

**UNITED STATES OF AMERICA  
Before The  
OFFICE OF THRIFT SUPERVISION**

_____ )	
In the Matter of )	Order No.: WN-09-016
)	
<b>AMERICAN EXPRESS BANK, FSB</b> )	Effective Date: June 29, 2009
)	
Salt Lake City, Utah )	
OTS Docket No. 15648 )	
_____ )	

**ORDER TO CEASE AND DESIST**

**WHEREAS**, American Express Bank, FSB, Salt Lake City, Utah, OTS Docket No. 15648 (Association), by and through its Board of Directors (Board) has executed a Stipulation and Consent to the Issuance of an Order to Cease and Desist (Stipulation); and

**WHEREAS**, the Association, by executing the Stipulation, has consented and agreed to the issuance of this Order to Cease and Desist (Order) by the Office of Thrift Supervision (OTS) pursuant to 12 USC § 1818(b); and

**WHEREAS**, pursuant to delegated authority, the OTS Regional Director for the Western Region (Regional Director) is authorized to issue Orders to Cease and Desist where a savings association has consented to the issuance of an order.

**NOW, THEREFORE, IT IS ORDERED that:**

**Compliance with Laws and Regulations.**

1. Effective immediately, the Association and its directors, officers, employees, and agents shall cease and desist from engaging in any violation of:

- a. Section 5 of the Federal Trade Commission Act (FTC ACT), 15 USC § 45(a)(1) (Unfair or Deceptive Acts or Practices); and
  - b. 12 CFR § 563.27 (OTS Prohibition Against Misleading Representations).
2. Effective immediately, the Association shall suspend offering any new convenience checks until the Association reviews and revises its current procedures for the Convenience Check Program (Convenience Check Program Procedures).

**Convenience Check Program Procedures.**

3. Before resuming the Convenience Check program, the Association shall review and revise its Convenience Check Program Procedures. At a minimum, the Convenience Check Program Procedures shall be revised to:
  - a. Establish a preauthorization process whereby a customer, prior to using a convenience check, may contact the Association and obtain preauthorization to use a convenience check for a specific dollar amount within a specified period of time, as follows:
    - i. The Association will conduct a risk rating review and provide the customer with an immediate response; and
    - ii. If a convenience check is preauthorized for a specific amount, the Association shall suspend a risk rating review for a sufficient period of time that will be disclosed to the customer and allow the customer to present the convenience check for payment;
  - b. Establish enhanced written disclosures that encourage customers to use the preauthorization option and clearly alert customers in writing that if they have not first obtained preauthorization, a risk rating review will be performed on convenience

checks presented for payment and such checks may be declined, which may result in fees or other charges being assessed by other parties;

c. Establish enhanced convenience check disclosures that notify customers that, outside of any preauthorized amount and time frame pursuant to Paragraph 3.a., the Association, based on a risk rating review of the customer, may decline a customer's convenience check when presented, which may in turn result in fees and other costs being incurred by the customer; and

d. Establish a notification process that alerts customers, following any convenience check decline based on a risk rating or credit limit reduction, that the customer should stop using convenience checks immediately.

4. At least twenty-five (25) days before resuming the Convenience Check Program, the Board shall provide the revised Convenience Check Program Procedures to the Regional Director for his or her review and comment. Within ten (10) days of receiving any comments from the Regional Director, the Board shall amend the Convenience Check Program Procedures to address any comments of the Regional Director. After amending the revised Convenience Check Program Procedures to incorporate the Regional Director's comments, the updated Convenience Check Program Procedures shall be approved by the Board and implemented by the Association. A copy of the updated Convenience Check Program Procedures shall be provided to the Regional Director within five (5) days of Board approval.

**Remediation Plan for Benefit of Consumers.**

5. Effective immediately, the Association shall establish a reserve in an initial amount of One Million and Five Hundred Thousand Dollars (\$1,500,000.00, Remediation Amount) for

use in its execution of the Remediation Plan required by Paragraph 6 of the Order. The Association shall add additional funds to the reserve until all customer claims have been settled. The Association shall provide monthly status reports on the Remediation Plan to the Regional Director by the fifteenth (15<sup>th</sup>) day of the month. When the Association has demonstrated to the Regional Director that the Association has settled all outstanding claims, the Regional Director will notify the Association in writing that no further monthly status reports will be required pursuant to this Paragraph.

6. Effective immediately, the Association, pursuant to authorization of its Board, shall submit a written plan for customer financial remediation, acceptable to the Regional Director, for the timely distribution of the Remediation Amount (Remediation Plan) to customers who, during 2008 and 2009, have had a convenience check declined by the Association either as a result of a risk rating determined at the time a convenience check was presented for payment or because of a decrease in the customer's credit limit prior to presentment of a convenience check (Eligible Customers). The Remediation Plan shall:

a. Within thirty (30) days of the Effective Date of this Order, provide remediation to all Eligible Customers in the amount of \$160 for each declined convenience check; and

b. Concurrently establish a claims process for customers to submit a claim for reimbursement of any fees or other charges incurred in excess of \$160, such claims to be processed in good faith and additional reimbursement to be provided in at least sixty (60) days from the date of receipt of the claim.

7. Within ten (10) days of receiving any comments from the Regional Director on the proposed Remediation Plan, the Board shall revise the proposed Remediation Plan to address

any comments of the Regional Director and the Association shall implement the updated Remediation Plan.

8. Effective immediately, at the direction of the Board, the Association shall provide a letter to all Eligible Customers to facilitate the removal of their names from any consumer reporting agency, bad check registry, or similar database on which their names were placed due to a declined convenience check.

**Retention of Records and Documentation.**

9. While this Order is in effect, the Association shall retain all Association records pertaining to the Convenience Check Program and the Remediation Plan, including but not limited to: documentation of the processes and procedures used to determine the Eligible Customers; all Eligible Customers account records; records of correspondence and other notifications, disclosures, or other documents provided to the Eligible Customers; copies of the checks for the initial \$160 remediation amount; all mailing records; records of the handling of any claims for excess fees or other charges incurred, including claim forms and other supporting documentation; and written records supporting the final determination of each claim and copies of any claim checks.

**Effective Date, Incorporation of Stipulation.**

10. This Order is effective on the Effective Date as shown on the first page. The Stipulation is made a part hereof and is incorporated herein by this reference.

**Duration.**

11. This Order shall remain in effect until terminated, modified, or suspended, by written notice of such action by OTS, acting by and through its authorized representatives.

**Time Calculations.**

12. Calculation of time limitations for compliance with the terms of this Order run from the Effective Date and shall be based on calendar days, unless otherwise noted.

13. The Regional Director may extend any of the deadlines set forth in the provisions of this Order upon written request by the Association that includes reasons in support for any such extension. Any OTS extension shall be made in writing.

**Submissions and Notices.**

14. All submissions, including progress reports, to OTS that are required by or contemplated by this Order shall be submitted within the specified timeframes.

15. Except as otherwise provided herein, all submissions, requests, communications, consents, or other documents relating to this Order shall be in writing and sent by first-class U.S. mail (or by reputable overnight carrier, electronic facsimile transmission, or hand delivery by messenger) addressed as follows:

a. To OTS:

C.K. Lee  
Regional Director, Western Region  
Office of Thrift Supervision  
225 E. John Carpenter Freeway, Suite 500  
Irving, Texas 75062-2326

b. To the Association:

Douglas H. Short, III  
President  
American Express Bank, FSB  
4315 South 2700 West  
Salt Lake City, Utah 84184

**No Violations Authorized.**

17. Nothing in this Order or the Stipulation shall be construed as allowing the Association or its Board, officers, employees, or agents to violate any law, rule, or regulation.

**IT IS SO ORDERED.**

OFFICE OF THRIFT SUPERVISION

By: \_\_\_\_\_ /s/  
C.K. Lee  
Regional Director, Western Region

Date: See Effective Date on page 1

**UNITED STATES OF AMERICA  
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In the Matter of )	Order No.: WN-09-016
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<b>AMERICAN EXPRESS BANK, FSB</b> )	Effective Date: June 29, 2009
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Salt Lake City, Utah )	
OTS Docket No. 15648 )	
_____ )	

**STIPULATION AND CONSENT TO THE  
ISSUANCE OF ORDER TO CEASE AND DESIST**

**WHEREAS**, the Office of Thrift Supervision (OTS), acting by and through its Regional Director for the Western Region (Regional Director), and based upon information derived from the exercise of its regulatory and supervisory responsibilities, has informed American Express Bank, FSB, Salt Lake City, Utah, OTS Docket No. 15648 (Association), that OTS is of the opinion that grounds exist to initiate an administrative proceeding against the Association pursuant to 12 USC § 1818(b);

**WHEREAS**, the Regional Director, pursuant to delegated authority, is authorized to issue Orders to Cease and Desist where a savings association has consented to the issuance of an order; and

**WHEREAS**, the Association desires to cooperate with OTS to avoid the time and expense of such administrative cease and desist proceeding by entering into this Stipulation and Consent to the Issuance of Order to Cease and Desist (Stipulation) and, without admitting or denying that such grounds exist, but only admitting the statements

and conclusions in Paragraph 1 below concerning Jurisdiction, hereby stipulates and agrees to the following terms:

**1. Jurisdiction.**

- a. The Association is a “savings association” within the meaning of 12 USC § 1813(b) and 12 USC § 1462(4). Accordingly, the Association is “an insured depository institution” as that term is defined in 12 USC § 1813(c); and
- b. Pursuant to 12 USC § 1813(q), the Director of OTS is the “appropriate Federal banking agency” with jurisdiction to maintain an administrative enforcement proceeding against a savings association. Therefore, the Association is subject to the authority of OTS to initiate and maintain an administrative cease and desist proceeding against it pursuant to 12 USC § 1818(b).

**2. OTS Findings of Fact.**

Based on OTS’s ongoing monitoring of the Association, OTS finds that the Association violated Section 5 of the Federal Trade Commission Act (FTC Act), 15 USC § 45(a)(1), and OTS Regulation 12 CFR § 563.27 by engaging in unfair practices that caused harm to the customer, in that:

- a. The Association issued convenience checks to its customers for use on credit card accounts and declined to honor certain of those checks when presented due to an intervening reduction in the customer’s risk rating and/or credit limit;

- b. The Association's practice resulted in dishonored check fees, charges for insufficient funds, and other costs incurred by the customers;
- c. The Association's practice may have resulted in negative consumer information being filed with consumer reporting agencies, bad check registries, or other databases against the customers; and
- d. The Association's practice caused damage that could not be reasonably avoided by the customer and the practice is not outweighed by countervailing benefits to the customers.

**3. Consent.**

The Association consents to the issuance by OTS of the accompanying Order to Cease and Desist (Order). The Association further agrees to comply with the terms of the Order upon the Effective Date of the Order and stipulates that the Order complies with all requirements of law.

**4. Finality.**

The Order is issued by OTS under 12 USC § 1818(b) and upon the Effective Date it shall be a final order, effective and fully enforceable by OTS under the provisions of 12 USC § 1818(i).

**5. Waivers.**

The Association waives the following:

- a. The right to be served with a written notice of OTS's charges against it as provided by 12 USC § 1818(b) and 12 CFR Part 509;
- b. The right to an administrative hearing of OTS's charges as provided by 12 USC § 1818(b) and 12 CFR Part 509;

- c. The right to seek judicial review of the Order, including, without limitation, any such right provided by 12 USC § 1818(h), or otherwise to challenge the validity of the Order; and
- d. Any and all claims against OTS, including its employees and agents, and any other governmental entity for the award of fees, costs, or expenses related to this OTS enforcement matter and/or the Order, whether arising under common law, federal statutes, or otherwise.

**6. OTS Authority Not Affected.**

Nothing in this Stipulation or accompanying Order shall inhibit, estop, bar, or otherwise prevent OTS from taking any other action affecting the Association if at any time OTS deems it appropriate to do so to fulfill the responsibilities placed upon OTS by law.

**7. Other Governmental Actions Not Affected.**

The Association acknowledges and agrees that its consent to the issuance of the Order is solely for the purpose of resolving the matters addressed herein, consistent with Paragraph 6 above, and does not otherwise release, discharge, compromise, settle, dismiss, resolve, or in any way affect any actions, charges against, or liability of the Association that arise pursuant to this action or otherwise, and that may be or have been brought by any governmental entity other than OTS.

**8. Miscellaneous.**

- a. The laws of the United States of America shall govern the construction and validity of this Stipulation and of the Order;
- b. If any provision of this Stipulation and/or the Order is ruled to be invalid,

illegal, or unenforceable by the decision of any Court of competent jurisdiction, the validity, legality, and enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby, unless the Regional Director in his or her sole discretion determines otherwise;

- c. All references to OTS in this Stipulation and the Order shall also mean any of the OTS's predecessors, successors, and assigns;
- d. The section and paragraph headings in this Stipulation and the Order are for convenience only and shall not affect the interpretation of this Stipulation or the Order;
- e. The terms of this Stipulation and of the Order represent the final agreement of the parties with respect to the subject matters thereof, and constitute the sole agreement of the parties with respect to such subject matters; and
- f. The Stipulation and Order shall remain in effect until terminated, modified, or suspended in writing by OTS, acting through its Regional Director or other authorized representative.

**9. Signature of Directors/Board Resolution.**

Each Director signing this Stipulation attests that he or she voted in favor of a Board Resolution authorizing the consent of the Association to the issuance of the Order and the execution of the Stipulation. This Stipulation may be executed in counterparts by the directors after approval of execution of the Stipulation at a duly called board meeting.

**WHEREFORE**, the Association, by its directors, executes this Stipulation.

Accepted by:

**AMERICAN EXPRESS BANK, FSB**  
**Salt Lake City, Utah**

**OFFICE OF THRIFT SUPERVISION**

By:                   /s/                    
Ronald C. Stovall, Chairman

By:   /s/    
C.K. Lee  
Regional Director, Western Region

Date: See Effective Date on page 1

  /s/    
Douglas H. Short, III, Director

  /s/    
Pam Codispoti, Director

  /s/    
Bob Phelan, Director

  /s/    
Peter Sisti, Director

  /s/    
Roger Goldman, Director

  /s/    
Peter A. Lefferts, Director

  /s/    
Jay Stevelman, Director

  /s/    
Roslyn Watson, Director