

FEDERAL DEPOSIT INSURANCE CORPORATION  
WASHINGTON, D.C.

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In the Matter of )  
CONSENT ORDER, ORDER  
WEX BANK ) FOR RESTITUTION, AND  
MIDVALE, UTAH ) ORDER TO PAY  
CIVIL MONEY PENALTY  
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(INSURED STATE NONMEMBER BANK) ) FDIC-15-0117b  
FDIC-15-0119k  
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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, Midvale, Utah (“the Bank”).

The FDIC determined that the Bank engaged in deceptive acts or 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), arising from the marketing to and enrollment of consumers into the OneAccount product offered through the Bank with its institution-affiliated party (“IAP”), Higher One, Inc. (“Higher One”).

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, ORDER FOR RESTITUTION, AND ORDER TO PAY CIVIL MONEY PENALTY (“CONSENT AGREEMENT”), dated December 21, 2015, which is accepted by the FDIC. With the CONSENT AGREEMENT, the Bank has consented, without admitting or denying any charges of violations of law or regulation, to the issuance of this CONSENT ORDER, ORDER

FOR RESTITUTION, AND ORDER TO PAY CIVIL MONEY PENALTY (collectively “ORDER”) by the FDIC.

### **FINDINGS OF FACT**

The FDIC finds the following facts:

- (1) Colleges and universities (hereinafter referred to as “schools”) often need to disburse financial aid refunds to the students. Many types of financial aid funds are initially distributed in full to the school, which then deducts the student’s tuition and other amounts payable to the school. Any remaining amount is known as a “refund.” Schools are responsible for distributing refunds to the students, typically by paper check or Automated Clearing House (“ACH”) transfer to a student’s bank account.
- (2) In 2000, Higher One created the “OneDisburse” service (also known as the “Refund Management” service), whereby schools could outsource the financial aid refund disbursement process, resulting in time- and cost-savings for the schools. Higher One offers students three methods of receiving their financial aid refund: (a) direct deposit to the Higher One deposit account and student debit card product known as the “OneAccount” (which was marketed at several product levels, including the OneAccount, OneAccount Flex, OneAccount Edge, and OneAccount Premier); (b) ACH transfer to another bank account; or (c) paper check, if permitted by the school.
- (3) Because Higher One is not an insured depository institution, as that term is defined in section 3(c)(2) of the FDI Act (12 U.S.C. § 1813(c)(2)), Higher One contracts with insured depository institutions to establish and maintain the OneAccounts. From May 4, 2012 through the Effective Date (defined herein), WEX Bank provided deposit accounts in connection with OneAccounts.

(4) Through this business model, Higher One and the Bank controlled students' access to and information about financial aid refund disbursement options because students were required by their schools to use the Higher One website to select the method of the financial aid refund disbursement, or wait at least two weeks to receive a refund check by default, as required by Department of Education regulations.

(5) The Bank benefitted from students directing their financial aid refunds to the OneAccount instead of to an alternative bank account or paper check. By holding and deploying the funds held in the non-interest bearing deposit accounts, the Bank has gained low cost deposits. The Bank also receives an annual operational support payment from Higher One in the amount of \$250,000.

(6) The Deposit Processing Services Agreement between the Bank and Higher One provides that Higher One is solely responsible for marketing the OneAccount, but the Bank must approve all marketing material.

(7) During the period beginning May 4, 2012 through December 19, 2013 (the "Relevant Period"), the Higher One website and associated materials used for selecting the disbursement method for refunds contained material omissions about certain fees, features, and limitations of the OneAccount, which were likely to mislead students acting reasonably under the circumstances. Information about certain fees, features, and limitations of the OneAccount was omitted entirely or was not clear and conspicuous. Examples that were in effect during all or part of the Relevant Period included, but are not limited to, the following:

(a) Each of the Higher One webpages in the enrollment process featured the students' school logos more prominently than either the Higher One logo or any references to the Bank.

(b) There was no information on the refund disbursement home page – the first webpage that would appear when a student started the disbursement selection process for the first time – about the ACH transfer to another bank account and paper check options, either of which may have enabled students to access their student financial aid refunds with fewer fees.

(c) On the web page where the student made a choice about the method of refund disbursement, information about the speed of receiving a refund through the OneAccount was displayed prominently, while information about certain fees, features, and limitations of the OneAccount was missing on that page, making it difficult for students to make a fully informed decision prior to selecting the method for financial aid disbursement.

(d) Information about the availability of fee-free ATM locations was not available on the web page where the student made a choice about the method of refund disbursement. While Higher One generally provided at least one fee-free ATM on each campus, some fee-free ATMs were on campus locations that were closed on nights, weekends, and holidays. Similarly, the website did not contain information notifying the student that the OneAccount was an Internet-only checking account.

(e) It was only after the student selected a refund delivery mechanism and entered all personal information that a complete fee schedule and the terms and conditions were readily available for the student to view. While the fee schedule contained information about ATM fees for using non-Higher One ATMs, the student had to click on another link to find information about fee-free ATM locations. If the student wanted to change his or her choice of refund delivery mechanism before opening the account, the student had to click back through previous screens to reach the appropriate web page and resubmit all personal information.

(8) The violations described above resulted in deceptive acts or practices in or

affecting commerce, within the meaning of Section 5, and unsafe or unsound banking practices.

(9) During the Relevant Period, nearly 978,500 new OneAccounts were opened at the Bank and more than 755,000 of these accounts were assessed at least one of the fees described in the Order for Restitution.

(10) On July 15, 2014, Higher One provided by electronic mail (or USPS mail, if necessary) the following information to existing customers who had opened OneAccounts during the Relevant Period: information about ACH transfer and paper check options for receipt of financial aid refunds; a copy of the Fee Schedule and Terms and Conditions; a description of the account closing procedures; and also provided fee waivers for certain foreign ATM, debit card, and cash transactions for a 30-day period.

### **DEFINITIONS**

For purposes of this ORDER, the following definitions shall apply:

1. “Board” shall mean the Bank’s duly elected and acting Board of Directors.
2. “Effective Date” shall mean the date on which this ORDER is issued.
3. “Regional Director” shall mean the FDIC Regional Director for the San Francisco Region.
4. “Higher One Order” shall mean, collectively, the Consent Order, Order for Restitution, and Order to Pay Civil Money Penalty issued by the FDIC to Higher One on December 23, 2015.

Having determined that the requirements for issuance of an order under sections 8(b) and 8(i)(2) of the FDI Act, 12 U.S.C. §§ 1818(b) and 1818(i)(2), have been satisfied, the FDIC hereby issues the following ORDER:

## **CONSENT ORDER**

IT IS HEREBY ORDERED that the Bank cease and desist, from engaging in unsafe or unsound banking practices and violations of law and/or regulations.

IT IS FURTHER ORDERED that the Bank shall take the following affirmative actions:

### Correct Violations of Law

5. Within 60 days of the Effective Date, the Bank shall, to the extent not already accomplished, correct all violations of law, set forth in the Compliance Report of Examination dated November 3, 2014 (“Compliance ROE”), and implement procedures to prevent their recurrence. The Bank’s actions as required by this paragraph shall be satisfactory to the Regional Director as determined at subsequent examinations and/or visitations.

### Deceptive Acts and Practices

6. The Bank shall take all action necessary to eliminate any violations of Section 5 cited in the Compliance ROE and maintain future compliance with Section 5. The Bank, whether acting directly or through third parties, shall not make, or allow to be made, any deceptive representations, statements, or omissions, expressly or by implication, in any marketing materials, telemarketing scripts, sales presentations, and/or websites used to solicit any consumer or in any similar communications to open a OneAccount, or any similar account offered by or through the Bank as a depository account for financial aid refunds. Additionally, the Bank shall take all action necessary to ensure that all material information needed by a consumer to make an informed decision about the method of receiving a financial aid refund is provided in advance of a consumer making such decision and that all representations are substantiated. Without limiting the generality of the foregoing, the Bank shall not make any misrepresentations and/or omissions of material fact related to:

- (a) all options available to a consumer seeking disbursement of a financial aid refund;
- (b) information about the fees, features, and limitations of the OneAccount, or any similar account offered by or through the Bank as a depository account for financial aid refunds, including limitations on any type of cash deposits and withdrawals;
- (c) information about Higher One ATM locations and hours of availability, including information on fees assessed by foreign ATMs used for access to financial aid refunds;
- (d) whether the school endorses or prefers the OneAccount, or any similar account offered by or through the Bank as a depository account for financial aid refunds, over other options for the consumers' receipt of the financial aid refund through another bank account by ACH transfer or by paper check; and
- (e) the approximate timing of funds availability for alternative financial aid refund disbursement options.

7. The Bank shall ensure that initiating direct payments electronically to an existing account is as timely as, and no more onerous than, initiating direct payment through the OneAccount or any similar account offered by or through the Bank as a depository account for financial aid refunds.

8. The Bank shall ensure that paper checks, to the extent offered to students, are issued on the same day it receives a request from a consumer for a financial aid refund disbursement through a paper check, or, if the request is received following business hours, the next business day.

9. The Bank, whether acting directly or through third parties, shall ensure that all marketing materials, telemarketing scripts, sales presentations, websites, and/or any similar

communications used to solicit any consumer to open a OneAccount, or any similar account offered by or through the Bank as a depository account for financial aid refunds, clearly discloses the name of the third party offering the account and the Bank, including contact information for the third party and the Bank.

10. The Bank must clearly and conspicuously disclose to its consumers, prior to choosing a financial aid refund disbursement method, the location and availability of the fee-free network of ATMs, and that the use of ATMs on other networks will result in foreign ATM fees.

#### Board and Senior Management Oversight

11. The Board and Senior Management shall participate fully, consistent with the role and expertise commonly expected for directors of banks of comparable size and complexity and offering comparable banking products and services, in the oversight of the Bank's Compliance Management System ("CMS"), and shall be responsible for:

- (a) the approval of sound policies and objectives;
- (b) ensuring an adequate compliance program is in place that addresses all consumer compliance risks associated with the Bank's operations; and
- (c) the effective supervision of all of the Bank's compliance-related activities, including activities conducted by third parties on behalf of the Bank.

#### Compliance Management System

12. Within 60 days from the Effective Date, the Board shall ensure that senior management reviews, revises, develops, and implements a sound risk-based CMS, including revising, as necessary, its comprehensive written compliance program ("Compliance Program") to ensure that all activities related to third-party service providers comply with Section 5 and all

applicable consumer protection laws, implementing rules and regulations, regulatory guidance, and statements of policy (“Consumer Protection Laws”).

13. The Bank shall ensure that its Compliance Program, at a minimum, includes comprehensive written policies and procedures, including detailed operating procedures and controls, designed to prevent violations of Consumer Protection Laws and the associated risks of harm to consumers, including third-party oversight and Section 5. The Bank’s policies and procedures shall also provide for the following:

(a) an effective training program that addresses compliance with Consumer Protection Laws and includes regular, specific, comprehensive training of the Board, senior management, Bank staff, third-party staff, and all individuals having responsibilities that relate to Consumer Protection Laws. The training shall be commensurate with individual job functions and duties for appropriate staff, be specific to the products and services offered by the Bank, and incorporate training for all high-risk compliance areas, including third-party oversight and Section 5;

(b) an effective, well-documented, and proactive internal monitoring process, incorporated into the daily work of Bank personnel that is designed to detect and promptly correct CMS weaknesses within the Bank and third parties, particularly weaknesses that have an impact on consumer accounts. The monitoring processes and procedures should include, without limitation, the following:

i. an effective consumer complaint monitoring process that includes procedures for promptly addressing and resolving all written, oral, or electronic complaints or inquiries, formal or informal, received by the Bank and all third parties acting on the Bank’s behalf, monitoring of such complaints, analyzing and identifying any trends concerning the

nature of such complaints, promptly addressing any root causes of such complaints, and documenting and tracking all complaints and inquiries through resolution; and

ii. an effective, independent audit of the Compliance Program and the Bank's compliance operations, including products or services offered by the Bank through third parties ("Third-Party Products"), to ensure compliance with all Consumer Protection Laws and internal policies and procedures.

14. Prior to implementation, the Board shall review the revised written Compliance Program and/or any subsequent modification thereto and, finding it acceptable, the Board shall approve it and record the approval in the Board minutes.

15. Following Board approval, the Bank shall implement and comply with the written Compliance Program and/or any subsequent modification thereto. Thereafter, the Board will ensure that the Compliance Program is fully implemented.

16. Within 90 days from the Effective Date, the Bank shall perform a full review of all compliance policies and procedures and ensure compliance with all Consumer Protection Laws, particularly with regard to third-party oversight and Section 5.

17. Within 90 days from the Effective Date, the Bank shall perform a full review of both the Bank and Higher One's training programs to ensure that all staff, management, and Board members receive training applicable to their job functions, including comprehensive training on Section 5 and third-party oversight, as applicable, to ensure compliance with all Consumer Protection Laws.

18. Within 90 days from the Effective Date, the Bank shall perform a full review of all compliance monitoring procedures, including those areas identified as weak in the Compliance ROE, to ensure compliance with all Consumer Protection Laws. Monitoring

procedures should include reviews of activities provided by third parties to ensure regulatory compliance, and reviews of both the Bank’s and third parties’ complaint processing procedures.

Compliance Officer

19. Within 30 days from the Effective Date, the Board shall provide the Compliance Officer with sufficient authority, resources, and training to effectively manage the Bank’s CMS, including oversight of third-party service providers, and address issues identified, if any. The Compliance Officer shall provide a monthly presentation to the Compliance Committee, *infra*, regarding the enhancements made to the Bank’s Compliance Program and compliance with each provision of this ORDER. The Board shall provide the Compliance Officer with sufficient authority to correct identified deficiencies and violations of Consumer Protection Laws.

Compliance Committee

20. Within 60 days from the Effective Date, the Board shall maintain a compliance committee comprised of at least two of its outside directors, who are not officers of the Bank or any affiliate of the Bank, at least one member of senior management, and the Compliance Officer (“Compliance Committee”).

21. The Compliance Committee shall meet at least monthly, and at a minimum, the following areas shall be reviewed and approved: minutes of the Compliance Committee, Compliance Officer reports, Compliance Program audit reports, Compliance Program policies, and progress reports concerning compliance with this ORDER that include, at a minimum, corrective action due dates, names of individuals assigned responsibility for the corrective action, and any follow-up testing and reporting to ensure corrective action is completed and effective.

22. The Compliance Committee shall report its actions to the Board at each quarterly Board meeting, and the Board minutes shall document the review and approval of all items

before the Board, including the names of any dissenting directors. Nothing in this ORDER shall diminish the responsibility of the entire Board to ensure compliance with the provisions of this ORDER.

23. The Board, in conjunction with the Compliance Committee, shall allocate resources that are commensurate with the level of complexity of the Bank's operations to ensure the establishment and implementation of an adequate CMS, as described in the FDIC's Compliance Examination Manual, Section II-3.1 to 3.4, and shall include specific procedures to ensure the Bank's compliance with all Consumer Protection Laws. The allocated resources shall be sufficient to ensure the Bank's timely compliance with this ORDER.

24. The Board, in conjunction with the Compliance Committee, shall oversee the following actions:

- (a) ensure that the Bank's Compliance Officer possesses the requisite knowledge and experience to administer an effective CMS;
- (b) ensure that all required disclosures provided through direct mail or online, related to products offered by, at, or through the Bank, including marketing materials or solicitations prepared by third parties, are reviewed and approved by the Bank prior to their use, and comply with all Consumer Protection Laws;
- (c) ensure that the duties and responsibilities of the Compliance Officer are clearly defined and provide the Compliance Officer access to both Board and Compliance Committee members;
- (d) ensure that the Compliance Officer has and retains sufficient authority and independence to implement policies related to Consumer Protection Laws and to institute corrective action as needed. This authority shall include the ability to oversee activities of all

third parties and across all departmental lines within the Bank, to have access to all areas of the Bank's operations, and to effectuate corrective action upon discovering deficiencies;

- (e) ensure that the Compliance Officer and all individuals with compliance oversight responsibilities receive ongoing training, sufficient time, and adequate resources to effectively oversee, coordinate, and implement the Bank's CMS;
- (f) require the Compliance Officer to provide monthly written reports through the Compliance Committee to the Board, including, but not limited to, reports related to the enactment and/or promulgation of new Consumer Protection Laws and changes to existing Consumer Protection Laws, training performed, compliance monitoring completed, independent, compliance audits performed, corrective action taken, and compliance with this ORDER; and
- (g) ensure proper and timely follow-up and resolution to audit and examination findings indicating the need for corrective action(s).

Audit

25. Within 30 days from the Effective Date, the Bank shall schedule independent audits to be conducted at least annually to ensure compliance with all 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 identified on the schedule will assess the Bank's CMS and Compliance Program, and at a minimum, shall:

- (a) define a comprehensive scope to include appropriate aspects of each law or regulation based on a risk analysis;
- (b) identify the number of transactions sampled by category or product type;
- (c) identify deficiencies;

(d) provide descriptions of, or suggestions for, corrective actions and timeframe for correction; and

(e) establish follow-up procedures to verify that corrective actions are implemented and effective. Audit findings, deficiencies, and recommendations must be documented in a written report and provided to the Bank's Audit Committee within 30 days after completion of the independent audit. In addition, the audit report should be thoroughly reviewed by the Bank's Board and fully documented in the Board's minutes.

26. Within 45 days from receipt of the independent auditor's written report, the Board shall take action to address the audit's findings and develop and implement a plan to complete the following:

(a) correct any deficiencies noted and implement any recommendations; or

(b) explain in a written document acceptable to the Regional Director and signed by all Board members why a particular recommendation is not being implemented.

#### Oversight of Third-Party Agreements and Services

27. Within 60 days from the Effective Date, the Bank shall develop and implement an effective third-party oversight program based on the principles set forth in *Guidance for Managing Third Party Risk* (Financial Institution Letter 44-2008, issued June 6, 2008). The program shall, at a minimum, include the following:

(a) a risk-based review related to compliance with Consumer Protection Laws of all aspects of the Bank's agreements with third parties and the services performed for the Bank pursuant to these agreements ("Third-Party Agreements");

(b) procedures for effective monitoring, training, record-keeping, and auditing of the Bank's third parties;

(c) access by Bank employees to all systems necessary to ensure compliance with all Consumer Protection Laws and to perform their duties, including monitoring, training, and fulfilling regulatory requests;

(d) review, approval, and maintenance by the Bank of copies of (i) all marketing, advertising, and solicitation materials, including direct mail, electronic or telephonic marketing, Internet solicitations, promotional materials, and telemarketing scripts and rebuttals; (ii) other materials provided or disseminated to consumers generated in connection with the marketing, administration, and servicing of such Third-Party Products, including account agreements, privacy policies, and periodic statements; and (iii) material changes or amendments to any such materials;

(e) review and approval by the Bank of all materials related to customer service, monitoring by the Bank of customer service calls on a regular basis, and review by the Bank of service-level reports to determine compliance with applicable laws and regulations;

(f) periodic compliance reviews, including on-site visits, by the Bank, as appropriate, of all Third-Party Product providers, partners, vendors, or servicers, and any of their material Third-Party Product-related service providers or sub-servicers;

(g) monitoring of Third-Party Agreements to ensure that they are formalized, enforceable, and contain the specific expectations, obligations, and consequences, for both the Bank and the third party;

(h) maintenance of records of all service provider agreements and approved marketing and solicitation materials, including any changes or amendments with respect to such materials;

- (i) prompt notification to the Bank by any third-party provider of all regulatory agencies' inquiries, customer complaint correspondence, and/or legal action received (other than routine requests such as requests to cease and desist collection contact); and
- (j) procedures for promptly addressing and resolving consumer complaints and inquiries, regardless of the source.

28. The Bank's Compliance Committee shall, on at least a quarterly basis, submit a written report to the Board and senior management addressing whether third parties are in compliance with Third-Party Agreements with respect to Consumer Protection Laws. The written report shall include potential violations, deficiencies, trends, and analyses related to consumer complaints and inquiries, or other concerns. The Board shall be responsible for ensuring that corrective actions are taken to address the findings of the written report and for assuring that a sound annual review of compliance-related Third-Party Agreements is performed.

### **ORDER FOR RESTITUTION**

IT IS FURTHER ORDERED that the Bank provide restitution to consumers as follows:

#### Reserve Account

29. If, within 10 days of the issuance of the Higher One Order, Higher One has not reserved or deposited, in whole or in part, a total of \$31,000,000 into a segregated deposit account for the purpose of providing restitution, as required by the Higher One Order, and upon written notice by the FDIC, the Bank shall have 10 days to reserve or deposit into a segregated deposit account an amount that, when aggregated with any funds contributed by Higher One, will total not less than \$31,000,000 for the purpose of providing restitution as required by the ORDER ("WEX Reserve Account").

30. In the event that the Bank assumes full or partial liability for the restitution as required by the ORDER, as described in the preceding paragraph, the Bank shall ensure that all restitution payments required by the ORDER are satisfied in full, regardless of whether the total of such payments exceeds the WEX Reserve Account. If the total of payments is less than the WEX Reserve Account, the excess shall be returned to the Bank's general funds or returned as agreed between Higher One and the Bank.

31. Restitution under this ORDER and the Higher One Order is intended to cover the same consumers without duplication of restitution payments. The Bank and Higher One may reach a separate agreement between them concerning the funding and distributing of restitution under this ORDER and the Higher One Order. Regardless of any separate agreement that may be entered into between the Bank and Higher One, the Bank remains responsible for funding and distributing restitution to consumers as required by this ORDER to the extent Higher One is unwilling or unable to do so.

#### Restitution Plan

32. In the event that the Bank assumes full or partial liability for the restitution as required by the ORDER, as described in paragraph 29, and within 70 days from the Effective Date, the Bank shall prepare and submit to the Regional Director a comprehensive Restitution Plan for all OneAccount Holders ("WEX OneAccount Restitution Plan").

33. "OneAccount Holder" shall mean any consumer who opened a OneAccount to facilitate receipt of the consumer's financial aid refund from May 4, 2012, through December 19, 2013.

34. "Restitution Fees" shall mean any fee or penalty assessed as a result of (a) a cash advance (*i.e.*, bank teller withdrawal); (b) a merchant PIN-based debit transaction; (c) a non-

Higher One ATM transaction; (d) a delinquent account (an account with insufficient funds in excess of a grace period); (e) a GreenDot cash deposit; (f) an abandoned account (an account that has not been accessed by the consumer in excess of a grace period); (g) a lack of documentation; or (h) an improperly disclosed uncategorized transaction.

35. The WEX OneAccount Restitution Plan shall, at a minimum, require the Bank to provide restitution to OneAccount Holders who have incurred one or more of the Restitution Fees (“Eligible Consumers”). The Restitution Fees shall be calculated for the period commencing May 4, 2012 through July 15, 2014 (“Restitution Period”). The restitution shall be equal to all such fees charged to the Eligible Consumer’s account during the Restitution Period.

36. Restitution provided to Eligible Consumers shall not limit consumers’ rights in any way.

37. Restitution to Eligible Consumers of the Restitution Fees in accordance with this ORDER shall apply to all Eligible Consumers regardless of whether their OneAccounts are closed, charged-off, sold, or otherwise transferred. The Bank’s restitution obligation for the Restitution Fees on each Eligible Consumer’s OneAccount for the Restitution Period may be reduced to the extent any such Restitution Fee was previously credited in compromise of a claim to the respective OneAccount or paid to the respective Eligible Consumer during the Restitution Period in compromise of a claim for such Restitution Fee in favor of such Eligible Consumer to the extent Higher One provides appropriate documentation.

38. Except as provided below, payments of the Restitution Fees for the Restitution Period shall be made by credits to the OneAccounts of Eligible Consumers entitled to such credits. If, as of the date that restitution has been made pursuant to this ORDER, an Eligible Consumer’s OneAccount has been closed, charged off, sold, or otherwise transferred, the amount

of restitution to which the Eligible Consumer is entitled will be made by restitution check to the holder of the respective OneAccount.

39. The Bank shall submit to the Regional Director for review, comment, and non-objection prior to implementation, the WEX OneAccount Restitution Plan, including samples of letters to consumers, in the event that the Bank assumes full or partial liability for the restitution as required by the ORDER, as described in paragraph 29. The text of letters and/or electronic mail to be sent to Eligible Consumers shall include satisfactory language explaining the reason the Bank is sending a restitution payment, including that the Bank is sending the payment, providing a statement credit, or a combination of the two. The letters and/or electronic mail shall also include reference to and the web addresses for any FDIC press releases related to the ORDER, and shall include a reference that the restitution payment does not, in any manner, limit a consumer's rights. The letters and/or electronic mail, incorporating any changes that may be required in response to comments by the Regional Director, shall be sent by United States Postal Service first-class mail and/or electronic mail to all Eligible Consumers entitled to receive restitution payments in accordance with the ORDER.

40. Within 60 days of receipt of non-objection from the Regional Director, the Bank shall implement the WEX OneAccount Restitution Plan.

#### Mailing Refunds

41. When the Bank makes cash restitution by official or bank check made payable to an Eligible Consumer under the WEX OneAccount Restitution Plan, the Bank shall send the official or bank check by United States Postal Service first-class mail, address correction service requested, to the Eligible Consumer's last address as maintained in the Bank's or Higher One's records. The Bank shall make reasonable attempts to obtain a current address for any Eligible

Consumer whose notification letter and/or restitution check is returned for any reason, using standard address search methodologies, and shall promptly re-mail all returned letters and/or restitution checks to current addresses, if any. If the certified or bank check for any Eligible Consumer is returned to the Bank after such second mailing by the Bank, or if a current mailing address cannot be identified using standard address search methodologies, the Bank shall retain the restitution amount of such Eligible Consumer for a period of 360 days from the date the restitution check was originally mailed, during which period such amount may be claimed by such Eligible Consumer upon appropriate proof of identity. After such time, these monies will be disposed of in accordance with the WEX OneAccount Restitution Plan.

42. The Bank shall not undertake collection efforts in the same mailing as that containing any of the restitution checks and/or notification letters. Further, the Bank shall not condition, expressly or by implication, the provision of a credit or cash payment pursuant to this ORDER on the payment of any outstanding debt.

#### Recordkeeping

43. The Bank shall retain for seven years all records pertaining to the WEX OneAccount Restitution Plan, including but not limited to: documentation of the processes and procedures used to determine Eligible Consumers; the names, contact, and account information of Eligible Consumers; any mailing records; and documentation that the appropriate restitution and equitable relief were made.

#### Independent Third-Party Auditor

44. In the event that the Bank assumes full or partial liability for the restitution as required by the ORDER, as described in paragraph 29, within 40 days from the Effective Date, the Bank shall hire an independent, third-party auditor that is acceptable to the Regional Director

to audit the Bank's completion of the WEX OneAccount Restitution Plan as set forth in the Order for Restitution.

45. Within 60 days of receipt of non-objection from the Regional Director to the WEX OneAccount Restitution Plan, the independent, third-party auditor shall verify that:

- (a) the Bank accurately identified the Eligible Consumers eligible for restitution pursuant to the WEX OneAccount Restitution Plan required by this ORDER;
- (b) the Bank accurately calculated the restitution amount for each Eligible Consumer pursuant to the WEX OneAccount Restitution Plan required by this ORDER; and
- (c) the Bank made the appropriate restitution payments to each Eligible Consumer as required by this ORDER.

46. Within 30 days of receiving the Regional Director's non-objection to the WEX OneAccount Restitution Plan, the independent, third-party auditor shall prepare a detailed written report describing the status of the WEX OneAccount Restitution Plan and payment distribution and submit it to the Regional Director for review, comment, and non-objection, and shall continue to submit such reports every 30 days thereafter until completion of the restitution required by this ORDER. Restitution under this ORDER shall not be deemed complete until the Regional Director notifies the Bank, in writing, that the requirements of this ORDER have been satisfied.

#### **ORDER TO PAY CIVIL MONEY PENALTY**

IT IS FURTHER ORDERED that by reason of the violations of law and/or regulations set forth herein, and after taking into account the appropriateness of the penalty with respect to the size of the financial resources and good faith of the Bank, the gravity of the violations, the history of previous violations by the Bank, and such other matters as justice may require,

including the severity of the risks to and losses of consumers, pursuant to 12 U.S.C. § 1818(i)(2), a civil money penalty of \$1,750,000 is assessed against the Bank. The Bank shall pay such amount to the Treasury of the United States, as directed by the FDIC.

IT IS FURTHER ORDERED that the Bank is prohibited from seeking or accepting indemnification from any third party for the civil money penalty assessed and paid in this matter.

### **NOTIFICATION AND REPORTING REQUIREMENTS**

#### **Progress Reports and Shareholder Notification**

47. On or before the 30<sup>th</sup> day after the end of the first calendar quarter following the Effective Date, and on or before the 30<sup>th</sup> day after the end of every calendar quarter thereafter, the Bank shall furnish written progress reports to the Regional Director detailing the form and manner of any actions taken to secure compliance with this ORDER and the results thereof.

48. Within 30 days of the Effective Date, the Bank shall send to its shareholder, WEX, Inc., a copy of this ORDER or a description of this ORDER. If the Bank sends its shareholder a description of this ORDER rather than a copy of it, the description shall fully describe this ORDER in all respects. The description and any accompanying communication, statement, or notice shall be sent to the FDIC, Accounting and Securities Section, Washington, D.C. 20429, at least 15 days prior to dissemination to the shareholder. Any changes requested to be made by the FDIC shall be made prior to dissemination of the description, communication, notice, or statement.

#### **SAVINGS CLAUSE**

49. The provisions of the ORDER shall not bar, estop, or otherwise prevent the FDIC or any other federal or state agency or department with jurisdiction over the Bank 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).

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

51. 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.

52. 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 23<sup>rd</sup> day of December, 2015.

/s/  
Sylvia H. Plunkett  
Senior Deputy Director  
Division of Depositor and Consumer Protection