security breaches, or other events pose risk to the bank or when the partner receives any consumer complaints or litigation notices related to the bank's program. If a contract does not provide for appropriate access to information, the bank may be at the risk of unknowingly being named in lawsuits or unknowingly having its customers' or other information breached. A lack of appropriate access could also inhibit the bank from promptly identifying any changes that the partner may have inappropriately made to its policies or operating procedures.

Materials and program control:

The agreements generally grant the bank pre-approval rights over all program materials (such as marketing materials and cardholder agreements). Pre-approval rights over plans to issue new products or to materially alter existing products are also typical control features. Further, review and approval of card fee structures prior to implementation is a critical function of bank management. The granting and exercise of all of these rights is necessary to ensure that the partner is not taking on inappropriate levels of risk that could ultimately impact the bank. Contracts that are structured to commit the bank to open or maintain any particular level or number of cards, accounts, or receivables could cause the bank or the partner to take on a greater level of risk than can be appropriately controlled.

Settlement exposure reserves (collateral protection):

The contract ordinarily requires the partner to provide some kind of security or protection against any settlement exposure that the bank might face if the partner is unable to settle through agreed-upon normal means. Normal means could include the partner wiring funds to the bank daily, an authorized debit of the partner's general operating account at the bank, or some other similar method. Security for the exposure if the partner is not able to settle via normal means frequently takes the form of a combination of two or more of the following options: a deposit account, a contingency reserve, a credit facility, or other mechanism. Some banks have required the partner to hold ten days of coverage in aggregate. In any case, the funds available to the bank should tie to a realistic, well-documented contingency plan. The portfolio's available credit (open-to-buy) position and trends in that position can point to potential future trends or worst-case exposures regarding settlement activity, and, thus, are important considerations for determining the adequacy of protection provided. Settlement exposure reserves frequently consist of two items:

- *A Deposit Account* - Many contracts call for the partner to provide for and maintain an adequate deposit to cover potential shortfalls that may occur in daily settlement. This deposit is normally separate from any operating accounts that the partner might have at the bank. Concern arises when the method for determining the necessary deposit amount has not been specified or controlled by the bank. The deposit is usually held at the bank, but, whatever the case, examiners should look for evidence that the bank has proper controls over the deposit, which may include a perfected first lien. The partner typically has outside financing, so without proper controls, the bank's lien could fall behind liens of the financier. The deposit is usually required to cover several days of settlement volume (for purchases, cash advances, and so forth). Some contracts call for coverage of three days of volume (when a contingency reserve or other reserve/protection source is also used). Each contract needs to be reviewed on a case-by-case basis in the context of the activities being conducted and of any additional support (or lack thereof) provided by other means. Effective calculations to determine the deposit consider items such as seasonal fluctuations, portfolio growth, and customer payment rates and are well-documented. Contract features also usually call for the partner to replenish the balance in the account within a very short period once the account is drawn on. Compliance with the deposit requirement is often included in covenant-monitoring reports. Failure by management to ensure the deposit is accurately calculated and sufficiently funded could lead to an inability to meet settlement needs without the bank providing funds.

- *A Contingency Reserve* - Contracts also frequently require the partner to fund and maintain (at the bank or at a third-party) an adequate contingency reserve (or similar instrument) for use if the partner is unable to fully replenish the deposit account. Like the deposit, a contingency reserve usually covers several days of settlement, although its coverage is ordinarily longer, such as around seven days. Contingency reserves also warrant review on a case-by-case basis. In lieu of a contingency reserve, some partners establish a credit facility to the benefit of the bank. An effective contingency reserve calculation (or credit facility or other instrument) considers items such as seasonal fluctuations, portfolio growth, and customer payment rates and is well-documented. If the contingency facility is at a third party, examiners should evaluate management's practices for periodically verifying the availability and liquidity of the funds. Contracts may call for the partner to replenish these secondary funding sources within a very short period in the event they are drawn on, although if the contingency reserves are being drawn on, the third party is likely under financial stress. Failure to ensure the availability of such funds or the adequacy of the required funding amount could lead to an inability to settle in the event the bank does not step forward with its own funds. Again, proper controls over the contingency instrument are critical.

Pricing:

Comprehensive contracts clearly depict the compensation structure, allow for periodic review and re-pricing of services, and identify which party is responsible for each expense incurred. If the partner or another entity holds the receivables, a bank essentially pays for perceived insulation from credit losses by foregoing higher compensation that would typically be associated with carrying the card portfolio on its books. Rather, in these cases, the partner typically retains most of the income generated by the portfolio and carries most of the expenses. Examiners should evaluate whether the bank's compensation is commensurate with the risks retained as well as with the costs incurred for monitoring and managing the arrangement.

Ineffective pricing structures could quickly erode the bank's profits. Therefore, examiners should determine whether, prior to entering into or re-negotiating a RAB contract, management performs detailed cost analyses of its expenses and tries to obtain information on comparable transactions. Because the responsibilities and card portfolios under each bank's arrangements are different, pricing structures are difficult to compare and vary from contract to contract. Some contracts specify tiered fee structures where the fee per account (the definition of account also varies from contract to contract) is reduced as the volume of accounts increases. For example, a contract might call for a dollar per account for the first 100,000 accounts, 75 cents per account for the next 200,000 accounts, and so forth[10]. Others use a flat monthly rate. Some contracts call for an upfront fee (or set-up fee) and/or establish a minimum fee per month. Whatever the case, examiners should expect pricing to adequately compensate the bank for its risks and costs.

Examiners should also expect that, throughout the life of the arrangement, management produces an income and cost statement for issuing RAB activities and properly budgets for its RAB activities. Effective statements display RAB fees or other related income received and all direct and indirect costs incurred. The bank might have to make a sizeable investment in the program to implement systems and personnel to appropriately run and monitor the program. And, it might not be a profitable venture for the bank if the RAB partner is unable to generate a sufficient volume of accounts or properly manage the program.

Examiners' attention should also be directed to situations in which management is not monitoring portfolio profitability, regardless of whether the bank holds the receivables. Portfolios that evidence deteriorating or negative earnings performance could signal improper management by the partner, existing or future stressed cash flows to the partner, or other impacts on the partner, all of which could potentially, albeit indirectly, result in safety and soundness risks to the bank.

Ability to terminate contract:

Comprehensive contracts address circumstances under which the bank can exit the agreement and set forth reasonable timeframes for such actions. For example, the bank normally has the ability to terminate the contract if the partner materially breaches the contract (usually after considering a reasonable cure opportunity). Timeframes for notification of intent to terminate should be commensurate with the risks and the reasons for termination. Contract language that requires the bank to incur substantial fees for terminating the contract for appropriate cause should be carefully analyzed. Contracts that do not provide the appropriate ability to terminate the contract leave the bank at the risk having to operate a program that could be unprofitable or that has substantial liquidity risks or other implications.

Audit:

The potential for serious or frequent violations and noncompliance exists when a bank's oversight program does not include appropriate audit features. As such, management normally retains the right to audit the partner (and its sub-contractors). Contract verbiage also normally requires the

[10] The fees cited here are for example purposes only and should not be construed to be typical or endorsed pricing.

partner to provide its applicable internal and external audit reports, including the findings of financial and procedural audits and the partner's responses thereto, to bank management for review. If a contract does not provide for appropriate audit access, it leaves the bank at risk of failing to timely identify concerns or problems with the program and its operations. As a result, the bank could become subject to elevated legal, compliance, or other risks.

Examiners should look for proof that the bank's internal audit program incorporates a comprehensive review of bank management's supervision and oversight of the RAB relationships and activities as well as a review of each entity's adherence to contract provisions. The bank's internal audit program is normally expected to confirm that policies, procedures, and materials for the RAB activities have been properly approved by bank management and comply with laws, rules, and regulations. It ordinarily includes periodic on-site inspections of the partner as well as requires the partner to respond to and address issues identified by the internal audits. Examiners should also assess bank management's practices for conducting its own audits of the partner's processes, especially when the partner has not provided for appropriate audits. Examiners should verify whether internal audits assess how the program complies with applicable laws, regulations, and guidance and whether the internal audits are well-documented and readily available. Regulatory scrutiny and risk management expectations for certain practices will be greater for higher-risk portfolios and segments as well as for higher-risk partners.

Contingency Planning

Examiners should also direct their attention to arrangements for which all parties involved, including the bank, purchasers, servicers, and other affected parties, do not have proper contingency plans in place. The review should incorporate an assessment of how management normally reviews those types of plans, particularly for entities providing material services. The bank's plans normally involve transferring the program to another entity, funding the program internally, or shutting down the card program if the contract is terminated. Examiners should substantiate whether contingency plans are written and board-approved, identify specific actions the bank will take, and include appropriate information such as contact information for the parties involved. Concern is normally elevated when the plans only include activation after default has occurred and do not consider actions to be taken to lessen risk exposure as soon as indications of potential default by the partner have become apparent. For cases in which securitizations are used either by the bank, partner, or third party as the funding mechanism for the receivables, contingency planning takes on added elements of complexity. For example, the plan then needs to address the impact of potential events on the ability to continue to sell assets to the trust.

Comprehensive, well-thought out plans consider exposures in worst-case scenarios, such as the existing full open-to-buy exposure combined with the maximum time necessary to close accounts, as well as potential, more likely scenarios, such as those that consider the ability to reduce credit lines and close problem accounts. Without a sufficient contingency plan, the bank could find itself in a strained liquidity position, similar to an early-amortizing securitization.

Ability to Cease Authorizations

The ability to cease authorizations on the cards if the partner materially breaches the agreement or does not maintain adequate deposits, contingency reserves, or other required collateral is crucial. Contracts and cardholder agreements normally allow the bank to stop authorizations. If management does not have such authority with the processor, problems could arise. If a bank cannot shut down or limit authorizations in a timely manner, it increases its funding risk and may ultimately end up taking on credit risk that it may not be able to control. Even with the authority to cease authorizations, problems could arise regarding the Association membership, impacting the bank's aggregate risk position.

Risk Measurement Systems

Risk measurement systems to operate, monitor, and control issuing-RAB activities are critical components to the successful operation of such activities. Examiners should assess reports that management regularly receives to determine whether those reports enable management to gauge, in a timely and comprehensive manner, the risk posed by RAB activities. Management normally receives and reviews key management reports no less than monthly. The reports commonly include items such as the number and dollar volume of accounts, delinquency and charge-off volumes, over-limit data, customer service metrics, sales volumes, payment volumes, profitability, and any other relevant metrics needed to appropriately gauge risk. Concerns arise when appropriate segmentation methods are not incorporated and when management is not closely monitoring the trend and volume of available credit (open-to-buy) positions. The level of available credit coupled with normal or expected account usage can be an indicator of future potential settlement requirements. Reports reviewed by management also normally include information for measuring the partner's performance against that required by the contract. If securitization activities are associated with RAB activities, examiners should require that reporting on the securitization facilities and performance is incorporated. Monitoring the securitized pool by both the bank and the partner is particularly important when the partner relies heavily on securitization for funding. The bank could have to fund settlement if an early amortization is triggered. In addition, adverse impacts on the partner's financial wherewithal from poor performance in the securitized receivables could impact the partner's ability to cover its other assigned expenses, such as fines or cardholder reimbursements.

The level of detail and frequency of reporting funneled to the board is contingent on the size and risk profile of the operation in relation to the overall operations of the bank and its capital base. However, board reporting normally occurs no less frequently than quarterly and more frequently in certain instances, such as if concerns with the partner or portfolio are identified, if the arrangements involve higher-risk activities such as subprime lending, if the card portfolios involved are sizable compared to the bank's asset base and capital level, or if it is a new activity.

PARTNER'S OTHER RELATIONSHIPS WITH THE BANK

Concerns normally arise when management has not considered lending or other relationships that it has with the partner when analyzing the bank's total risk exposure or when each applicable area of the bank involved with the partner does not inform the other(s) about any adverse change in the partner's credit quality. For example, a partner's failure to make a loan payment likely points to emerging credit quality problems that may affect the partner's ability to meet settlement requirements or to fund the deposit and/or contingency reserve.

Lending to a partner essentially creates a conflict of interest that could result in management failing to take appropriate action against the partner when problems arise. For example, management might not want to discontinue marketing the card program because such an action might jeopardize repayment of the bank's loan to the partner. When management continues with a problem relationship, it often exacerbates the problems and increases subsequent losses. Examiners should look for evidence that management fully understands the total risk exposure when lending to a partner and carefully manages any such relationships to ensure any losses are minimized.

CAPITAL

A bank must hold appropriate capital for all of its business lines, including issuing-RAB arrangements. Effective policies limit the bank's volume of issuing-RAB activity relative to the bank's capital, the bank's risk profile, and management's ability to monitor and control the risks. Examiners assess the records supporting the capital allocation for issuing-RAB activities.

Existing regulations do not assess a specific capital charge for the aspects of issuing-RAB activities that the bank may be carrying off balance sheet. But, regulators may require the bank to hold capital above the regulatory minimums when appropriate. In general, factors considered in determining the proper level of capital to hold include:

- Quality of the partner, including reputation, experience, and organizational culture.
- Bank's management expertise in the area of credit card operations and RABs.
- Quality of the RAB oversight program.
- Profitability of the RAB activities from both the bank's perspective and the portfolio's perspective.
- Any instances of breach of contract.
- Deterioration in the partner's financial condition.
- Type of program offered through the RAB arrangement because certain types of business, such as subprime lending, are inherently riskier.
- Portfolio balance as well as open-to-buy trends and exposures.
- Quality and reasonableness of contingency plans.
- Audit findings.
- Bank's risk profile, including the adequacy of capital to support its other business lines.

Some RAB banks that are not holding the receivables consider risk-weightings similar to those that would be in place if the receivables were still on the bank's books, adjusted for collateral or other protection available. Examiners should expect that any methodology used will be well-supported and thoroughly documented and tie to considerations such as, but not limited to, those identified in the prior bullet points.

ACCOUNTING

As discussed, issuing RAB arrangements can have various structures. In some cases, the bank may have even been retaining the receivables for quite some time and only later decided to move the receivables off its balance sheet. Examiners will normally look at management's documentation of the RAB structure(s), including bookkeeping entries used. Because the structures, operations, and bookkeeping entries for the arrangements vary based on the governing contracts, accounting consequences also vary. All it would take to bring a receivable within the scope of FAS 140, *Accounting for Transfers and Servicing of Financial Assets and Extinguishments of Liabilities*, is for the receivable to be an asset of the bank for even a brief moment before being transferred to the partner or another party. In this case, management will need to determine whether or not the transfer of the receivables qualifies for sale accounting under FAS 140. To ensure all applicable accounting guidance (FAS 140 and otherwise) is followed, examiners would normally expect (and confirm) that management has consulted with the bank's accountants.

SUMMARY OF EXAMINATION GOALS – CREDIT CARD ISSUING RENT-A-BINS

Examiners must determine the extent of the bank's RAB activities as well as the level of risk that the activities pose to the bank. They must also determine whether the bank's capital level adequately covers the identified risk. Procedures for reviewing RAB arrangements are often similar to those procedures used to review other types of third-party arrangements. Examiners should review and assess:

- Applicable board and committee minutes, in coordination with the EIC.
- The bank's RAB policies to determine if they are comprehensive and that management is cognizant of the risks involved in such activities.

- Management's due diligence practices to determine whether this early line of defense against problematic relationships is effective.
- Staffing and resources to assess if the level is sufficient and qualifications are acceptable.
- The contract between the bank and the partner to determine if it is comprehensive and sufficiently limits the level of the risk that the bank assumes.
- Management's practices for testing and ensuring compliance with the contract to determine if emerging problems with the partner are promptly identified, thus allowing contract termination to be evoked timely when warranted.
- The marketing materials used for the program, including whether bank management exercises appropriate approval authority over such materials.
- The audit program to determine if it sufficiently encompasses issuing RAB activities.
- Deposit, contingency reserve, or other risk-mitigating funds/assets to determine if they are adequate, appropriately monitored, and readily available.
- Pricing structure and profitability data to assess whether fees received adequately compensate the bank and to identify any instances where portfolios might be unprofitable and, thus, appear to pose risk to both the partner and the bank.
- Contingency plans for thoroughness and reasonableness.
- Compliance with the AMG as well as any other applicable laws, regulations, or guidance.

In some cases, examiners should sample the partner's underwriting and other practices to compare them to established policies, laws, regulatory guidance, and other applicable devices. The use of or level of these types of review can be influenced by whether or not bank management is effectively reviewing and auditing such areas. If bank management is not properly reviewing the various areas, including underwriting and collections, then examination procedures will generally include expanded testing and review of the portfolio. Testing and portfolio review will also likely be expanded when higher-risk lending, such as subprime lending, or higher-risk partners are evident.

The following items might signal current or future elevated risk and warrant follow-up:

- Lack of appropriate RAB policies.
- Failure to appropriately monitor collateral protection, such as deposit and contingency reserve balances or other risk-mitigating devices.
- Unprofitable RAB operations.
- Unprofitable portfolios.
- Lawsuits or other complaints brought by cardholders.
- Compliance issues.
- Weak due diligence practices.
- Failure to properly monitor the partner's compliance with financial covenants and performance parameters.
- Failure to properly monitor performance of the portfolio.
- Failure to meet settlement requirements.
- Failure of the partner to provide open and timely communication with management.
- Weak understanding of the partner's activities and operations.
- Unfavorable correspondence from or to the Associations.

These lists are not exhaustive, and examiners must exercise discretion in determining the expanse and depth of review procedures to apply. If examiners identify significant concerns, they should expand procedures accordingly. In addition, examiners may limit the review as appropriate.

EXHIBIT D

XIX. MERCHANT PROCESSING

Merchant processing is the acceptance, processing, and settlement of payment transactions for merchants. A bank that contracts with (or acquires) merchants is called an acquiring bank, merchant bank, or acquirer. Acquiring banks sign up merchants to accept payment cards for the network and also arrange processing services for merchants. They can contract directly with the merchant or indirectly through agent banks or other third parties.

A bank can be both an issuing bank and an acquiring bank, but banks most often specialize in one function or the other. Merchant processing is a separate and distinct line of business from credit card issuing. It is generally an off-balance sheet activity with the exception of merchant reserves and settlement accounts, both of which are discussed later in this chapter. Merchant processing involves the gathering of sales information from the merchant, obtaining authorization for the transaction, collecting funds from the issuing bank, and reimbursing the merchant. It also involves charge-back processing. The vast majority of merchant transactions are electronically originated (as compared to paper-based) and come from credit card purchases at merchant locations or the point-of-sale (POS). Merchant processing increasingly includes transactions initiated via debit cards, smart cards, and electronic benefits transfer (EBT) products.

TRANSACTION PROCESS OVERVIEW

The payment networks are the center of the cardholder transaction process and maintain the flow of information and funds between issuing banks and acquiring banks. In a typical cardholder transaction, the transaction data first moves from the merchant to the acquiring bank (and through its **card processor**, if applicable), then to the Associations, and finally to the issuing bank (and through its card processor, if applicable). The issuing bank ultimately bills the cardholder for the amount of the sale. Clearing is the term used to refer to the successful transmission of the sales transaction data. At this point, no money has changed hands; rather, only financial liability has shifted. The merchant, however, needs to be paid for the sale. Settlement is the term used to refer to the exchange of the actual funds for the transaction and its associated fees. Funds to cover the transaction and pay the merchant flow in the opposite direction: from the issuing bank to the Associations, to the acquiring bank, and finally to the merchant. The merchant typically receives funds within a few days of the sales transaction.

In a simple form, the clearing and settlement processes for payments can be illustrated with a standard four-corners model (as discussed in the FFIEC IT Examination Handbook, Retail Payment Systems Handbook (March 2004)). In this model, there is a common set of participants for credit card payments: one in each corner (hence, the term four-corners model) and one in the middle of the diagram. The initiator of the payment (the consumer) is located in the upper left-hand corner, the recipient of the card payment (the merchant) is located in the upper right-hand corner, and the relationships of the consumer and the merchant to their banks (the issuing bank and the acquiring bank, respectively) reside in the bottom two corners. The payment networks that route the transactions between the banks, such as Visa, are in the middle of the chart. The information and funds flows for a typical credit card transaction are illustrated in a four-corners model[13] labeled Exhibit D on the next page. Information flows are presented as solid lines while funds flows are represented by dashed lines.

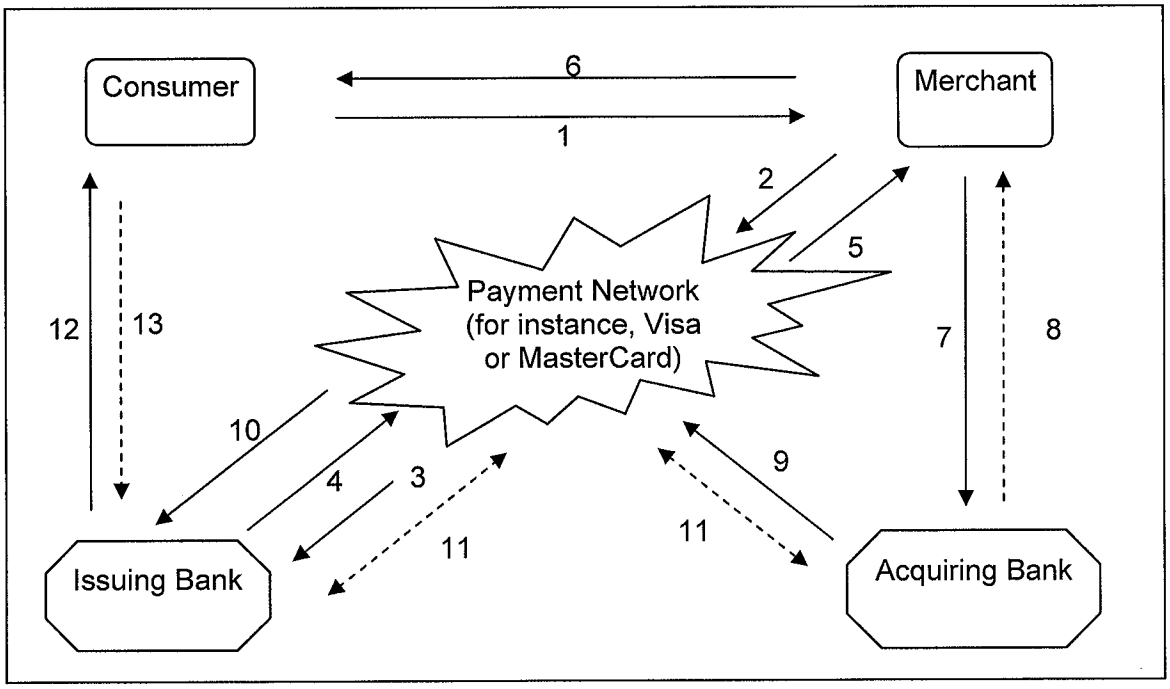
[13] The model and discussion generally mirror the model and discussion that is presented in the FFIEC IT Examination Handbook, Retail Payment Systems Handbook (March 2004).

Step 1:	The consumer pays a merchant with a credit card.
Steps 2 and 3:	The merchant then electronically transmits the data through the applicable Association's electronic network to the issuing bank for authorization.
Steps 4, 5, and 6:	If approved, the merchant receives authorization to capture the transaction, and the cardholder accepts liability, usually by signing the sales slip.
Steps 7 and 8:	The merchant receives payment, net of fees, by submitting the captured credit card transactions to its bank (the acquiring bank) in batches or at the end of the day[14].
Steps 9 and 10:	The acquiring bank forwards the sales draft data to the applicable Association, which in turn forwards the data to the issuing bank.

The Association determines each bank's net debit position. The Association's settlement financial institution coordinates issuing and acquiring settlement positions. Members with net debit positions (normally the issuing banks) send funds to the Association's settlement financial institution, which transmits owed funds to the receiving bank (generally the acquiring banks).

Step 11:	The settlement process takes place using a separate payment network such as **Fedwire**.
Step 12:	The issuing bank presents the transaction on the cardholder's next **billing statement**.
Step 13:	The cardholder pays the bank, either in full or via monthly payments.

Exhibit D



[14] Acquiring banks generally pay merchants by initiating Automated Clearing House (ACH) credits to deposit accounts at the merchants' local banks (possibly an agent bank). If an acquiring bank employs a third-party card processor, the card processor usually prepares the ACH file.

Exhibit D is only a simplistic example of the variety of arrangements that can exist. The parties for the transaction could be one of thousands of acquirers or issuers or one of millions of merchants and consumers. Further, there are many other ways the arrangements can be structured. For example, in on-us transactions, the acquiring bank and the issuing bank are the same. Also, the timing of the payment to the merchant (step 8 of Exhibit D) varies. Some acquiring banks pay select merchants prior to receiving funds from the issuing bank, thereby increasing the acquiring bank's credit and liquidity exposure. However, payment from the acquiring bank to the merchant often occurs shortly after the acquiring bank receives credit from the issuing bank.

The presence of third-party organizations coupled with the acquiring bank's ability to sub-license the entire merchant program, or part thereof, and the issuing bank's ability to sub-license the entire issuing program, or part thereof, to other entities also introduces complexities to the transaction and fund flows. For example, because the cost of technology infrastructure and the level of transaction volume are high for acquiring banks, most small acquiring banks rely on third-party card processors to perform the functions. In addition, issuing banks often use card processors to conduct several of their services. In intra-processor transactions, the same third party processes for both the acquiring bank and the issuing bank. Under the by-laws and operating rules/regulations of the Associations, the issuing banks and acquiring banks are responsible for the actions of their contracted third-parties, respectively.

A merchant submits sales transactions to its acquiring bank by one of two methods. Large merchants often have computer equipment that transmits transactions directly to the acquiring bank or its card processor. Smaller merchants usually submit transactions to a vendor that collects data from several merchants and then transmits transactions to the acquiring banks.

RISKS ASSOCIATED WITH MERCHANT PROCESSING

Some bankers do not understand merchant processing and its risks. Attracted to the business by the potential for increased fee income, they might underestimate the risk and not employ personnel with sufficient knowledge and expertise. They also might not devote sufficient resources to oversight or perform proper due diligence reviews of prospective third-parties. Many banks simply do not have the managerial expertise, resources, or infrastructure to safely engage in merchant processing outside their local market or to manage high sales volumes, high-risk merchants, or high charge-back levels. Many of a bank's risks may be interdependent with payment system operators and third parties. For example, the failure of any payment system participant to provide funding for settlement may precipitate liquidity or credit problems for other participants, regardless of whether they are party to payments to or from the failing participant.

For banks that engage in merchant programs or that are contemplating engaging in such programs, examiners should look for evidence that management understands the activity's risks which include credit, transaction, liquidity, compliance, strategic, and reputation risk. A failure by management to understand the risks and provide proper controls over such risks can be very problematic, and even lethal, to the bank. Take, for example, the case of National State Bank, Metropolis, Illinois. Inadequate control of the credit and transaction risks associated with its merchant processing activities contributed to a high volume of losses that ultimately depleted capital, threatened the bank's liquidity, and led to its closing by the Office of the Comptroller of the Currency (OCC) in December 2000.[15]

[15] As per press release PR-90-2000.

Credit Risk

A primary risk associated with merchant processing is credit risk. Even though the acquiring bank typically does not advance its own funds, processing credit card transactions is similar to extending credit because the acquiring bank is relying on the creditworthiness of the merchant to pay charge-backs. Charge-backs are a common element in the merchant processing business and are discussed in more detail later in this chapter. They can result from legitimate cardholder challenges, fraud, or the merchant's failure to follow established guidelines. Charge-backs become a credit exposure to the acquiring bank if the merchant is unable or unwilling to pay legitimate charge-backs. In that case the acquiring bank is obligated to honor the charge-back and pay the issuing bank which could result in significant loss to the acquiring bank. In a sense, the acquiring bank indemnifies a third party (in this case, the issuing bank that in turn indemnifies the cardholder) in the event that the merchant cannot or does not cover charge-back. Banks have been forced to cover large charge-backs when merchants have gone bankrupt or committed fraud. Acquiring banks control credit risk by using sound merchant approval processes and closely monitoring merchant activities.

Transaction Risk

Acquiring banks are faced with the transaction risk associated with service or product delivery because they process credit card transactions for their merchants daily. The risk can stem from a failure by the bank or any party participating in the transaction to process a transaction properly or to provide adequate controls. It can also stem from employee error or misconduct, a breakdown in the computer system, or a natural catastrophe. The acquiring bank needs an adequate number of knowledgeable staff, appropriate technology, comprehensive operating procedures, and effective contingency plans to carry out merchant processing efficiently and reliably. A sound internal control environment is also necessary to ensure compliance with the payment networks' rules. Formal reconciliation processes are also essential to limiting risk.

The high transaction and sales volume normally encountered with merchant processing programs creates significant transaction and liquidity risks. A failure anywhere in the process can have implications on the bank. Examples include an issuing bank's inability to fund settlement to the acquiring bank or a processing center's failure to transmit sales information to the issuing bank, thus resulting in a delay of or failure of funding to the merchant bank.

Liquidity Risk

Liquidity risk can be measured by the ability of the acquiring bank to timely transmit funds to the merchants. Acquiring banks often limit this risk by paying merchants after receiving credit from the issuing bank. If the acquiring bank pays the merchant prior to receiving credit from the issuing bank, the acquiring bank could sustain a loss if the issuing bank is unable or unwilling to pay. Some acquiring banks delay settlement and pay merchants one day after receiving the funds from the issuing bank. The delay allows the acquiring bank time to perform fraud reviews. For delayed settlement, which most commonly occurs when transactions are identified as suspicious or unusual, management is expected to have established formal procedures. Because merchant deposits can be volatile, risk may also arise if the acquiring bank becomes reliant on the merchant's deposits as a funding source for other bank activities. Furthermore, substantial charge-backs could potentially strain the bank's financial condition and/or reputation to such a degree that its creditors may withdraw availability of borrowing lines.

Associations guarantee settlement for transactions that pass through interchange. As a result, they may require collateral pledges/security if a bank's ability to fund settlement becomes questionable. This can create significant liquidity strains and potentially capital difficulties, depending on the size of the collateral requirement and/or the financial condition of the bank.

The Associations' rules allow them to assess the banks directly through the settlement accounts if the bank is not forthcoming with the collateral.

Compliance Risk

Compliance risk arises from failure to follow payment networks' rules and regulations, clearing and settlement rules, suspicious activity reporting requirements, and a myriad of other laws, regulations, and guidance. It can lead to fines, payment of damages, diminished reputation, reduced franchise value, limited business opportunities, reduced expansion potential, and lack of contract enforceability. Acquiring banks can limit compliance risk by ensuring a structured compliance management program is in place, the internal control environment is sound, and staff is knowledgeable. They can also limit risk by providing staff with access to legal representation to ensure accurate evaluation of items such as new product offerings, legal forms, laws and regulations, and contracts.

Strategic Risk

Strategic risk arises from adverse business decisions or improper implementation of those decisions. A failure by management to consider the bank's merchant processing activities in the context of its overall strategic planning is normally cause for concern. A decision to enter, maintain, or expand the merchant processing business without considering management's expertise and the bank's financial capacity is also normally cause for concern. Examiners should also pay close attention to how the acquiring bank plans to keep pace with technology changes and competitive forces. Examiners should look for evidence that the strategic planning process identifies the opportunities and risks of the merchant processing business; sets forth a plan for managing the line of business and controlling its risks; and considers the need for a comprehensive vendor management program. An evaluation of management's merchant processing expertise is critical to judging strategic risk. The bank's overall programs for audit and internal controls, risk management systems, outsourcing of services, and merchant program oversight are key to controlling the strategic risk.

Reputation Risk

Reputation risk arising from negative public opinion can affect a bank's ability to establish new relationships or services or to continue servicing existing relationships. This risk can expose the bank to litigation, financial loss, or damage to its public image. The bank's business decisions for marketing and pricing its merchant processing services can affect its reputation in the marketplace. Reputation risk is also associated with the bank's ability to fulfill contractual obligations to merchants and third parties. Most notably, the outsourcing of any part of the merchant processing business easily increases reputation risk. Decisions made by the acquiring bank or its third-parties can directly cause loss of merchant relationships, litigation, fines and penalties as well as charge-back losses. Concerns normally arise when the acquiring bank does not maintain strong processes for performing due diligence on prospective merchants and third-parties or perform ongoing evaluations of existing merchant and third-party relationships.

MANAGEMENT

Examiners should expect that management fully understand, prior to becoming involved in merchant processing and continuing thereafter, the risks involved and its own ability to effectively control those risks. Merchant programs are specialized programs that require management expertise, significant operational support, and rigorous risk-management systems. It can be a profitable line of business but, if not properly controlled, can result in significant risk to the bank.

Examiners should determine whether qualified management has been appointed to supervise merchant activities and to implement a risk management function that includes a merchant approval system and an ongoing merchant review program for monitoring credit quality and guarding against fraud. Bank staff's knowledge and skill-sets are expected to be commensurate with the risks being taken. For example, personnel responsible for processing charge-backs should have the technical knowledge and understanding of charge-back rules, and personnel responsible for approving merchant applications should have the ability to properly evaluate creditworthiness and identify high-risk merchants.

Examiners assessing risks of merchant programs should direct their attention to situations in which management has not put proper risk measurement systems in place to operate, monitor, and control the activity effectively. This includes situations that evidence the absence of regular management reports detailing pertinent information. Key reports generally include new merchant acquisitions, merchant account attrition, merchant portfolio composition, sales volumes, charge-back volumes and aging, fraud, and profitability analyses.

Examiner attention should be given to instances in which comprehensive, written merchant processing policies and procedures are absent or are not adequate for the size and complexity of operations. Necessary components of policies and procedures generally include:

- Clear lines of authority and responsibility (for example, the level of approval required to contract with certain types of merchants).
- Adequate and knowledgeable staff.
- Markets, merchant types, and risk levels the bank is and is not willing to accept.
- Limits on the individual and aggregate volume of merchant activity that correlates with the bank's capital structure, management expertise, and ability of operations to accommodate the volume (e.g., human and systems resources) as well as with merchants' risk profiles.
- Goals for portfolio mix and risk diversification, including limits on the volume of sales processed for higher-risk merchants and that take into account the level of management expertise.
- Merchant underwriting and approval criteria.
- Procedures for monitoring merchants, including financial capacity, charge-backs and fraud (regardless of who originates the merchants for the bank).
- Criteria for determining appropriate **holdback** or merchant reserve accounts.
- Procedures for settlement, processing **retrieval requests** and charge-backs, handling complaints, monitoring and reporting of fraud, and training personnel.
- Third-party risk management controls.
- Guidelines for accepting and monitoring agent banks.
- Guidelines for handling policy exceptions.
- MIS to keep management sufficiently informed of the condition of, and trends in, the merchant program.
- Audit coverage.

CAPITAL

Examiners should insist that the bank hold capital sufficient to protect against risks from its merchant business. In addition, they should determine whether management has established sound risk limits on the merchant processing volume based on the bank's capital structure, the risk profile of the merchant portfolio, and the ability of management to monitor and control the risks of merchant processing.

Associations limit the processing volume a bank can generate based upon the bank's capital structure, high-risk merchant concentrations, and charge-back rates. Banks operating outside the established thresholds (which may vary and are subject to change) are generally considered

to be high-risk acquiring banks by the applicable Association and may be subject to additional activity limits or collateral requirements.

No specific regulatory risk-based capital allocation(s) for merchant processing activities, which, as mentioned, are typically off-balance sheet, exist. Nevertheless, capital regulations permit examiners to require additional capital if needed to support the level of risk. Examiners frequently consider these measurements that take into account the volume of merchant activity:

- Risk Weighted Off-Balance Sheet Items for Merchant Processing = Average monthly merchant sales (Annual Merchant Sales/12) X 2.5 X 20 percent (conversion factor for off-balance sheet items) X 100 percent (risk weight category)[16].
- Tier 1 capital / (Average Total Assets + Risk Weighted Off-Balance Sheet Items for Merchant Activity).

MERCHANT UNDERWRITING

Evidence should corroborate that the bank scrutinizes prospective merchants with the same level of diligence used to properly evaluate prospective borrowers. Concerns may arise when the bank's underwriting does not consider the merchant's ability to cover projected charge-backs as well as its potential risk for fraud, high charge-back rates, and business failure. Merchant underwriting and approval policies generally:

- Define criteria for accepting merchants (for example, acceptable business types, time in business, location, sales and charge-back volumes, and financial capacity).
- Establish underwriting standards for the review of merchants.
- Define what information is required on the merchant application.
- Stipulate what information is required in the merchant agreement.
- Outline procedures and time frames for periodic review of existing relationships.

Merchant Review and Approval

Merchant underwriting provides an opportunity to reject a merchant that the acquiring bank determines has an unacceptable history of charge-back volumes, has a weak financial condition, is not operating a valid business, or is otherwise not acceptable for the bank's program. Limits for personnel approving new merchant accounts are usually based on the merchant's sales volume, and situations in which the designated bank personnel do not have appropriate levels of credit expertise in relation to that volume are cause for concern. Further, if the acquiring bank uses information collected by Independent Sales Organizations (ISOs) / Merchant Service Providers (MSPs), examiners should look for policies and controls to be in place for substantiating the quality of the information provided. In addition to exception guidelines and documentation requirements, underwriting standards generally include:

- A signed merchant application.
- A signed merchant processing agreement.
- A signed corporate resolution, if applicable.
- An on-site inspection report.
- Analysis of credit bureau reports on the principal(s) of the business.
- Evaluation of financial statements, tax returns and/or credit reports on the business.

[16] This calculation converts the off-balance sheet activity (merchant sales settled) to an on-balance sheet risk-weighted item. The 2.5 figure represents a 2.5 month average liability for charge-backs that is based on the premise that most charge-backs run off within 2.5 months. Technically, there is a potential 6 month window of charge-back liability. The 20 percent figure is the factor to convert the off balance sheet transactions subject to recourse to an on-balance sheet item. The 100 percent figure represents the risk weight applied based on capital regulations. The resulting risk weighted off-balance sheet items for merchant processing would be included in the denominator of the risk based capital ratios.

- Analysis of prior merchant activity, such as the latest monthly statements from the most recent processor.
- Analysis of projected sales activity (for instance, average ticket amount, daily/monthly sales volume).
- Assessment of any existing relationship (for example, a loan) with the bank.
- Consideration of the line of business and/or the product(s) offered by the merchant.
- Verification of trade and bank references.
- Evidence as to whether the merchant is on the Member Alert To Control High Risk Merchants (**MATCH**) system.

Principals:

Proper review by management normally includes conducting a background check on the business's principal(s), scrutinizing personal credit reports for derogatory information, and verifying addresses. Where appropriate and allowed by law, management may also perform a criminal background check.

MATCH:

Association regulations state that acquiring banks must check MATCH before approving a prospective merchant. The database contains a list of merchants that have been terminated for cause or that have made multiple applications for merchant accounts (because submitting applications to more than one acquiring bank simultaneously might indicate fraud). If an acquiring bank denies permission to accept cards to a merchant because of adverse processing behavior and fails to add it to the MATCH list, the acquiring bank can be liable for losses another provider might suffer from that merchant.[17]

If a merchant is listed on MATCH, management is expected to contact the listing bank regarding the termination reasons. MATCH status can help a bank determine whether to implement specific actions or conditions if a merchant is accepted. Examiners should pay attention to instances in which management has not carefully investigated a merchant listed on MATCH or in which their decision to accept or refuse a merchant has been solely based on the merchant being listed or not being listed on MATCH.

On-Site Inspection:

The goal of on-site inspections is to verify a merchant's legitimacy. The absence of documentation of the inspections, including photographs and a written inspection report normally is cause for concern as are situations in which the inspection was conducted by an individual who has a financial interest in its outcome. Acquiring banks signing merchants remotely sometimes find performing inspections themselves difficult or expensive. Often other acquiring banks or third parties will perform site inspections on an exchange or fee basis. In these cases, examiners need to assess whether management is well-informed of the other parties' inspection procedures and ensures that the procedures are, at a minimum, consistent with procedures management would use if conducting a proper inspection itself.

Products and Marketing:

The merchant's line of business and/or the products offered as well as its marketing practices are key factors for management to consider when it evaluates the credit quality of a merchant. The Associations segment merchants according to activity because the type of activity often is a good indicator of risk. Thus, it stands to reason that examiners may expect acquiring banks to

[17] According to the article entitled "Merchant Acquirers and Payment Card Processors: A Look Inside the Black Box," authored by Ramon P. DeGennaro, and housed in the First Quarter 2006 edition of the *Economic Review* (Federal Reserve Bank of Atlanta).

continually analyze their merchant portfolios along similar guidelines. Acquiring banks typically compile a prohibited or restricted merchant list which includes the types of merchants they are unwilling to sign or are willing to sign only under certain circumstances.

While the extent of product and marketing evaluations varies, considerations normally include review of the merchant's business plans, merchandise, and marketing practices and materials (for example, catalogs, brochures, telemarketing scripts, and advertisements). In addition, shipping, billing, and return policies can be reviewed for unusual or inappropriate practices (for instance, customers being billed long before merchandise is shipped). These considerations can help determine, among other things, if: the business is of a type that typically has high charge-back rates; the merchant is selling a legitimate product; sales methods are legitimate and not deceptive; product quality and price are consistent with projected sales and charge-back rates; and customers will be satisfied with products ordered. Merchants offering low-quality products or services tend to incur more charge-backs, thus dissuading many banks from signing them.

The merchant's sales volume and time frame within which product delivery is completed are other considerations to evaluate risk. Generally, the greater the sales volume and the longer the time between transactions and product delivery, the greater the risk. For example, when a restaurant closes, an acquiring bank typically has less exposure to charge-backs for undelivered goods and services. In contrast, the failure of a travel agency could expose an acquiring bank to substantial charge-backs due to the high volume of reservations common in the travel agency business.

Certain types of merchant businesses can present increased risk. Although there are many reputable merchants whose sales transactions occur without a credit card being present (card-not-present merchants), these merchants generally present higher charge-back risks for acquiring banks. In particular, mail order and telemarketing (MO/TO) merchants and adult entertainment services merchants, in aggregate, tend to display elevated incidents of charge-backs. Merchants without an established storefront (for example, door-to-door salesman and flea market vendors) also typically pose greater risk for charge-backs. The risk of charge-back is also higher if the merchant sells products for **future/delayed delivery**, such as airline tickets, health club memberships, travel clubs, or internet purchases. The increased risk associated with future delivery of products results, in part, because customer disputes are normally not triggered until the date of delivery. High charge-back rates are also generally associated with certain selling methods, such as sales pitches involving gifts, cash prizes, sweepstakes, installment payments, multi-level marketing, and automatic renewals unless the consumer opts out. Association regulations define certain broad business categories as high-risk merchants. These categories in general present higher risk, but each individual merchant in the category may not necessarily be high risk. Appropriate procedures and risk controls for high-risk merchants generally include:

- Criteria for determining the types of merchants the bank is or is not willing to sign and under what circumstances.
- Increased emphasis on underwriting considerations regarding products and marketing in evaluating the merchants.
- Limitations on the volume of high-risk merchant transactions processed relative to the bank's total merchant portfolio.
- Criteria for determining the appropriate level of holdback or reserve accounts to sufficiently cover the level of credit risk.
- Appropriate pricing of these merchants in relation to the charge-back risk and any costs associated with increased monitoring.
- Heightened monitoring and problem resolution. For example, for charge-back monitoring, banks may set lower charge-back thresholds for required remedial action and/or a shorter timeline for problem resolution for those merchants exceeding acceptable charge-back thresholds.
- Compliance with bankcard regulations regarding registration of certain high-risk merchants and assigning proper **Merchant Category Codes (MCC)** to merchants.

Merchant Agreements

If management has not sought legal advice when developing merchant agreements and/or referred to network guidelines for contracting, closer scrutiny of such agreements may be warranted. Typical contents of a merchant agreement include but are not limited to:

- Fees and pricing.
- Merchant requirements at POS.
- Requirements for cardholder information security.
- Prohibition of **split sales drafts** and **laundering** of sales drafts.
- Merchant liability (for example, charge-backs and reserves).
- Notification of ownership changes or substantive marketing and product changes.
- Right to hold funds (for example, bank's right to freeze deposits when fraudulent activity suspected).
- Termination provisions.
- Internet provisions (for example, encryption and web-site displays).

Periodic Review

Concerns normally become elevated when management is not monitoring the financial condition of high-volume and high-risk merchants on an ongoing basis and/or when the bank's policy has not addressed the frequency of reviews and the size of merchants requiring reviews. Examiners should assess management's practices for considering volume, concentrations, high-risk industries, and charge-back history in establishing the thresholds for periodic reviews. Depending on the composition of the bank's merchant portfolio, examiners may not necessarily expect the bank to conduct credit reviews of smaller merchants on an ongoing basis if the bank used sound underwriting guidelines at acquisition and if the bank is using strong controls to monitor all merchant transactions, including fraud and charge-back monitoring. Examiners might observe cases in which databases (for items such as risk scores and bankruptcy filings) are used to periodically screen the merchant portfolio.

Communication between merchant program and loan personnel regarding changes in the merchant's credit quality is key part of assessing any shared banking relationships. For example, an unacceptable charge-back rate for a merchant might indicate emerging credit quality problems that could trigger the need to review any lending relationships with the merchant. Likewise, concerns that identify merchants as problem borrowers could trigger the need to review merchant arrangements. If credit information shows deterioration in the merchant's financial condition, the bank may want to reduce its risk exposure from merchant processing. For instance, when dealing with a financially-unstable merchant, the bank might require a holdback or security deposit, as discussed later in this chapter.

Internet Merchants

The lower level of barriers encountered when setting up an Internet merchant increases the risk of fraudulent businesses or businesses with minimal financial resources being established compared to the risks associated with traditional merchants. This risk elevates the need for acquiring banks to conduct thorough underwriting reviews of internet merchants. Whether fraud and charge-back risks warrant additional risk-mitigation techniques, such as delaying settlement or setting up reserves, is a critical decision that normally occurs during the underwriting process.

Electronic commerce via the Internet poses additional privacy and security concerns. The absence of or weak transaction and data security controls for customer transactions and storage of customer information are cause for concern. Secured servers and data encryption technologies help to protect data and transaction integrity. Other items considered normally include whether the merchant meets the following general web site display guidelines:

- Description of goods and services offered.
- Customer service number.
- Company's e-mail address.
- Statement regarding security controls.
- Delivery methods and timing.
- Refund and return policies.
- Privacy statements (permissible uses of customer information).

PRICING

One of the key aspects of a successful merchant program is appropriately setting the fees that the merchant will be charged for sales transactions and acquiring bank services. Merchant pricing is extremely competitive, especially for large- and national-scale merchants who generate high transaction volumes. High transaction volumes can lead to economies of scale and possibly increased income. Examiner should look for evidence that banks have adopted a pricing policy that outlines the methods used for pricing, authority levels, and repricing procedures. A pricing policy can facilitate consistency in pricing practices and help optimize profit margins.

Acquiring banks use various methods to price merchants. Smaller merchants are frequently priced with a single discount rate based on merchant volume and average ticket size. Acquiring banks frequently use unbundled pricing for medium to large merchants. Unbundled pricing is the method of assigning fees for the cost of each service used. Examples of unbundled services include interchange, authorizations, and charge-backs. Other fees may include, but are not limited to: statement preparation, application, customer service, membership, maintenance, and penalty fees (for example, for violating payment network rules).

Examiners should evaluate the bank's practices for ensuring that pricing is consistent with the risk posed by the merchant. Acquiring banks sometimes use a pricing model to determine the target discount rate. They might maintain one or more pricing models, with model usage driven by the merchant's sales volume and/or industry classification. Pricing models allow the acquiring bank to quickly substitute variables regarding sales volumes, average ticket size, revenues and expenses to produce a projected profit margin. A failure of the pricing model to include all direct and indirect expenses may render the model's results meaningless. A model's accuracy depends upon the reasonableness of the assumptions used.

Pricing Components

Discount Rate:

Acquiring banks assign a discount rate for each merchant when the merchant agreement is signed. The discount rate is the percentage that gets "discounted" off the transaction amount that is paid to the merchant, hence the term discount rate. In a simple case, the discount represents a single rate charged to a merchant based on the merchant's sales volume. For example, a merchant with a 2 percent discount rate receives $98 for a $100 credit card sale. Most merchant agreements allow the acquiring bank to change the discount rate for various cost increases. Numerous factors influence the discount rate charged, including, but not limited to, the transaction method, processing volume, and type of merchant business. For example, merchants who use **electronic data capture (EDC)** are typically charged lower discount rates than paper-based merchants. Discount rates generally range from 1 to 4 percent for small to medium-size merchants and sometimes well below that range for large-volume merchants.

When considering the range of discount rates used by the bank, examiners should call on management to readily explain outliers, including those that are well below the normal range. Banks sometimes give merchants a favorable discount rate because of existing commercial loan

or deposit relationships. In other cases, the discount rate is favorable due to a credit card equipment lease arrangement. Packaging may be an acceptable practice, but does not eliminate the need to measure the overall profitability of a merchant relationship. Further, examiner attention should be drawn to situations in which management has offered favorable discount rates to insiders or their related interests.

Interchange Fees:

Interchange fees represent compensation paid by the acquiring bank to the issuing bank. Thus, they are recorded as an expense on the acquiring bank's income statement and as a revenue source on the issuing bank's income statement. Interchange fees are based on several factors such as volume, size, and type of transaction and are usually set by the Associations. They average less than two percent of the purchase price and are typically one of many considerations in determining the size of the discount rate that the acquiring bank charges the merchants. (For on-us transactions, interchange may be reduced, if not entirely eliminated.) A number of merchants and merchant groups have filed lawsuits alleging that the interchange fees set by the Associations for credit card transactions violate anti-trust laws and that the fees paid to accept payment cards are too high. In last quarter of 2006 the Associations began offering pubic access to interchange rate information.

Processing Fees:

Processing fees cover the costs associated with data processing services and vary depending on the size and number of transactions the merchant submits per batch. The processing fee may include data capture and authorization costs. It might go directly to the bank if it handles the processing or to the bank's third-party processor.

ISO/MSP Fees:

The ISO/MSP fee is the amount the acquiring bank pays the ISO/MSP for services provided. It is negotiated and often represents a percentage of the volume that the ISO/MSP-sponsored merchants bring to the bank. The fee agreement between the bank and the ISO/MSP is normally considered when pricing merchants obtained through an ISO/MSP.

Agent Bank Commission:

The agent commission is a fee passed to the agent bank for signing a merchant. This fee could be built into the discount rate or be assessed separately.

Other Income:

Acquiring banks sometimes offer other programs to generate fee income (for instance, equipment leasing). Instances in which management has not researched the legal and compliance aspects of products or services offered or has not priced the programs adequately warrant scrutiny.

Monitoring Pricing

Examiners should evaluate management's practices for ensuring that merchants are priced appropriately throughout the life of the contract. Best practices by management may include verifying actual volumes and ticket sizes after signing a new merchant (for example, at six months into the relationship) to ensure consistency with volumes and ticket sizes anticipated. Examiners should assess management's practices for ensuring the discount rate is in line with the application estimate and original pricing model assumptions. In general, a failure by management to review all significant merchants for repricing at least annually elevates concern. Further, if any merchants are or have been unprofitable, examiners should accordingly inspect management's repricing practices for those merchants. Merchant agreements typically allow

acquiring banks to increase pricing at any time during the contract's life.

Profitability Analysis

Merchant programs can be profitable. Although competition with third-party processors has lowered margins, banks have been able to compete due to their strong marketplace presence. Banks are able to generate new merchant accounts through their branch networks and existing customer relationships.

Merchant processing is characterized as a high transaction volume, low profit margin business. Only efficiently run departments with strong cost controls can operate profitably. Examiners should analyze profitability reports used by the bank to measure the profitability of the merchant processing operations to determine if it is consistent with the size and complexity of the operations. Reports should detail key performance measures such as net income to sales and net income per item. Ideally, it should be able to segment profitability by merchant, acquisition channel, and industry.

Examiners should normally expect profitability analyses for merchant operations to be distinctly separate from the analyses of other banking activities and to include all direct and indirect costs. Direct costs include costs such as those for internal data processing, merchant accounting, fraud and charge-back losses, personnel, and occupancy. Indirect costs may include corporate overhead expenses such as those for human resources, legal, and audit services. The level of detail and frequency of board reporting is contingent on the size of the operation in relation to the overall operations of the bank and its capital base.

FRAUD MONITORING

Management's ability to quickly detect fraudulent activity is important in controlling losses. The merchant, then its acquiring bank, are the parties liable for certain types of losses. Persons possessing stolen credit cards sometimes take advantage of unsuspecting store clerks, or merchants sometimes perpetrate fraud. Merchant fraud can be extremely costly if not discovered quickly. Examples of merchant fraud include **factoring** and draft laundering. New merchant accounts are particularly susceptible to fraud such as **bust-out scams**. Examiners should insist that banks have a fraud detection system to identify and monitor potentially fraudulent activity.

Fraud Detection Methods

Fraud identification that relies exclusively on excess charge-back activity analysis is normally cause for concern because there are a number of other indicators that can point to fraud. A primary tool used by management for fraud detection is an exception report that details variances from a multitude of parameters established at account set-up. Along with charge-backs, basic parameters usually include daily sales volume, average ticket size, multiple purchases of the same dollar amount, multiple use of the same cardholder number, percentage of keyed versus swiped transactions (because keyed transactions frequently are associated with card-not-present transactions which are normally higher-risk), number of authorizations declined, authorizations during non-business hours, and high volume of authorizations in relation to transactions. A daily exception report lists merchants that are outside of any of the parameters.

Most large-volume processors have established exception parameters based on industry or merchant type. Examiners should review management's practices for periodically updating parameters. For example, management might set the daily sales threshold at a percent of a prior timeframe's activity (for instance, 110 percent of the three months' average). The margin allows for normal growth of the merchant and compensates for seasonal sales patterns.

Some banks use neural network technologies for fraud detection. These complex computer programs can compare each transaction against the merchant's prior sales patterns. Though more sophisticated than a traditional exception report, smaller merchant processors may be unwilling or unable to purchase these technologies on an ongoing basis. Instead, some acquiring banks selectively route higher-risk transactions through a neural network while confining the remainder of transactions to exception reporting.

Some banks also use Informational databases (such as those for scoring, bankruptcy, trade, and fraud) to identify at-risk merchants. Merchants that have financial or legal difficulties often have a higher propensity to falsify transactions.

Associations provide educational materials to acquiring banks and merchants about the industry's latest fraud detection techniques. They also prepare fraudulent activity reports for each acquiring bank. The reports are not intended to replace the bank's own fraud system. Rather, examiners should expect to see that such reports supplement the internal system. Certain circumstances require management to document its plan to correct a merchant's unacceptable sales practices.

Inactive merchant accounts can signal potential fraud. For example, inactivity could signal a bust-out scam wherein a fraudulent merchant signs with several acquiring banks simultaneously, moving from one to the next as the scam is perpetrated or detected. When exception reports flag an inactive account, management normally follows up with the business owner.

Other potential warning signs of fraud generally include:

- Evidence that credit card purchases have been intentionally structured by a merchant to keep individual amounts below the "floor limit" to avoid approval requirements.
- Merchant account activity that reflects a substantial increase in the number and/or size of charge-backs.
- Merchant's deposit of sales drafts made payable to a business or businesses other than the business named on the account.
- Merchant's frequent request that funds be wire transferred from the merchant account to other institutions in other parts of the country or to offshore institutions almost immediately after deposits are made.
- Merchant that is engaged in telemarketing activities and is the subject of frequent customer complaints.
- Merchant account deposits that appear to exceed the level of customer activity observed at the merchant's place of business.
- Merchant that has access to electronic data capture equipment but frequently inputs credit card account numbers manually (for example, if manually keyed transactions exceed 10 percent of total transactions).
- Merchant that has a sudden or unexplained increase in the level of authorization requests from a particular merchant location.

Fraud Investigations

Examiners must expect management to take swift action when it encounters suspicious transactions or other suspicious activity. Management's investigation may include verifying purchases with the issuing bank and/or obtaining copies of paper-based transaction tickets from the merchant. An acquiring bank's quick response will help minimize losses to it and the issuer as well as provide timely information to law enforcement agencies. Changes in a merchant's business operations such as changes in ownership, business principals, bank accounts, merchandise, sales methods, or target market normally also warrant an investigation.

Merchant agreements normally allow the acquiring bank to delay settlement until questionable transactions are resolved. Once fraud is suspected, management must follow Suspicious Activity Report (SAR) guidelines. Examiners should evaluate the bank's processes for terminating fraudulent merchant accounts and placing such merchants on MATCH. They should also consider the acquiring bank's and its processor's practices for suspending or blocking settlement and authorization processing to a terminated merchant's account. Such procedures are intended to prevent further deposits and **account testing**.

CHARGE-BACK PROCESSING

Credit risk arising from charge-backs is an acquiring bank's primary risk and can result in significant financial loss. If a merchant is unable to pay its charge-backs, the acquiring bank must pay the issuing bank. Large charge-back losses can also result from deliberate fraud undertaken by the merchant. For example, a merchant might sell deceptive or misleading merchandise or never deliver the product. Authorization issues, inaccurate or incomplete transaction information, and processing errors can also result in charge-backs. Charge-backs are governed by a complex set of rules and time limits that can be costly to merchants and acquiring banks if disregarded. Charge-back losses realized by the bank are listed as other non-interest expense on the Call Report.

The most effective preventive measure against charge-back losses is thorough underwriting prior to merchant acceptance. Nonetheless, examiners should expect that an acquiring bank have strong controls in place to accurately and timely process charge-backs and retrieval requests. The bank may lose a charge-back dispute (thus resulting in a loss) if it does not adhere to charge-back rules. The absence of effective charge-back monitoring to identify problem merchants for remedial action normally draws examiner attention. Quickly considering problem merchants for termination may help avoid or limit loss.

Charge-Back Transaction Flow

Cardholders initiate charge-backs, for instance when they are dissatisfied with the product, did not receive the merchandise or service, or did not authorize the charge. A consumer first tries to resolve the dispute with the merchant. If unsuccessful, the consumer informs the issuing bank about the dispute, and the issuing bank posts a temporary credit to the cardholder's account. The issuing bank then requests documentation from the merchant to authenticate the transaction and possibly resolve the dispute. If the dispute is upheld, the amount is charged back to the merchant's account and the consumer does not pay for the disputed charge. The consumer has 60 days from the day he or she receives the statement to report a dispute to the issuing bank.

Issuing banks can also initiate charge-backs when the merchant does not follow proper card acceptance and authorization procedures or when there is a problem with the credit card account (for example, it is not valid or has been terminated). The acquiring bank's contingent charge-back liability generally spans 90 to 120 days (but up to 180 days for certain transactions).

Associations have strict charge-back processing regulations. For example, charge-backs occur when a merchant fails to provide copies of requested sales tickets. If the merchant does not fulfill retrieval requests within prescribed time frames, it loses the charge-back dispute. Merchants must also follow other card acceptance procedures, including obtaining authorizations, as depicted in the governing documents.

Charge-Back Monitoring

The Associations notify acquiring banks about high charge-back merchants. Once management has received notification of excessive charge-back activity, examiners should expect management to promptly take appropriate steps to bring charge-back rates down to acceptable

levels. The steps may include, but are not limited to, reviewing procedures with merchants or developing a detailed and comprehensive charge-back reduction plan. If the charge-back volume is not sufficiently reduced within established timeframes, the Associations may impose substantial fines against the acquiring bank.

Although the Associations notify acquiring banks about merchants with excessive levels of charge-backs, examiners normally have concern when an acquiring bank's own risk management practices do not detect such merchants or when charge-back processing staff is not alert for merchants with excessive retrieval requests or charge-backs. Numerous charge-backs could indicate an unscrupulous merchant or a need for additional training.

Risk Mitigation for Charge-Backs

Acquiring banks often establish specific merchant reserve accounts, or holdback reserves, for higher-risk or high-charge-back merchants. Holdback reserves are also used to limit a bank's credit risk when the merchant's product or service involves future/delayed delivery. They are funded by a lump sum payment or by withholding part of each day's proceeds. Examiner should expect these types of specific reserve accounts to be adequately funded.

The acquiring bank might also fund a general allowance account, similar to the ALLL (although not commingled therewith), for a portfolio of merchant accounts. The method used to determine the allowance allocation varies but is typically based on contingent charge-back exposure for the entire portfolio. Such an allowance is reported as an "other liability." Examiners should analyze management's merchant reserving methods to determine whether these types of allowances are sufficiently funded.

An acquiring bank might also obtain merchant charge-back insurance which is intended to provide protection against uncollectible charge-backs. While insurance products potentially provide some level of protection, they are not a substitute for strong risk management practices. Insurance contracts frequently include significant limitations or restricting clauses that constrain the usefulness of the contract in the event of an actual loss (for instance, limits on types of losses covered and restrictions based upon bank management's action or inaction in managing the merchant portfolio). In addition, the insurance carrier might not have the financial ability to fund the contract in the event of significant loss.

Larger merchant processors employ collectors to recover charge-back losses and other fees. A collector seeks remedy from the principals of the business through negotiations or civil action.

Accounting for Charge-Backs

Management is expected to appropriately detail charge-back losses on Call Reports as other non-interest expense and reverse any uncollectible fees from income in a timely manner. Any collected funds are to be reported as other non-interest income.

ACQUIRING RENT-A-BINS

A BIN[18] is a number assigned by an Association to identify the bank for authorization, clearing, settlement, card issuing, or other processes. Ownership and usage of BINs can result in significant credit risk exposure if not appropriately controlled, especially when the acquiring bank owns a BIN and permits other entities to share in the usage, otherwise known as an acquiring Rent-a-BIN. The concept of Rent-a-BINs (RAB) was introduced earlier in this manual. There are

[18] An ICA number, which is similar to a Visa BIN, is assigned by MasterCard. ICAs and BINs are collectively referred to as BINs in this manual. Examiners may also encounter arrangements with American Express and Discover, particularly now that their access to banks has expanded.

issuing RABs and acquiring RABs. Issuing RABs were the focus of the Credit Card Issuing Rent-a-BINs chapter while acquiring RABs are discussed here.

Acquiring RABs draw their names from the characteristic of acquiring merchant contracts and cardholder transactions. Under an acquiring RAB arrangement, an acquiring bank permits ISO/MSPs to use the bank's BIN(s) to acquire merchants and settle their credit card transactions. The ISO/MSP retains the majority of income, and the BIN-owner receives a fee for the use of its BIN(s). Although it has minimal operational involvement, the BIN-owner has primary responsibility to the Association if any user fails to perform. The BIN-owner retains the risk of loss as well as responsibility for settlement with the Associations consistent with the contract between the bank and the Association. Thus, examiners should insist that management rigorously oversee and control acquiring RAB arrangements to ensure that the ISO/MSP is appropriately managing the risks. Oversight controls are important, even if the ISO/MSP shares liability with the bank. A failure by management to consider any lending relationships the bank has with ISO/MSPs in analyzing total risk exposure warrants examiner attention. Given the substantial risk involved, many banks are reluctant to enter into acquiring RAB arrangements.

Risk also exists when an acquiring bank uses a BIN owned by another bank. If the BIN-owning bank fails to perform, the Associations may hold all of the BIN-users liable. RABs require close examiner analysis of the acquiring bank's program to determine the extent of risk to the bank.

THIRD PARTIES

The success of a payment system depends on the credit quality of its participants and its operational reliability. As mentioned, the presence of third parties coupled with the bank's ability to sub-license the entire merchant program, or part thereof, to other entities, introduces numerous complexities in the transaction and funds flows related to credit card transactions. Third parties such as ISO/MSPs and servicers are used by acquiring banks for a variety of functions like soliciting merchants, merchant application processing, charge-back processing, fraud detection, customer service, accounting services, selling/leasing electronic terminals to merchants, transaction processing, authorizations, and data capture. Each acquiring bank's program is unique regarding the number of third parties used and the services provided. Examiners should require that banks have proper risk management policies and procedures to control the applicable third-party risks.

An acquiring bank, as the Association member, is ultimately responsible for the settlement of transactions processed through its BINs, regardless of the third parties used and the contents of its contracts with those parties. The acquiring bank (BIN-owner) needs to take an active role in ensuring the quality and integrity of the services these third parties provide because the quality of services among third parties varies greatly. Examiners should pay close attention to instances in which the bank relies on the guarantee of a third party against losses as a substitute for prudent risk management. Losses associated with high-risk or fraudulent credit card activity can be substantial and easily reach figures well beyond the means of a seemingly financially capable third party. Banks have incurred significant losses from failing to control third-party activities. Uncontrolled growth, fraud, and inadequate operations by the third parties have all resulted in significant problems for banks. ISO/MSPs in particular could be motivated by their own profits at the expense of merchant portfolio quality and often have limited financial capacity.

Regardless of the third parties used and any guarantees provided, the examination approach requires that bank staff have the expertise and knowledge of the business to properly manage the risks and that management have a sound plan for managing its merchant program as well as policies and procedures in place to control the risks associated with using third parties and to properly limit the use of the bank's BINs by others. For instance, the final review of merchant applications and the decision to approve or decline a new account should be controlled by the BIN-owner.

The examination should verify that the bank's policies and procedures, in general, provide for:

- A due diligence process to: determine the third party's character and ability to perform the services; assess the risks associated with using the third party; and establish risk controls.
- A process for ensuring the adequacy of written agreements.
- A monitoring process for the third party's operations and financial condition.

Examiners should look for evidence that due diligence processes, in general, include:

- Determining that the third party has the operational and financial ability as well as expertise to perform the services.
- Performing thorough background checks on the third party's principals and key individuals to determine their good standing, including bank and trade references, credit reports, and, where appropriate, criminal backgrounds.
- Analyzing the financial capacity of the third party and its principals to determine continued viability and capacity to absorb losses.
- Performing an on-site inspection.
- Assessing the third party's marketing practices and the types of merchants targeted.
- Assessing the risks associated with the use of the third party and the controls needed to manage the risk (for example, underwriting standards, security of sensitive information, reporting requirements, and procedures for settlement, charge-back processing, fraud monitoring, and pricing).
- Establishing criteria for requiring additional loss controls, such as reserves or security deposits to absorb losses stemming from merchant fraud and charge-backs.
- Ensuring separation of duties for activities performed (for example, the individual conducting the on-site inspection should have no financial interest in its outcome).
- Registering third parties with Associations as required.

The examination should also include assessing whether the bank's monitoring process, in general, includes:

- Periodically reviewing the financial condition of third parties and their principals to determine capacity to meet commitments and remain in good standing.
- Reviewing allowances to ensure they are consistent with the condition of the third party and volume of business generated.
- Reviewing compliance with the bank's established requirements (for example, underwriting standards, settlement and charge-back processing, fraud monitoring, merchant pricing, and security of cardholder information).
- Periodically conducting on-site inspections.
- Periodically evaluating the third party's internal controls (for example, through review of operational audits).
- Assessing system audits for third parties performing processing tasks.
- Periodically reviewing marketing practices.
- Reviewing contingency plans to assure continuity of operations.
- Documenting the bank's relationship with the third party.
- Checking compliance with contractual provisions.
- Determining the adequacy of the bank's controls over third party access to sensitive information.

Contractual Considerations

Concerns arise when management has not obtained a signed, written agreement between it and each third party or when the agreement fails to take into consideration business requirements, key risk factors identified during the due diligence process, and the Associations' regulations. Legal counsel familiar with merchant processing normally reviews contracts prior to signing.

Contractual considerations generally include:

- Responsibilities of each party.
- Terms specifying compensation, payment arrangements, price changes, and time frames.
- Provisions prohibiting the third party from assigning the agreement to any other party.
- Frequency and means of communication and monitoring activities of each party.
- Provisions regarding the ownership, confidentiality, and non-disclosure of cardholder information as well as compliance with cardholder information security standards.
- Recordkeeping requirements and whether each party has access to these records.
- Responsibility for audits, the bank's access to those audits, and whether the acquiring bank has the right to perform an audit of the third party.
- Notification requirements of system changes that could affect procedures and reports.
- Type and frequency of financial information the third party will provide.
- Termination parameters, including potential penalty provisions.
- Maintenance of an adequate contingency plan by the third party.

Additional contractual considerations for ISO/MSPs generally include:

- Tying compensation to the merchant portfolio's performance (for instance, charge-back activity).
- Defining responsibilities for fraud and charge-back processing and losses.
- Requiring security deposits from the ISO/MSP, particularly if its financial condition is weak or the quality of the merchants it solicits presents significant risk.
- Establishing remedies to protect the bank if the ISO/MSP fails to perform (for example, indemnity provisions, early termination rights, and delayed payment).
- Providing criteria for acceptability of merchants.
- Specifying that the bank owns the merchant relationships.
- Controlling the future use and solicitation of merchants.
- Defining the allowable use of the name and logo of the bank and the ISO/MSP.
- Permitting bank employees to conduct onsite inspections of the ISO/MSP.
- Specifying that all applicable regulations and Association rules are to be followed.

Association Requirements Regarding Third Parties

The bank's risk management program needs to consider the Associations' requirements regarding third parties. Each acquiring bank is expected to register third parties according to the Associations' guidelines before accepting services. Associations generally require an initial registration fee and annual fees for each third party under contract. The fees are normally passed on to the third party.

The Associations have specific guidelines relating to contract provisions, functions controlled by the acquiring bank, accessibility of procedural audits, and recordkeeping requirements. In particular, Association regulations state that:

- All new merchant accounts should be reviewed with final approval controlled by the acquiring bank.
- A registered third party cannot subcontract its bankcard-related services to another business. Bankcard-related services can only be provided by businesses with a direct written contract with an Association member.
- All aspects of a member's relationship with a third party should be documented.
- Members are responsible for ensuring that merchants receive payment for the card transactions deposited.

Even after registration, the acquiring bank remains responsible for ensuring compliance with the Associations' operating regulations. The regulations make the acquiring bank liable to the Associations for the actions of third parties. Banks are to periodically submit certain information on third parties used to the Associations and can be fined by the Associations for not doing so.

Agent Banks

Agent banks contract with merchants on behalf of an acquiring bank. Agent banks are typically community banks that want to offer merchant processing services to their merchant customers but that do not have the management expertise and/or do not want to invest in the infrastructure needed to serve as an acquiring bank. Acquiring banks generally provide backroom operations to the agent bank. Depending upon the contractual arrangement, the agent bank may or may not be liable to the acquiring bank in the event of charge-back or fraud losses. Agent banks with liability typically perform merchant underwriting. Agent banks without liability are typically called referral banks. In a referral arrangement, the acquiring bank performs the underwriting, executes the merchant agreement, and accepts responsibility for merchant losses. Acquiring banks sometimes compensate the referral bank byway of a referral fee.

If examining an agent bank, examiners should determine whether management fully understands the bank's financial liability for charge-backs as well as its responsibilities under the agreement with the acquiring bank. An agent bank should have appropriate procedures in place to ensure it fulfills its obligations under such agreement. Examiners should expect that agent banks with liability have proper risk management policies and controls in place for merchant underwriting and monitoring, pricing and profitability, and third-party relationships.

Examiners should determine whether management of an agent bank has ensured underwriting guidelines meet the acquiring bank's underwriting standards, at a minimum, and represent an appropriate level of risk for the agent bank to hold. Acquiring banks may decline a merchant if it poses undue risk or does not meet the bank's minimum standards. Other agent bank tasks include performing ongoing monitoring of sales, charge-backs, and fraud.

Examiners should look for evidence that pricing of agent relationships is sufficient to cover costs, including any fees paid to the acquiring bank and anticipated losses. Depending on the size of the agent bank's merchant portfolio, separate profitability reports on this business line may not be necessary. But, that does not negate management's responsibility to determine if the service is profitable to the bank. If profits are minimal or nonexistent, considerations would include whether the risk is sufficiently offset by the intangible benefits gained from offering the services.

Examiners should expect to see a written agreement clearly outlines both agent and acquiring banks' responsibilities. They should also determine whether the agent bank has performed appropriate due diligence regarding the acquiring bank's ability to meet its obligations under the contract and, similarly, whether acquiring banks have put appropriate controls in place regarding the use of agent banks. Examiners should evaluate controls for maintaining appropriate underwriting standards and processing volumes and for monitoring the agent's financial condition and processing volume. Instances in which the financial condition is not consistent with its merchant portfolio risk profile and/or the activity's volume normally raise concern.

Loans to Third-Party Organizations

Examiners should pay attention to situations in which management has failed to fully understand the total risk exposure when lending to third parties that perform services for the bank, including for its merchant program. The lending relationship creates a potential conflict of interest and increases the bank's overall credit risk. The risk exposure is not only the loan(s) to the third-party but also the contingent liability from merchant processing activities by the third party conducted through the bank's BIN. Lending to a third-party organization sometimes results in management failing to take appropriate action against the third party when problems are identified. For example, management may not want to stop processing for the ISO/MSP because it may jeopardize repayment of the bank's loan. As a result, management could continue with a problem relationship, which may increase the problems and subsequent losses. Examiners should evaluate management's processes to determine and control total risk exposure.

Contingency Planning

Concerns also surface when acquiring banks have not ensured that third-party processors and network providers have contingency plans in place to continue operations in the event of a disaster. If an ISO/MSP is providing the backroom operations, examiners should confirm whether management has ensured that the ISO/MSP has a proper contingency plan. The examiner should determine management's practices for requesting and reviewing contingency plans. Further, the merchant processing examination should include IT examiners to the extent needed to review the adequacy of the contingency plan as well as the bank's in-house data processing systems for merchant processing.

Cardholder Information

Cases where disclosure of cardholder information is not in accordance with privacy regulations and the Associations' guidelines warrant scrutiny. Inappropriate disclosure to third parties could result in substantial liability to the bank, especially if the third party perpetrates fraud.

Association regulations prohibit an acquiring bank from disclosing cardholder and transaction information to third parties, other than to its agents for the sole purpose of completing a transaction, without the prior written consent of the cardholder's issuing bank and the Association. The Associations' regulations also state that if an acquiring bank discloses the information, the acquiring bank must ensure that its agents and their employees make no further disclosure and treat the information as confidential.

The emphasis of the privacy regulations is on providing customers a notice of the bank's disclosure practices and an opportunity to opt out of the disclosure. The regulations also prohibit the disclosure of certain cardholder information for marketing purposes, with certain exceptions.

CORRSEPONDENCE WITH THE ASSOCIATIONS

Correspondence between Associations and acquiring banks can point to potential problems with a particular merchant, third-party arrangement, or a significant portion of the acquiring bank's merchant portfolio. Of particular concern are acquiring banks that have been required to post collateral to the Associations, that have had limits placed on their activity, or that have been fined. Associations typically take these actions when the acquiring bank has excessive levels of risk in the merchant portfolio. Topics of correspondence include, but are not limited to:

- Periodic reviews performed on the acquiring bank by an Association.
- High-risk merchants.
- Terminated merchants.
- Excessive volumes of charge-backs at the merchant and bank portfolio levels.

- Fraud or other suspect activity at both portfolio levels.
- Risk limits on activity, or collateral requirements, imposed on the acquiring bank due to the level of risk in the acquiring bank's portfolio.
- Capital requirements.
- Third party usage.

Examiners should closely review correspondence between the bank and the Associations. Banks should also have the applicable Association's by-laws, regulations/rules, and other guidance on hand for review if necessary.

SUMMARY OF EXAMINATION GOALS – MERCHANT PROCESSING

Examiners are expected to determine the level of risk posed by the bank's merchant processing activities as well as determine whether management has correctly identified and is sufficiently controlling those risks with a comprehensive risk management program. In general, the examiner's role includes:

- Reviewing the bank's strategic plan to determine how (and if) merchant processing fits into the bank's objectives.
- Evaluating the bank's merchant processing policies, including, but not necessarily limited to, those covering merchant selection, underwriting, and monitoring.
- Reviewing correspondence between the bank and the Associations regarding the bank's merchant processing activities.
- Determining the quality of the bank's merchant portfolio, including the identification of any high-risk merchants.
- Sampling recently approved (such as within the last 90 days) merchant files.
- Identifying the volume of merchant processing transactions, comparing that volume to the bank's capital level, and determining if additional capital support is necessary.
- Reviewing the trends in the volume and aging of charge-backs, and determining what charge-back losses the bank has suffered.
- Gauging management's ongoing review processes for merchant accounts.
- Evaluating acquiring Rent-a-BIN activities.
- Assessing agent-bank programs and determining level of liability under such programs.
- Analyzing pricing practices and models as well as profitability of the merchant program. Also, considering whether merchant relationships are profitable and investigating as necessary (for example, if a significant relationship is not profitable).
- Reviewing budgeting and forecasting processes for merchant processing activities, including assumptions used.
- Reviewing the settlement flow chart and the bank's practices for paying merchants.
- Identifying what third parties the bank uses for its merchant activities and reviewing controls over third-party risks. The analysis should include reviewing governing contracts or agreements for significant relationships.
- Assessing the adequacy of holdbacks or other merchant reserves.
- Inspecting contingency plans, calling on IT specialists as necessary.
- Reviewing routine MIS for the merchant processing program.
- Assessing whether management possess the necessary skill-sets to properly management the program.
- Reviewing fraud detection procedures.
- Reviewing merchant program sections of internal and external audit reports.
- Determining whether any planned changes exist for the merchant operation. If changes are planned, identify how the changes may impact the bank, specifically as related to higher risks that the bank may be taking on.