

UNITED STATES OF AMERICA  
DEPARTMENT OF THE TREASURY  
COMPTROLLER OF THE CURRENCY

In the Matter of:	)	
	)	AA-EC-2013-12
RBS Citizens, N.A.	)	
Providence, Rhode Island	)	

**CONSENT ORDER**

The Comptroller of the Currency of the United States of America (“Comptroller”), through his authorized representatives, has examined the affairs of RBS Citizens, N.A., Providence, Rhode Island (“Bank”), and has identified deficiencies in the Bank’s practices that resulted in violations of Section 5 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45(a)(1), related to its overdraft protection program, checking rewards programs, and stop payment process for preauthorized recurring electronic fund transfers.

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, dated April 29, 2013 (“Stipulation”), that is accepted by the Comptroller. By this Stipulation, which is incorporated by reference, the Bank has consented to the issuance of this Consent Cease and Desist Order (“Order”) by the Comptroller.

**ARTICLE I**

COMPTROLLER’S FINDINGS

The Comptroller finds, and the Bank neither admits nor denies, the following:

- (1) In the operation of the Bank’s Standard Overdraft Protection Practices (“Standard ODP”) prior to August 15, 2010, some Bank employees attempted, on an *ad hoc* basis, to allow Bank customers to opt out of Standard ODP, but did not disclose to these consumers certain

technical limitations of the opt-out that prevented it from being effective for all transactions. Certain consumers who opted out of the Standard ODP were charged overdraft fees as a result of this practice.

(2) Between at least May 2010 and July 2012, the Bank distributed an overdraft opt-in notice to its customers that stated that the Bank would charge a fee for “paid or returned” items to customers who opted in to its overdraft protection program, when in fact, the Bank did not charge fees for certain items.

(3) Between approximately September 2007 and September 2011, the Bank’s written customer agreement for its Savings Account Overdraft Protection Program did not disclose that the Bank would not transfer funds from a consumer’s savings account to cover overdrafts in a linked checking account if the savings account did not have funds to cover the entire overdrawn balance on a given day, even if the available funds would have covered one or more overdrawn items. Certain consumers were charged overdraft fees as a result of available savings funds not being transferred.

(4) The Bank’s Personal Deposit Account Agreement stated that the Bank would stop preauthorized recurring electronic fund transfers at the consumer's request, if notice was given at least three business days before the payment was scheduled to be made. Due to technical limitations which were not disclosed to consumers, the Bank was unable to process such stop payments between at least January 1, 2008 and August 1, 2010. Some consumers were charged overdraft fees as a result of continued pre-authorized electronic fund transfers after requesting that the transactions cease.

(5) Between October 2008 and September 2011, the Bank’s checking reward program disclosures stated that its customers who have at least ten eligible checking account

transactions in a calendar month would receive rebates based on those transactions, without disclosing posting date requirements for those transactions. As a result, some consumers did not receive anticipated rewards.

(6) By reason of the foregoing practices as described in paragraphs (1) through (5) of this Article, the Bank engaged in deceptive practices in violation of Section 5 of the FTC Act, which formed a pattern of misconduct.

Pursuant to the authority vested in him by the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818(i), the Comptroller hereby ORDERS that:

## **ARTICLE II**

### **COMPLIANCE COMMITTEE**

(1) Within ten (10) days, the Board shall appoint a Compliance Committee of at least three (3) independent directors, which may not be employees or officers of the Bank or any of its subsidiaries or affiliates. The Compliance Committee shall be responsible for monitoring and coordinating the Bank's adherence to the provisions of the Order. The Compliance Committee shall maintain minutes of its meetings at which compliance with this Order is discussed.

(2) The Compliance Committee shall meet at least monthly.

(3) Within sixty (60) days of the date of this Order and within thirty (30) days of each calendar quarter thereafter, the Compliance Committee shall submit a written progress report to the Board setting forth in detail:

- (a) actions taken since the prior report (if any) to comply with each Article of this Order;
- (b) the results of those actions; and

(c) a description of the actions needed and the anticipated time frame to achieve full compliance with each Article of this Order;

(4) The Board shall forward a copy of the Compliance Committee's report, with any additional comments by the Board, to the Examiner-in-Charge within thirty (30) days of receiving such report. These reports shall:

- (a) include the Compliance Committee's report to the Board for the applicable quarter, with any additional comments by the Board; and
- (b) describe any actions initiated by the Board or the Bank to comply with each Article of this Order.

### **ARTICLE III**

#### **COMPREHENSIVE ACTION PLAN**

(1) Within sixty (60) days of this Order, the Bank shall submit to the Deputy Comptroller for Large Bank Supervision ("Deputy Comptroller") and the Examiner-in-Charge an acceptable plan containing a complete description of the actions that are necessary and appropriate to achieve compliance with Articles IV through VII of this Order ("Action Plan"). In the event the Deputy Comptroller or the Examiner-in-Charge asks the Bank to revise the Action Plan, the Bank shall promptly make the requested revisions and resubmit the Action Plan to the Deputy Comptroller and the Examiner-in-Charge. Following acceptance of the Action Plan by the Deputy Comptroller, the Bank shall not take any action that would constitute a significant deviation from, or material change to, the requirements of the Action Plan or this Order, unless and until the Bank has received a prior written determination of no supervisory objection from the Deputy Comptroller.

(2) The Board shall ensure that the Bank achieves and thereafter maintains

compliance with this Order, including, without limitation, successful implementation of the Action Plan. In order to comply with these requirements, the Board shall:

- (a) require the timely reporting by the Bank of such actions directed by the Board to be taken under this Order;
- (b) follow-up on any non-compliance with such actions in a timely and appropriate manner; and
- (c) require corrective action be taken in a timely manner for any non-compliance with such actions.

(3) The Action Plan shall specify timelines for completion of each of the requirements of Articles IV through VII of this Order. The timelines in the Action Plan shall be consistent with any deadlines set forth in this Order.

#### **ARTICLE IV**

##### **POLICIES AND PROCEDURES**

(1) Within sixty (60) days, the Bank shall review and update compliance risk management systems designed to ensure that the Bank is operating in compliance with all applicable consumer protection laws, rules and regulations, including Section 5 of the FTC Act. The compliance risk management system shall include, but not be limited to:

- (a) policies and procedures that address internal controls and secondary review processes (specific to overdraft protection programs, overdraft practices, stop payment programs, and rewards programs) for use by appropriate Bank personnel in the performance of their duties and responsibilities;
- (b) a secondary review process and audit program that will adequately test for

compliance with consumer protection laws, rules and regulations, with an expanded scope including the Bank's overdraft protection program, overdraft practices, stop payment program, and rewards program;

- (c) processes to ensure that exceptions noted in the audit reports are corrected and addressed by the appropriate Bank personnel in a timely manner; and,
- (d) training of all appropriate Bank personnel specific to the above noted areas to ensure compliance with the requirements of all federal and state consumer protection laws, rules, and regulations.

(2) The Board shall approve and submit the updated policies, procedures, and programs described in paragraph (1) of this Article to the Deputy Comptroller for review and written determination of no supervisory objection. Upon receiving a written determination of no supervisory objection from the Deputy Comptroller, the Board shall ensure adherence to the program.

## **ARTICLE V**

### **COMPLIANCE RISK MANAGEMENT**

(1) Within sixty (60) days of this Order, the Bank shall review and make any necessary adjustments to the written policy governing its Compliance Risk Management function ("CRM Policy"). The Board shall approve and submit this CRM Policy to the Deputy Comptroller for written determination of no supervisory objection. At a minimum, the CRM Policy shall require implementation of operating procedures for each consumer protection law and regulation applicable to the Bank.

(2) Upon receipt of a determination of no supervisory objection to the CRM Policy submitted pursuant to paragraph (1) of this Article, the Board shall ensure the Bank adheres to the CRM Policy.

## **ARTICLE VI**

### **CONSUMER RESTITUTION FOR DECEPTIVE PRACTICES**

(1) The Bank shall make full restitution and remediation to consumers adversely affected by the findings described in Article I of this Order (“Eligible Consumers”) and in accordance with the Restitution Plan required by this Article. At a minimum, the restitution or remediation amount paid to each Eligible Consumer shall include: the sum of all overdraft or other fees paid by the Eligible Consumer, and checking rewards not paid to the Eligible Consumer, as a result of the findings described in Article I, together with the estimated interest the Eligible Consumer would have earned on such fees or rewards.

(2) Within thirty (30) days of the date of this Order, the Bank shall develop and submit to the Deputy Comptroller for prior written determination of no supervisory objection, a plan to provide restitution or remediation to the Eligible Consumers (“Restitution Plan”). At a minimum, the Restitution Plan shall include:

- (a) A description of the method to be used to identify Eligible Consumers;
- (b) A description of the method used to calculate the amount of restitution or remediation for the individuals so identified;
- (c) A description of the procedures for issuance and tracking of the restitution and remediation payments;
- (d) A description of the procedures for monitoring compliance with the Restitution Plan; and

(e) A description of all other non-monetary relief to be provided.

(3) The Bank has initiated and is in the process of completing a plan to provide restitution and remediation to Eligible Consumers. This plan shall be incorporated into the Restitution Plan required by this Article and be subject to the requirements of this Article.

(4) The Bank's Internal Audit shall periodically conduct an assessment of the Restitution Plan and the methodology used to determine the population of Eligible Consumers, the amount of restitution for each Eligible Consumer, the procedures used to issue and track restitution and remediation payments, and the procedures used for reporting and requesting the reporting of updated balances to the credit reporting agencies. Such assessments shall occur at appropriate intervals during the development and execution of the Restitution Plan and within forty-five (45) days of completion of restitution and remediation, and the findings shall be memorialized in writing. Within ten (10) days of completing each assessment, Internal Audit shall provide its written findings to the Compliance Committee, the Deputy Comptroller, and the Examiner-in-Charge.

(5) Upon receipt of a written determination of no supervisory objection to the Restitution Plan, the Board shall adopt, and thereafter ensure that the Bank implements and adheres to, the Restitution Plan. Any proposed changes to or deviations from the Restitution Plan shall be submitted in writing to the Deputy Comptroller for prior supervisory review and non-objection.

## **ARTICLE VII**

### **COMPLIANCE WITH LAW**

(1) The Board shall ensure that the Bank, its officers, agents and service providers immediately cease and desist from engaging in violations of law, rule or regulation, and shall



specifically ensure that the Bank take all steps necessary to eliminate violations of Section 5 of the FTC Act and to maintain future compliance with the requirements of that Act.

## **ARTICLE VIII**

### **OTHER PROVISIONS**

(1) Although this Order requires the Bank to submit certain actions, plans, programs, policies, and procedures for the review or prior written determination of no supervisory objection by the Deputy Comptroller, the Board has the ultimate responsibility for proper and sound management of the Bank.

(2) In each instance in this Order in which the Board is required to ensure adherence to, or undertake to perform certain obligations of the Bank, it is intended to mean that the Board shall:

- (a) authorize and adopt such actions on behalf of the Bank as may be necessary for the Bank to perform its obligations and undertakings under the terms of this Order;
- (b) require the timely reporting by Bank management of such actions directed by the Board to be taken under the terms of this Order;
- (c) follow-up on any material non-compliance with such actions in a timely and appropriate manner; and
- (d) require corrective action be taken in a timely manner of any material non-compliance with such actions.

(3) If, at any time, the Comptroller deems it appropriate in fulfilling the responsibilities placed upon him by the several laws of the United States to undertake any action

affecting the Bank, nothing in this Order shall in any way inhibit, estop, bar, or otherwise prevent the Comptroller from so doing.

(4) This Order is and shall become effective upon its execution by the Comptroller, through his authorized representative. The Order shall remain effective and enforceable, except to the extent that, and until such time as, any provision of this Order shall be amended, suspended, waived, or terminated in writing by the Comptroller or his authorized representative.

(5) Any time limitations imposed by this Order shall begin to run from the effective date of this Order, as shown below, unless the Order specifies otherwise.

(6) This Order is intended to be, and shall be construed to be, a final order issued pursuant to 12 U.S.C. § 1818(b), and expressly does not form, and may not be construed to form, a contract binding the Comptroller or the United States. Nothing in this Order shall affect any action against the Bank or its institution-affiliated parties by a bank regulatory agency, the United States Department of Justice, or any other law enforcement agency, to the extent permitted under applicable law.

(7) The terms of this Order, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements, or prior arrangements between the parties, whether oral or written.

IT IS SO ORDERED, this 29th day of April, 2013.

/s/ Vance S. Price  
Vance S. Price  
Deputy Comptroller  
Large Bank Supervision

**UNITED STATES OF AMERICA  
DEPARTMENT OF THE TREASURY  
COMPTROLLER OF THE CURRENCY**

<b>In the Matter of:</b>	)	
	)	AA-EC-2013-12
RBS Citizens, N.A.	)	
Providence, Rhode Island	)	

**STIPULATION AND CONSENT TO THE ISSUANCE  
OF A CONSENT ORDER**

The Comptroller of the Currency of the United States of America (“Comptroller”), intends to impose a cease and desist order on RBS Citizens, N.A., Providence, Rhode Island (“Bank”), pursuant to 12 U.S.C. § 1818(b), for its deceptive practices in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1).

The Bank, in the interest of compliance and cooperation, enters into this Stipulation and Consent to the Issuance of a Consent Order (“Stipulation”) and consents to the issuance of a Consent Order, dated April 29, 2013 (“Order”).

In consideration of the above premises, the Comptroller, through his authorized representative, and the Bank, through its duly elected and acting Board of Directors, stipulate and agree to the following:

**ARTICLE I**

**JURISDICTION**

(1) The Bank is a national banking association chartered and examined by the Comptroller pursuant to the National Bank Act of 1864, as amended, 12 U.S.C. § 1 *et seq.*

(2) The Comptroller is “the appropriate Federal banking agency” regarding the Bank pursuant to 12 U.S.C. §§ 1813(q) and 1818(b).

(3) The Bank is an “insured depository institution” within the meaning of 12 U.S.C.

§ 1818(b)(1).

(4) For purposes of, and within the meaning of 12 C.F.R. §§ 5.3(g)(4), 5.51(c)(6), and 24.2(e)(4), this Order shall not be construed to be a “cease and desist order” or “consent order,” unless the Comptroller informs the Bank otherwise in writing.

## **ARTICLE II**

### **CONSENT**

(1) The Bank, without admitting or denying any wrongdoing, consents and agrees to issuance of the Order by the Comptroller.

(2) The Bank consents and agrees that the Order shall be deemed an “order issued with the consent of the depository institution” pursuant to 12 U.S.C. § 1818(h)(2), and consents and agrees that said Order shall become effective upon its issuance and shall be fully enforceable by the Comptroller pursuant to 12 U.S.C. § 1818(i).

(3) Notwithstanding the absence of mutuality of obligation, or of consideration, or of a contract, the Comptroller may enforce any of the commitments or obligations herein undertaken by the Bank under his supervisory powers, including 12 U.S.C. § 1818(i), and not as a matter of contract law. The Bank expressly acknowledges that neither the Bank nor the Comptroller has any intention to enter into a contract.

(4) The Bank expressly acknowledges that no officer or employee of the Comptroller has statutory or other authority to bind the United States, the United States Treasury Department, the Comptroller, or any other federal bank regulatory agency or entity, or any officer or employee of any of those entities to a contract affecting the Comptroller’s exercise of his supervisory responsibilities.

(5) The terms and provisions of the Stipulation and the Order shall be binding upon, and inure to the benefit of, the parties hereto and their successors in interest. Nothing in this Stipulation or the Order, express or implied, shall give to any person or entity, other than the parties hereto, and their successors hereunder, any benefit or any legal or equitable right, remedy or claim under this Stipulation or the Order.

### **ARTICLE III**

#### **WAIVERS**

- (1) The Bank, by consenting to this Stipulation, waives:
  - (a) the issuance of a Notice of Charges pursuant to 12 U.S.C. § 1818(b);
  - (b) any and all procedural rights available in connection with the issuance of the Order;
  - (c) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(i), 12 C.F.R. Part 19;
  - (d) all rights to seek any type of administrative or judicial review of the Order;
  - (e) any and all claims for fees, costs or expenses against the Comptroller, or any of his agents or employees, related in any way to this enforcement matter or this Order, whether arising under common law or under the terms of any statute, including, but not limited to, the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
  - (f) any and all rights to challenge or contest the validity of the Order.

## **ARTICLE IV**

### **CLOSING**

(1) The provisions of this Stipulation shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any other action affecting the Bank if, at any time, it deems it appropriate to do so to fulfill the responsibilities placed upon it by the several laws of the United States of America.

(2) Nothing in this Stipulation shall preclude any proceedings brought by the Comptroller to enforce the terms of this Order, and nothing in this Stipulation constitutes, nor shall the Bank contend that it constitutes, a waiver of any right, power, or authority of any other representative of the United States or an agency thereof, including, without limitation, the United States Department of Justice, to bring other actions deemed appropriate.

(3) The Comptroller releases and discharges the Bank from all potential liability for a cease and desist order that has been or might have been asserted by the Comptroller based on the banking practices or violations described in Article I of the Order, to the extent known to the Comptroller as of the effective date of the Order. However, the banking practices or violations described in Article I of the Order may be utilized by the Comptroller in other future enforcement actions against the Bank or its institution-affiliated parties, including, without limitation, to establish a pattern or practice of violations or the continuation of a pattern or practice of violations. This release shall not preclude or affect any right of the Comptroller to determine and ensure compliance with the terms and provisions of this Stipulation or the Order.

(4) The terms of the Stipulation and the Order are not subject to amendment or modification by any extraneous expression, prior agreements or prior arrangements between the parties, whether oral or written.

IN TESTIMONY WHEREOF, the undersigned, authorized by the Comptroller as his representative, has hereunto set his hand on behalf of the Comptroller.

/s/ Vance S. Price  
Vance S. Price  
Deputy Comptroller  
Large Bank Supervision

4/29/13  
Date

IN TESTIMONY WHEREOF, the undersigned, as the duly elected and acting Board of Directors of the Bank, have hereunto set their hands on behalf of the Bank.

<u>/s/ Ellen Alemany</u> Ellen Alemany	<u>3/26/2013</u> Date
<u>/s/ William P. Hankowsky</u> William P. Hankowsky	<u>4/8/13</u> Date
<u>/s/ Howard W. Hanna, III</u> Howard W. Hanna, III	<u>3/28/13</u> Date
<u>/s/ Charles J. Koch</u> Charles J. Koch	<u>4/9/13</u> Date
<u>/s/ Robert D. Matthews</u> Robert D. Matthews	<u>3/26/13</u> Date
<u>/s/ Arthur F. Ryan</u> Arthur F. Ryan	<u>3/27/13</u> Date
<u>/s/ Shivan S. Subramaniam</u> Shivan S. Subramaniam	<u>3/28/13</u> Date
<u>/s/ Judith M. von Seldeneck</u> Judith M. von Seldeneck	<u>3/27/13</u> Date
<u>/s/ Wendy A. Watson</u> Wendy A. Watson	<u>3/29/13</u> Date
<u>/s/ Marita Zuraitis</u> Marita Zuraitis	<u>3/28/13</u> Date