

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

_____)	
In the Matter of)	
WEXBANK)	CONSENT ORDER
SANDY, UTAH)	
)	
(INSURED STATE NONMEMBER BANK))	FDIC-23-0044b
)	
)	
_____)	

The Federal Deposit Insurance Corporation (“FDIC”) is the appropriate Federal banking agency under section 3(q) of the Federal Deposit Insurance Act (“FDI Act”), 12 U.S.C. § 1813(q), for WEX Bank, Sandy, Utah (“Bank”). The FDIC determined that the Bank has engaged in: a) unsafe or unsound banking practices; b) deceptive acts and practices in or affecting commerce, in violation of section 5 of the Federal Trade Commission Act (“Section 5”), 15 U.S.C. § 45(a)(1), by charging certain, higher fees than the Bank’s disclosures indicated the Bank would charge; and c) violations of the Equal Credit Opportunity Act (“ECOA”), 15 U.S.C. §§ 1691 *et seq.*, and its implementing Regulation B, 12 C.F.R. § 1002; and d) other violations of law, as described in the Consumer Compliance Report of Examination as of October 3, 2022 (“Compliance ROE”).

The Bank, by and through its duly elected and acting Board of Directors (“Board”), has executed a STIPULATION AND CONSENT TO THE ISSUANCE OF A CONSENT ORDER (“CONSENT AGREEMENT”), dated September 19, 2023, that is accepted by the FDIC. With the CONSENT AGREEMENT, the Bank has consented, without admitting or

denying any charges of unsafe or unsound banking practices or violations of law or regulation, to the issuance of this CONSENT ORDER (collectively “ORDER”) by the FDIC.

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

I. CONSENT ORDER

IT IS HEREBY ORDERED that the Bank, its institution-affiliated parties, as that term is defined in 12 U.S.C. § 1813(u), and its successors and assigns, cease and desist from a) engaging in unsafe or unsound banking practices, b) operating in violation of (1) Section 5 by engaging in the deceptive and unfair practices and (2) ECOA by failing to provide a statement of specific reasons for adverse action on applications for credit, as described below, and c) engaging in other violations of law and/or regulations, as cited in the Compliance ROE.

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

Correct Violations of Law

1. If not already corrected, within 90 days of the effective date of this ORDER, the Bank shall correct all violations of law and/or regulations cited in the Compliance ROE and as described below, and implement procedures designed to prevent their recurrence. The Bank’s actions as required by this paragraph shall be satisfactory to the Regional Director of the FDIC’s San Francisco Regional Office (“Regional Director”) as determined at subsequent examinations and/or visitations.

Unfair and Deceptive Acts and Practices

2. The Bank shall take all action necessary to eliminate and correct all violations of Section 5 cited in the Compliance ROE and implement a sufficient Compliance Management System (“CMS”) designed to prevent future violations of Section 5. Specifically, such CMS shall provide that all monthly fees to consumers are accurately disclosed and that the Bank’s

practices and procedures conform to those disclosures.

ECOA

3. The Bank shall take all action necessary to eliminate and correct all violations of ECOA and implement a sufficient CMS designed to prevent future violations of ECOA. Without limiting the generality of the foregoing, such CMS shall provide that the Bank provide a statement of specific reasons for any adverse action on an application for credit. The Bank should analyze the denial codes across all operating systems from which an adverse action determination is generated, and modify procedures and the notice language for the reason for denial as needed. Updated reasons for adverse action must be specific and provide the principal reason(s) for adverse action to the applicant and, when applicable, the personal guarantor.

Board and Senior Management Oversight

4. The Board, pursuant to its duty to fulfill its fiduciary responsibility, must increase, consistent with the role and expertise commonly expected for directors of banks of comparable size and complexity and offering comparable banking products and services, its supervision and direction of management and its oversight and monitoring of the Bank's CMS, and shall be responsible for the approval of sound policies and objectives and for the effective supervision of all the Bank's compliance-related activities.

5. Senior management, under the direction and supervision of the Board, shall review, revise, develop, and/or implement, as necessary, policies and procedures, including monitoring and training programs, that are designed, given that the Bank serves commercial clients, to effect compliance with all applicable consumer protection laws and implementing rules and regulations ("Consumer Protection Laws").

6. The Board and senior management shall direct appropriate time and resources to ensure that the Bank effectively implements and administers the CMS.

Compliance Program

7. Within 90 days from the effective date of this ORDER, senior management, under the direction and supervision of the Board, shall review, revise, develop, and/or implement, as necessary, a sound risk- based CMS, including a comprehensive written compliance program (“Compliance Program”) that is designed to effect compliance with all applicable Consumer Protection Laws. The Bank’s CMS and Compliance Program shall specifically address compliance with Section 5 and ECOA. The written Compliance Program shall be an organized document that guides the Bank’s compliance activities and shall be a source document that serves as a training and reference tool for all Bank employees and management. At a minimum, the written Compliance Program shall provide for and include:

(a) Comprehensive written policies and procedures, including detailed operating procedures and controls designed to prevent violations of applicable Consumer Protection Laws and prevent associated risks of harm to consumers, particularly with regard to Section 5 and ECOA;

(b) An effective training program that addresses compliance with applicable Consumer Protection Laws and includes regular, specific, comprehensive training of the Board, senior management, and Bank staff, having responsibilities that relate to applicable Consumer Protection Laws. The training shall be documented and commensurate with individual job functions and duties for appropriate Bank personnel, and shall incorporate training for high-risk compliance areas, including Bank oversight of service providers and Section 5;

(c) A well-documented and proactive internal CMS monitoring process that is designed to detect and promptly correct compliance weaknesses within the Bank and service providers, particularly weaknesses that impact consumer accounts; and

(d) Effective independent audit coverage of the Compliance Program and the Bank's compliance with all applicable Consumer Protection Laws and internal policies and procedures.

8. Any changes to the Bank's Compliance Program resulting from the Bank's review of its Compliance Program, as described above, shall be completed within 90 days of the effective date of this Order and shall be reviewed and approved by the Board and recorded in the Board's minutes. Any subsequent revisions to the Bank's Compliance Program shall also be reviewed and approved by the Board and recorded in the Board's minutes.

9. The Bank shall comply with the written Compliance Program and/or any subsequent modification of the Compliance Program.

10. During the life of this ORDER, the Bank shall regularly perform a full review (not less than annually) of each of its compliance policies and procedures to confirm that they properly address all applicable Consumer Protection Laws.

11. Within 180 days from the effective date of this ORDER, and at least annually thereafter, the Bank shall perform an internal review, including transactional testing, of all compliance monitoring procedures to determine the effectiveness of monitoring procedures to ensure compliance with all applicable Consumer Protection Laws. The review shall include any areas identified as weak in the Compliance ROE. Monitoring procedures should include reviews of activities provided by service providers to ensure regulatory compliance, and reviews of the Bank's complaint processing procedures to ensure identification of trends and root causes for complaints or consumer dissatisfaction.

Audit

12. Within 90 days from the effective date of this ORDER, the Bank shall appropriately revise its schedule of independent audits, to be conducted as determined by the Bank's risk assessment, with higher risk areas audited at least annually, to test its compliance with all applicable Consumer Protection Laws. The audits shall be conducted by qualified personnel with experience in conducting independent audits of compliance programs of banks of comparable complexity. The audits shall be performed by individuals or entities that are independent of the areas being audited, *i.e.* individuals or entities who were not involved with the underlying compliance programs being audited. The scope of the audits identified on the schedule will assess the Bank's CMS and Compliance Program, and at a minimum, shall include the following, as applicable:

- (a) Define a comprehensive scope to include appropriate aspects of each applicable law or regulation based on a risk analysis;
- (b) Review the Bank's CMS policies and procedures, and review the Bank's policies and procedures for oversight of service providers;
- (c) Identify the number of transactions sampled by category or product type;
- (d) Conduct transactional testing that is sufficient to determine the effectiveness of the Bank's CMS, including with respect to Bank products and services for which the Bank uses service providers; and
- (e) Identify deficiencies.

The auditor shall provide descriptions of or suggestions for corrective actions and recommended timeframes for correction.

The auditor shall establish follow-up procedures to verify that corrective actions are implemented and effective.

13. For any compliance area identified as high risk by the Bank's annual Risk Assessment Process, the Board or its Audit and Compliance Committee shall determine the need for increased frequency of the audits required by paragraph 12 above. The frequency and scope of such compliance audits, i.e. bi-annually, quarterly or monthly, shall be commensurate with the risk factors and mitigating controls identified.

14. Audit findings, deficiencies, and recommendations must be documented in a written report and provided to the Bank's Audit and Compliance Committee at the Committee's next regularly scheduled meeting following issuance of a report of the independent audit. In addition, the audit report should be thoroughly reviewed by the Bank's Audit and Compliance Committee and fully documented in the minutes.

15. If the written independent auditor's report does not already contain a reasonable management action plan, within 30 days from receipt of the written independent auditor's report by the Board, the Board shall ensure that management prepares a reasonable written action plan to address the audit's findings to:

- (a) Correct any deficiencies noted; and
- (b) Implement any recommendations. Any actions not properly taken by management to correct the deficiencies must be explained in a written document and presented to the Board members with an explanation as to why a particular recommendation is not being implemented. This shall be documented in the Board or Audit and Compliance Committee's minutes.

II. NOTIFICATION AND REPORTING REQUIREMENTS

Progress Reports and Certifications of Compliance

16. Within 30 days from the end of each calendar quarter following the effective date

of this ORDER, the Bank shall provide a written progress report addressing each provision of the ORDER and detailing the form, manner, results and dates of any actions taken to secure compliance with the provisions of the ORDER to the Regional Director. All progress reports and other written responses to the ORDER shall be reviewed by the Board and made a part of the Board minutes. The progress reports shall be true and accurate and accompanied by a certification of compliance signed by the Chairman of the Board and/or the Bank President. The certification of compliance, which will be reviewed and verified through subsequent visitations and/or examinations, shall include the following:

(a) A statement confirming that the Bank is in compliance with all provisions of the ORDER; or

(b) If the Bank is not in compliance with all provisions of the ORDER, the Bank must provide:

(i) A list of the provisions with which the Bank is not yet in compliance, an explanation of why the Bank is not yet in compliance with each specific provision, and a description of the actions the Bank has taken to comply with the provision; and

(ii) A statement as to when the Bank will be in full compliance with the ORDER.

III. SAVINGS CLAUSE AND EFFECTIVE DATE OF THE ORDER

The provisions of the ORDER shall not bar, estop, or otherwise prevent the FDIC or any other federal or state agency or department from taking any other action against the Bank or any of the Bank's current or former institution-affiliated parties, as that term is defined in section 3(u) of the FDI Act, 12 U.S.C. § 1813(u).

The ORDER shall be effective on the date of issuance.

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

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

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

Issued pursuant to delegated authority this 20th day of September, 2023.

/s/

Dana L. Crutchfield
Deputy Regional Director
Division of Depositor and Consumer Protection