

FEDERAL DEPOSIT INSURANCE CORPORATION  
OFFICE OF THE COMPTROLLER OF THE CURRENCY  
WASHINGTON, D.C.

_____	)	
	)	CONSENT ORDER
In the Matter of	)	
	)	
FUNDTECH CORPORATION	)	FDIC-13-0452b
JERSEY CITY, NEW JERSEY	)	OCC-AA-NE-2013-106
	)	
And	)	
	)	
BSERV, INC.	)	
LAS VEGAS, NEVADA	)	
	)	
(TECHNOLOGY SERVICE PROVIDER)	)	
	)	
_____	)	

The Federal Deposit Insurance Corporation (“FDIC”) is the appropriate Federal regulatory agency for FUNDtech Corporation, Jersey City, New Jersey and BServ, Inc., Las Vegas, Nevada (individually and collectively “TSP”) under both section 3(q) of the Federal Deposit Insurance Act (“Act”), 12 U.S.C. § 1813(q), and the Bank Service Company Act (“BSCA”), 12 U.S.C. § 1867, *et seq.* The Office of the Comptroller of the Currency (“OCC”) is also the appropriate regulatory agency for the TSP under both the BSCA, and section 5(d)(7) of the Home Owners’ Loan Act (“HOLA”), 12 U.S.C. § 1464(d)(7). The TSP is a technology service provider of banking services for insured depository institutions and an “institution-affiliated party” within the meaning of 12 U.S.C. § 1813(u).

Each TSP, by and through its duly elected and acting Boards of Directors (individually and collectively “Board”), has executed STIPULATIONS AND CONSENTS TO THE ISSUANCE OF A CONSENT ORDER (“CONSENT AGREEMENTS”), dated

December 5, 2013, that is accepted by the FDIC and the OCC. With the CONSENT AGREEMENTS, the TSP has consented, without admitting or denying any charges of unsafe or unsound banking practices, to the issuance of this Consent Order (“ORDER”) by the FDIC and the OCC.

The FDIC and the OCC considered the matter and determined that it had reason to believe that the TSP has engaged in unsafe or unsound banking practices in the performance of the services that it provides to insured depository institutions, including:

- (a) Operating without an internal auditor or an integrated risk-focused audit program, with no effective process to ensure that all high risk areas are audited;
- (b) Operating without a comprehensive due diligence program or formalized policies and procedures to monitor, measure, and evaluate vendor risk or determine which vendors have access to non-public customer information;
- (c) Operating without an enterprise-wide risk assessment to determine related risks and vulnerabilities of assets throughout the company;
- (d) Operating without effective business continuity or disaster recovery planning;
- (e) Operating without effective patch management procedures to identify and address software vulnerabilities; and
- (f) Operating without an effective log review program to detect, identify and act on potential threats in a timely manner.

Having determined that the requirements for issuance of an order under section 8(b) of the Act, 12 U.S.C. § 1818(b), and the BSCA have been satisfied, the FDIC and OCC hereby order that:

## **BOARD PARTICIPATION**

1. (a) The Board shall increase their participation in the affairs of the TSP, assuming full responsibility for the approval of sound policies and objectives and for the supervision of all of the TSP's activities, consistent with the role and expertise commonly expected for directors of technology service providers of comparable size.

(b) This participation shall include meetings to be held no less frequently than monthly at which, at a minimum, the following areas shall be reviewed and approved: individual committee reports; audit reports; penetration testing reviews including managements responses; vendor management reports; any significant changes to the IT infrastructure; reports from the Business Continuity Planning/Disaster Recovery ("BCP/DR") coordinator; and compliance with this ORDER.

(c) Board minutes shall document Board reviews and contain detailed information of the review and any related actions or discussions. The Board minutes shall be maintained and recorded on a timely basis, with each individual member's vote appropriately recorded, with the names of any approving and dissenting directors.

## **MANAGEMENT**

2. The TSP shall have and retain qualified management. At a minimum, such management shall include: a senior Vendor Management Coordinator with an appropriate level of due diligence and vendor risk modeling experience for the type and quality of the TSP's services; an independent Internal Auditor with demonstrated ability in all audit areas including, but not limited to, developing audit programs, risk evaluation, audit scheduling, and integration of audit programs into a technology service provider's infrastructure; and an organization-wide BCP/DR

Coordinator with experience conducting enterprise-wide Business Impact Analysis (“BIA”), contingency planning and testing, and coordinating across multiple business lines and locations. The Board shall provide the necessary written authority to management to implement the provisions of this ORDER.

### **AUDIT PROGRAM**

3. (a) Within 60 days from the effective date of this ORDER, the TSP shall hire a qualified independent Internal Auditor with demonstrated ability in all audit areas including, but not limited to, developing audit programs, risk evaluation, audit scheduling, and integration of audit programs into a technology service provider’s infrastructure. The independent Internal Auditor shall be vested with sufficient executive authority to fulfill the duties and responsibilities of the position and shall report directly to the Board.

(b) Within 60 days from the effective date of this ORDER, the TSP shall establish a formal information technology audit program ("Audit Program") that provides comprehensive and ongoing audit coverage, the scope of which shall be across the entire organization, which shall be submitted to the Regional Director of the FDIC New York Regional Office (“Regional Director”) for non-objection or comment. The Audit Program shall include the areas recommended in the Federal Financial Institutions Examination Council’s (“FFIEC”) *IT Examination Handbook, Audit Booklet*. Additionally, the Audit Program shall include, but is not limited to: a scoring system that identifies or ranks significant business units, departments, and product lines; an audit schedule and cycles; the resources to be allocated for the audit; and provisions for a regular assessment and updating of the Audit Program. The Audit Program shall be implemented by individuals possessing sufficient experience and expertise in conducting such

information technology audits. All audit reports shall be submitted to the Board for review, which shall be noted in the minutes of the Board meeting.

(c) Within 30 days from receipt of non-objection or any comments from the Regional Director, and after incorporation and adoption of all comments, the Board shall approve and implement the Audit Program, which approval shall be recorded in the minutes of the Board meeting. Thereafter, the TSP shall implement and fully comply with the Audit Program.

(d) Within 60 days of receipt of the Regional Director's non-objection, the TSP shall complete their first quarterly internal audit. The TSP shall, within five (5) business days of the completion of each internal audit, submit a copy of the internal audit report to the Regional Director.

(e) Within 30 days from the effective date of this ORDER, the TSP shall develop, adopt, and implement a tracking system for all IT audit and examination deficiencies that includes the source of the deficiency, corrective action promised, the person responsible for the corrective action, and the date by which corrective action is due. The internal auditor shall report on all outstanding deficiencies at each meeting of the Audit Committee and deficiencies cleared since the previous meeting.

(f) Within 30 days from the effective date of this ORDER, the Board shall establish an IT Committee to coordinate the overall management of IT operations. The IT Committee shall meet at least quarterly and report its activities to the Board. Written minutes of discussions and decisions shall be maintained with all actions reported to the Board.

## RISK ASSESSMENT

4. (a) Within 45 days from the effective date of this ORDER, the Board shall conduct a full information security risk assessment that meets the requirements of Appendix B of Part 364 of the FDIC Rules and Regulations, 12 C.F.R. Part 364 app. B, and the FFIEC's IT Examination Handbook, *Information Security Booklet*. This assessment shall include: a complete software and hardware inventory; all system vulnerabilities and current mitigating controls; the development of threat scenarios; and assignment of risk ratings based on inherent risks, possible impacts, vulnerabilities, threats, and controls implemented. The risk assessment shall be periodically made pursuant to 12 C.F.R. Part 364 and the *Information Security Booklet* requirements and the results formally documented. The Board shall be provided with an annual report regarding compliance requirements.

(b) Within 45 days from the effective date of this ORDER, the TSP shall develop, adopt, and implement a Data Sensitivity Classification Matrix ("DSCM") that classifies and rates data according to sensitivity with respect to the following three criteria: (1) Confidentiality, which addresses sensitivity to unauthorized disclosure; (2) Integrity, which addresses sensitivity to unauthorized modification; and (3) Availability, which addresses sensitivity to outages. The DSCM shall identify all of the TSP's systems or applications ("SorA"); the location and business unit that utilizes the SorA; a description of the customer information maintained on the SorA; where non-public customer and confidential information is stored or maintained and the methods, process, or manner such information is exchanged; and correlate the noted exposures to the physical and/or logical security controls in place.

## **VENDOR MANAGEMENT PROGRAM**

5. (a) Within 30 days from the effective date of this ORDER, the TSP shall designate a Vendor Management Coordinator with an appropriate level of due diligence and vendor risk modeling experience for the type and quality of the TSP's services. The Vendor Management Coordinator shall be vested with sufficient executive authority to fulfill the duties and responsibilities of the position and shall report directly to the Board.

(b) Within 45 days from the effective date of this ORDER, the TSP shall develop, adopt, and implement a written vendor management program that meets the requirements and guidance of the FFIEC's IT Examination Handbook, *Outsourcing Technology Services Booklet* and provides a comprehensive inventory, assessment, and ongoing evaluation of all key services providers. The Vendor Management Program shall include: the identity of vendors with access to non-public personal information; detailed due diligence procedures for selecting a vendor; a vendor risk assessment model and associated definitions; risk based policies to control outsourcing actions; contract negotiation, implementation, and service level agreement procedures; and monitoring procedures that identify and evaluate changes in the risk from previous assessments.

## **BUSINESS CONTINUITY PLANNING/DISASTER RECOVERY PROGRAM**

6. (a) Within 30 days from the effective date of this ORDER, the TSP shall designate an organization-wide BCP/DR Coordinator with experience conducting enterprise-wide BIA, contingency planning and testing, and coordinating across multiple business lines and locations.

The BCP/DR Coordinator shall be vested with sufficient executive authority to fulfill the duties and responsibilities of the position and shall report to the Board or designated committee.

(b) Within 45 days from the effective date of this ORDER, the TSP shall develop a written enterprise-wide BIA incorporating the guidance provided in the FFIEC's IT Examination Handbook, *Business Continuity Planning Booklet*, which shall be submitted to the Regional Director for non-objection or comment. Within 15 days of receipt of non-objection or any comments from the Regional Director, the Board shall approve, adopt and implement the BIA and such approval shall be recorded in the minutes of the Board meeting. The TSP shall notify the Regional Director within 15 business days once the Board has approved the BIA. Thereafter, the TSP shall test and update the BIA at least annually and whenever there are significant changes to the IT infrastructure. Results of the tests shall be reported to the Board, which shall be noted in the minutes of the Board meeting.

(c) Within 90 days from the effective date of this ORDER, the TSP shall develop a written individualized BCP/DR plans for each business line, which shall be submitted to the Regional Director for non-objection or comment. The BCP/DR plans shall address: key roles and responsibilities for employees; BCP/DR employee training; testing scenarios and methods; implementation of testing strategies that simulate complete data center loss; a tracking system for all BCP/DR tests, and a method of reporting the results to the Board. Within 15 days of receipt of non-objection or any comments from the Regional Director, the Board shall approve, adopt and implement the written individualized BCP/DR plans and such approval shall be recorded in the minutes of the Board meeting. The TSP shall notify the Regional Director within 15 business days once the Boards have approved the BCP/DR plans. Thereafter, the TSP shall test

and update the written individualized BCP/DR plans at least annually. Results of the tests shall be reported to the Board, which shall be noted in the minutes of the Board meeting.

### **PATCH MANAGEMENT PROGRAM**

7. (a) Within 30 days from the effective date of this ORDER, the TSP shall develop, adopt, and implement a patch management program to guide patch deployment across the entire organization and to address software vulnerabilities, that meets the requirements and guidance of the FFIEC's IT Examination Handbook, *Information Security Booklet*. This patch management program shall detail the frequency, testing, and distribution of all relevant system patches, ensuring that servers and other network appliances are included.

(b) Within 90 days from the effective date of this ORDER, the TSP's production services and network appliances shall have been patched in all material aspects in accordance with the patch management program.

### **LOG REVIEW**

8. (a) Within 60 days from the effective date of this ORDER, the TSP shall develop, adopt, and implement policies and procedures that detail log maintenance, monitoring, and review procedures utilizing log information to detect and identify potential problems, that meet the requirements and guidance of the FFIEC's IT Examination Handbook, *Information Security Booklet*. The TSP shall ensure that log information is maintained in a format that allows for investigation beyond 30 days to detect and identify potential problems.

(b) The Board shall approve the log review plans and such approval shall be recorded in the minutes of the Board meeting.

## **IMPLEMENTATION OF CORRECTIVE ACTIONS**

9. The TSP shall take all steps necessary, consistent with other provisions of this ORDER and safe and sound technology service practices, to eliminate or correct and prevent unsafe or unsound technology service practices and all contraventions of regulatory policies or guidelines.

## **COMPLIANCE COMMITTEE**

10. (a) Within 30 days from the effective date of this ORDER, the Board shall establish an independent compliance committee (“Compliance Committee”) with the responsibility of ensuring compliance with the provisions of this ORDER.

(b) The Compliance Committee shall monitor compliance with this ORDER and submit a written report quarterly to the entire Board, and a copy of the report and any discussion related to the report or this ORDER shall be part of the minutes of the Board meeting. Copies of the quarterly report shall be submitted to the Regional Director as part of the progress reports required by this ORDER. Nothing contained herein shall diminish the responsibility of the entire Board to ensure compliance with the provisions of this ORDER.

## **PROGRESS REPORTS**

11. Within 30 days from the end of each calendar quarter following the effective date of this ORDER, the TSP shall furnish to the Regional Director written progress reports (“progress reports”) detailing the form, manner, and results of any actions taken to secure compliance with this ORDER. All progress reports and other written responses to this ORDER shall be reviewed by the Board and made a part of the Board minutes.

### **LETTER TO CLIENT BANKS**

12. At the same time the TSP furnishes progress reports to the Regional Director, the TSP shall send a letter (“Letter”) to the TSP’s client banks accurately detailing the actions the TSP has taken during the quarter to secure compliance with this ORDER.

### **SHAREHOLDER DISCLOSURE**

13. Within 30 days from the effective date of this ORDER, the TSP shall send a copy of this ORDER, or otherwise furnish a description of this ORDER, to its parent company. The description shall fully describe the ORDER in all material respects.

The provisions of this ORDER shall not bar, estop, or otherwise prevent the FDIC, OCC or any other federal or state agency or department from taking any other action against the TSP.

This ORDER shall be effective on the date of issuance.

The provisions of this ORDER shall be binding upon the TSP and any successors and assigns thereof.

The provisions of this 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 by the FDIC and OCC.

Issued Pursuant to Delegated Authority.

Dated: December 9, 2013

Dated: December 9, 2013

FEDERAL DEPOSIT INSURANCE CORPORATION

OFFICE OF THE COMPTROLLER  
OF THE CURRENCY

By:

By:

\_\_\_\_\_/s/\_\_\_\_\_  
John F. Vogel  
Regional Director  
New York Region  
Federal Deposit Insurance Corporation

\_\_\_\_\_/s/\_\_\_\_\_  
C. Scott Schainost  
Associate Deputy Comptroller  
Northeastern District Office  
Office of the Comptroller of the  
Currency

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

<u>In the Matter of:</u>	)	
FUNDTech Corporation	)	
Jersey City, New Jersey	)	AA-NE-2013-106
	)	
<u>(Technology Service Provider)</u>	)	

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

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”) intends to initiate cease and desist proceedings against FUNDTech Corporation, Jersey City, New Jersey (“FUNDTech”), pursuant to the Bank Service Company Act (“BSCA”), 12 U.S.C. §§ 1861-1867, section 5(d)(7) of the Home Owners’ Loan Act (“HOLA”), 12 U.S.C. § 1464(d)(7), and section 8(b) of the Federal Deposit Insurance Act (“FDIA”), 12 U.S.C. §§ 1818(b), through the issuance of a Notice of Charges for an Order to Cease and Desist for unsafe or unsound banking practices in the performance of the services that FUNDTech provides to national banks and Federal savings associations relating to audit; due diligence; vendor risk; enterprise-wide risk assessment; business continuity planning; patch management; and, log review;

WHEREAS, FUNDTech, in the interest of compliance and cooperation, and without admitting or denying any wrongdoing, consents to the issuance of a Consent Order, dated December 5, 2013 (the “Order”) by executing this Stipulation and Consent to the Issuance of a Consent Order;

NOW THEREFORE, in consideration of the above premises, the Comptroller, through his authorized representative, and FUNDTech, through its duly elected and acting Board of Directors, hereby stipulate and agree to the following:

## ARTICLE I

### JURISDICTION

(1) FUNDTech is a technology service provider (“TSP”) that performs services for and provides services to national banks and Federal savings associations (“financial institution clients”) within the meaning of 12 U.S.C. §§ 1464(d)(7) and 1867.

(2) FUNDTech’s financial institution clients are insured depository institutions within the meaning of 12 U.S.C. § 1818(b).

(3) FUNDTech is subject to the regulation and examination authority of the OCC pursuant to 12 U.S.C. §§ 1464(d)(7) and 1867.

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

## ARTICLE II

### CONSENT

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

(2) FUNDTech further consents and agrees that said Order shall:

- a. be deemed an “order issued with the consent of” FUNDTech as defined in 12 U.S.C. § 1818(h)(2);
- b. become effective upon its issuance; and,
- c. be fully enforceable by the Comptroller under the provisions of 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 FUNDTech under his supervisory powers, including 12 U.S.C. § 1818(i), and not as a matter of contract law. FUNDTech expressly acknowledges that neither FUNDTech nor the Comptroller has any intention to enter into a contract.

(4) FUNDTech declares that no separate promise or inducement of any kind has been made by the Comptroller, or by his agents or employees, to cause or induce FUNDTech to consent to the issuance of the Order or to execute the Order.

(5) FUNDTech also expressly acknowledges that no officer or employee of the Comptroller has statutory or other authority to bind the United States, the U.S. 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.

(6) The terms and provisions of this Stipulation and Consent 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 and Consent 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 and Consent or the Order.

### ARTICLE III

#### WAIVERS

- (1) FUNDTech, by signing this Stipulation and Consent, hereby 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(b) and (h), or 12 C.F.R. Part 109;
- (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 the 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

##### OTHER PROVISIONS

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

(2) Nothing in this Stipulation and Consent shall preclude any proceedings brought by the Comptroller to enforce the terms of the Order, and nothing in the 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 terms of this Stipulation and Consent 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, has hereunto set his hand on behalf of the Comptroller.

/s/  
C. SCOTT SCHAINOST

December 5, 2013  
DATE

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

/s/  
\_\_\_\_\_  
REUVEN BEN-MENACHEM

December 5, 2013  
\_\_\_\_\_  
DATE

/s/  
\_\_\_\_\_  
DOUGLAS BERGERON

December 5, 2013  
\_\_\_\_\_  
DATE

/s/  
\_\_\_\_\_  
MICHAEL BROWN

December 5, 2013  
\_\_\_\_\_  
DATE

/s/  
\_\_\_\_\_  
AARON COHEN

December 5, 2013  
\_\_\_\_\_  
DATE

/s/  
\_\_\_\_\_  
KEVIN FORD

December 5, 2013  
\_\_\_\_\_  
DATE

/s/  
\_\_\_\_\_  
EDWARD HO

December 5, 2013  
\_\_\_\_\_  
DATE

/s/  
\_\_\_\_\_  
DAVID KVEDERIS

December 5, 2013  
\_\_\_\_\_  
DATE

/s/  
\_\_\_\_\_  
COLLIN ROCHE

December 5, 2013  
\_\_\_\_\_  
DATE

/s/  
\_\_\_\_\_  
STUART YARBOROUGH

December 5, 2013  
\_\_\_\_\_  
DATE

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

<u>In the Matter of:</u>	)	
BServ, Inc.	)	
Las Vegas, Nevada	)	AA-NE-2013-106
	)	
<u>(Technology Service Provider)</u>	)	

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

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”) intends to initiate cease and desist proceedings against BServ, Inc., Las Vegas, Nevada (“BServ”), pursuant to the Bank Service Company Act (“BSCA”), 12 U.S.C. §§ 1861-1867, section 5(d)(7) of the Home Owners’ Loan Act (“HOLA”), 12 U.S.C. § 1464(d)(7), and section 8(b) of the Federal Deposit Insurance Act (“FDIA”), 12 U.S.C. §§ 1818(b), through the issuance of a Notice of Charges for an Order to Cease and Desist for unsafe or unsound banking practices in the performance of the services that BServ provides to national banks and Federal savings associations relating to audit; due diligence; vendor risk; enterprise-wide risk assessment; business continuity planning; patch management; and, log review;

WHEREAS, BServ, in the interest of compliance and cooperation, and without admitting or denying any wrongdoing, consents to the issuance of a Consent Order, dated December 5, 2013 (the “Order”) by executing this Stipulation and Consent to the Issuance of a Consent Order;

NOW THEREFORE, in consideration of the above premises, the Comptroller, through his authorized representative, and BServ, through its duly elected and acting Board of Directors, hereby stipulate and agree to the following:

## ARTICLE I

### JURISDICTION

- (1) BServ is a technology service provider (“TSP”) that performs services for and provides services to national banks and Federal savings associations (“financial institution clients”) within the meaning of 12 U.S.C. §§ 1464(d)(7) and 1867.
- (2) BServ’s financial institution clients are insured depository institutions within the meaning of 12 U.S.C. § 1818(b).
- (3) BServ is subject to the regulation and examination authority of the OCC pursuant to 12 U.S.C. §§ 1464(d)(7) and 1867.
- (4) The Comptroller is the “appropriate Federal banking agency” regarding BServ pursuant to 12 U.S.C. §§ 1813(q) and 1818(b).

## ARTICLE II

### CONSENT

- (1) BServ, without admitting or denying any wrongdoing, hereby consents and agrees to the issuance of the Order by the Comptroller.
- (2) BServ further consents and agrees that said Order shall:
  - a. be deemed an “order issued with the consent of” BServ as defined in 12 U.S.C. § 1818(h)(2);
  - b. become effective upon its issuance; and,
  - c. be fully enforceable by the Comptroller under the provisions of 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 BServ under his supervisory powers, including 12 U.S.C. § 1818(i), and not as a matter of contract law. BServ expressly acknowledges that neither BServ nor the Comptroller has any intention to enter into a contract.

(4) BServ declares that no separate promise or inducement of any kind has been made by the Comptroller, or by his agents or employees, to cause or induce BServ to consent to the issuance of the Order or to execute the Order.

(5) BServ also expressly acknowledges that no officer or employee of the Comptroller has statutory or other authority to bind the United States, the U.S. 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.

(6) The terms and provisions of this Stipulation and Consent 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 and Consent 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 and Consent or the Order.

### ARTICLE III

#### WAIVERS

(1) BServ, by signing this Stipulation and Consent, hereby 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(b) and (h), or 12 C.F.R. Part 109;
- (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 the 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

##### OTHER PROVISIONS

- (1) BServ agrees that the provisions of this Stipulation and Consent shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any other action affecting BServ if, at any time, the Comptroller deems it appropriate to do so to fulfill the responsibilities placed upon him by the several laws of the United States of America.
- (2) Nothing in this Stipulation and Consent shall preclude any proceedings brought by the Comptroller to enforce the terms of the Order, and nothing in the 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 terms of this Stipulation and Consent 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, has hereunto set his hand on behalf of the Comptroller.

/s/  
C. SCOTT SCHAINOST

December 5, 2013  
DATE

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

/s/  
\_\_\_\_\_  
REUVEN BEN-MENACHEM

\_\_\_\_\_  
DATE

/s/  
\_\_\_\_\_  
DOUGLAS BERGERON

December 5, 2013  
\_\_\_\_\_  
DATE

/s/  
\_\_\_\_\_  
MICHAEL BROWN

December 5, 2013  
\_\_\_\_\_  
DATE

/s/  
\_\_\_\_\_  
AARON COHEN

December 5, 2013  
\_\_\_\_\_  
DATE

/s/  
\_\_\_\_\_  
KEVIN FORD

December 5, 2013  
\_\_\_\_\_  
DATE

/s/  
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EDWARD HO

December 5, 2013  
\_\_\_\_\_  
DATE

/s/  
\_\_\_\_\_  
DAVID KVEDERIS

December 5, 2013  
\_\_\_\_\_  
DATE

/s/  
\_\_\_\_\_  
COLLIN ROCHE

December 5, 2013  
\_\_\_\_\_  
DATE

/s/  
\_\_\_\_\_  
STUART YARBOROUGH

December 5, 2013  
\_\_\_\_\_  
DATE