

#2002-92

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

In the Matter of:)
ACE Cash Express, Inc.)
Irving, Texas)
)
Agent and Bank Service Provider for:)
)
Goleta National Bank)
Goleta, California)

AA-EC-02-19

CONSENT ORDER

ACE Cash Express, Inc., Irving, Texas (“ACE”), by and through its duly elected and acting President and Chief Operating Officer (“President”), has executed a “Stipulation and Consent to the Issuance of a Consent Order” dated October 25, 2002, that is accepted by the Comptroller of the Currency (“Comptroller” or “OCC”). By this Stipulation and Consent, which is incorporated by this reference, ACE has consented to the issuance of this Consent Order (“Order”) by the Comptroller.

Pursuant to the authority vested in him by the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818(b) and (i)(2), the Comptroller hereby orders that:

ARTICLE I

CESSATION OF PAYDAY LENDING AND INDEMNIFICATION

(1) Beginning November 15, 2002, and on an ongoing basis thereafter, ACE shall notify all applicants seeking to originate, renew or rollover any short-term consumer loan made by Goleta National Bank, Goleta, California (“Bank”), hereinafter referred to as “Bank Payday

Loans”, that ACE will no longer provide services related to the origination, renewal and rollover of Bank Payday Loans on or after January 1, 2003, in any state or in the District of Columbia.

(2) Not later than January 1, 2003, ACE shall cease providing any services to the Bank related to the origination, renewal or rollover of Bank Payday Loans in all states and the District of Columbia.

(3) Notwithstanding paragraphs (1) and (2) of this Article, ACE may continue to provide services to the Bank related to the servicing and collection of Bank Payday Loans originated, renewed or rolled over before January 1, 2003; provided that, the due date is not extended for more than five (5) days, and no new funds are advanced on any Bank Payday Loan on or after January 1, 2003.

(4) On or before November 1, 2002, ACE shall assume, indemnify, and hold the Bank harmless for one hundred percent (100%) of the costs, expenses, legal fees, damages, and related liabilities from third-party claims in accordance with the terms of Section 8.2(a) of the Master Loan Agency Agreement between the Bank and ACE dated August 11, 1999, as amended (“Master Loan Agreement”). ACE shall comply with this requirement by executing an amendment to the Master Loan Agreement with the Bank, which Amendment shall include, inter alia, an increase in the percentage of Section 8.2(a) to one hundred percent (100%) from either ninety-five percent (95%) or ninety percent (90%), respectively, and a reduction in the percentage of Section 8.1(a) to zero percent (0%) from either five percent (5%) or ten percent (10%), respectively. Thereafter, the Master Loan Agreement shall not be further amended or modified without the prior written consent of the Comptroller.

ARTICLE II

FUTURE ACTIVITIES

(1) Effective immediately, ACE shall not enter into any agreement, written or oral, to provide services to any national bank or to any subsidiary of a national bank, including but not limited to the marketing, origination, servicing or collection of payday loans offered through a national bank or subsidiary thereof, without first obtaining the prior written determination of no objection from the OCC.

(2) Any request to obtain a prior written determination of no objection, as required by paragraph (1) of this Article, shall:

- (a) be made at least ten (10) business days prior to entering into any agreement referenced in paragraph (1) of this Article;
- (b) be made in writing to the Director of Special Supervision/Fraud, Office of the Comptroller of the Currency, 250 E Street, Washington, DC 20219;
and
- (c) include a full and complete description of the services to be performed by ACE, the name(s) of the national bank(s) and/or subsidiary(ies) for which the services will be provided, and a copy of any draft contract(s) governing the relationship between ACE and such national bank(s) and/or subsidiary(ies).

(3) The Director of Special Supervision/Fraud will respond to any written request pursuant to paragraphs (1) and (2) of this Article within ten (10) business days, provided that the ten-day period shall not commence until ACE has complied with paragraph 2(c) and the Director has notified ACE in writing that the request is deemed to be complete.

ARTICLE III

FILE ACCESS AND DOCUMENT RETENTION

(1) Effective immediately and continuing for so long as this Order remains outstanding, ACE shall make available at the request of the Bank any information or documentation in ACE's possession, custody or control that relates to any applicant of a Bank Payday Loan obtained by ACE as a result of the Master Loan Agreement, or any other agreement between ACE and the Bank existing on or before December 31, 2002.

(2) For purposes of this Order, the term "applicant" shall be defined as any person who has applied for a Bank Payday Loan, regardless of whether the loan has been approved, denied, cancelled, renewed, rolled over, or withdrawn.

(3) Prior to the disposal or destruction of any Bank Payday Loan records, ACE shall secure the written authorization of the Bank. In addition, ACE shall not dispose of or destroy any records relating to Bank Payday Loans prior to the end of any applicable statutory or regulatory period requiring the retention of such records, and shall only dispose of or destroy such records in a manner that is in conformance with the applicable Bank policies and procedures in effect as of the date of this Order.

ARTICLE IV

CIVIL MONEY PENALTY ORDER

(1) Without admitting or denying any wrongdoing, ACE hereby consents to the payment of a civil money penalty in the amount of two hundred fifty thousand dollars (\$250,000), which shall be paid upon execution of this Order. ACE shall make payment in full by check made payable to the Treasurer of the United States and shall deliver the payment to:

Comptroller of the Currency, P.O. Box 73150, Chicago, Illinois 60673-7150 with a copy of the check sent to Director, Enforcement & Compliance Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

(2) This Order shall be enforceable to the same extent and in the same manner as an effective and outstanding order that has been issued and has become final pursuant to 12 U.S.C. §§ 1818(h) and (i) (as amended).

ARTICLE V

CLOSING

(1) It is expressly and clearly understood that if, at any time, the Comptroller deems it appropriate in fulfilling the responsibilities placed upon him by the several laws of the United States of America to undertake any action affecting ACE or any national bank (or subsidiary or affiliate thereof), except as set forth elsewhere herein (including the Stipulation and Consent) nothing in this Order shall in any way inhibit, estop, bar or otherwise prevent the Comptroller from so doing.

(2) Any time limitations imposed by this Order shall begin to run from the effective date of this Order. Such time limitations may be extended in writing by the Director for Special Supervision/Fraud for good cause upon written application by ACE.

(3) The provisions of this Order are effective upon issuance of this Order by the Comptroller, through his authorized representative whose hand appears below, and shall remain effective and enforceable, except to the extent that, and until such time as, any provisions of this Order shall have been amended, suspended, waived or terminated in writing by the Comptroller.

(4) 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 (i)(2), and expressly does not form, and may not be construed to form, a contract binding on the Comptroller or the United States.

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

IT IS SO ORDERED, this 25th day of October, 2002.

/s/ David D. Gibbons

David D. Gibbons
Deputy Comptroller
Special Supervision/Fraud Division

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

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

The Comptroller of the Currency of the United States of America (“Comptroller”) is prepared to initiate cease and desist and civil money penalty proceedings against ACE Cash Express, Inc., Irving, Texas (“ACE”) pursuant to 12 U.S.C. § 1818(b) and (i).

ACE, in the interest of cooperation and settlement, consents to the issuance of a Consent Order, dated October 25, 2002 (“Order”);

In consideration of the above premises, the Comptroller, through his authorized representative, and ACE, through its duly elected and acting President and Chief Operating Officer (“President”), hereby stipulate and agree to the following:

ARTICLE I

Jurisdiction

(1) Goleta National Bank, Goleta, California, (“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.* Accordingly, the Bank is an “insured depository institution” as that term is defined in 12 U.S.C. § 1813(c)(2).

(2) ACE's performance of services for the Bank is subject to regulation and examination by the OCC to the same extent as if such services were being performed by the Bank itself on its own premises, pursuant to 12 U.S.C. § 1867(c).

(3) ACE is an agent of the Bank and is an "institution-affiliated party" of the Bank as that term is defined in 12 U.S.C. § 1813(u).

(4) The Comptroller is "the appropriate Federal banking agency" regarding ACE pursuant to 12 U.S.C. § 1813(q). Therefore, ACE is subject to the authority of the Comptroller to initiate and maintain cease and desist and civil money penalty proceedings pursuant to 12 U.S.C. §§ 1818(b) and (i), and 1867(c).

(5) Through a Master Loan Agency Agreement dated August 11, 1999, as amended, the Bank initiated a program with ACE (the "Program") whereby the Bank would make short-term consumer loans ("Bank Payday Loans") to consumers at ACE's various retail locations throughout the United States. The Bank Payday Loans are or have been offered at ACE locations in approximately 24 states and the District of Columbia. The loans are made by the Bank, and, pursuant to 12 U.S.C. § 85, the Bank charges an interest rate permissible under the laws of the United States for national banks located in the State of California. Shortly after origination, ACE purchases a 90-95% participation in the loans from the Bank. Subject to the Bank's supervision and direction, ACE performs marketing, servicing and collecting on the loans. As reflected in past statements, the Comptroller has substantial policy concerns regarding programs of this type. As described in the Order, the Program is being terminated.

ARTICLE II

Agreement

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

(2) ACE agrees that the Order shall be deemed an “order issued with the consent of the . . . institution-affiliated party” as that phrase is used in 12 U.S.C. § 1818(h)(2) and further agrees that this Order shall become effective upon its issuance and shall be fully enforceable by the Comptroller under the provisions of 12 U.S.C. § 1818(i). Notwithstanding the absence of mutuality of obligation, or of consideration or of a contract, the Comptroller or his designee may enforce any of the commitments or obligations herein or within the Order undertaken by ACE under its supervisory powers, including 12 U.S.C. § 1818(i), and not as a matter of contract law. ACE expressly acknowledges that neither ACE nor the Comptroller has any intention to enter into a contract.

(3) ACE also expressly acknowledges that no officer or employee of the Office of the Comptroller of the Currency (“OCC”) has statutory or other authority to bind the United States, the U.S. Treasury Department, the OCC, or any other federal bank regulatory agency or entity, or any officer or employee of any of those entities to a contract affecting the OCC’s exercise of its supervisory responsibilities.

ARTICLE III

Waiver

(1) By executing the Order, ACE waives:

(a) the right to the issuance of a Notice under 12 U.S.C. § 1818(b) or (i);

- (b) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(b) or (i) and 12 C.F.R. Part 19;
- (c) all rights to seek judicial review of the Order;
- (d) all rights in any way to contest the validity of the Order; and
- (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.

(2) ACE shall not cause, participate in or authorize the Bank or any national bank (or any subsidiary or affiliate thereof) to incur, directly or indirectly, any expense for the payment of the civil money penalty under the Order or any legal (or other professional) expense relative to the negotiation and issuance of the Order; and, in accordance with 12 C.F.R. § 7.2014, ACE shall not, directly or indirectly, obtain or accept any indemnification (or other reimbursement) from the Bank or any national bank (or any subsidiary or affiliate thereof) with respect to such amounts.

(3) It is hereby agreed that the provisions of the Order constitute a full settlement and final disposition of cease and desist and civil money penalty proceedings contemplated by the Comptroller. The Comptroller agrees not to institute further proceedings for any acts, omissions or violations that occurred prior to the date of the Order.

(4) It is further agreed that the provisions of the Order shall not be construed as an adjudication on the merits.

(5) ACE understands that nothing herein shall preclude any proceedings brought by the Comptroller to enforce the terms of the Order, and that nothing herein constitutes, nor shall ACE contend that it constitutes, a waiver of any right, power or authority of any other representatives of the United States or agencies thereof, including the Department of Justice, to bring other actions deemed appropriate.

(6) Nothing in this Stipulation and Consent or the Order shall be construed to be and is not intended to imply an admission or denial by ACE as to any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with the Order constitute or be construed as an admission or denial by ACE of any fact, finding, conclusion, issue of law, or violation of law. ACE's agreement to terminate its participation in the Program pursuant to this Stipulation and Consent and the Order does not constitute an admission or denial with respect to ACE's activities prior to the effective date of the Order.

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

/s/ David D. Gibbons
David D. Gibbons
Deputy Comptroller
Special Supervision / Fraud Division

10/25/02
Date

IN TESTIMONY WHEREOF, the undersigned, as the duly elected and acting President and Chief Operating Officer of ACE, has hereunto set his hand on behalf of ACE.

/s/

Jay B. Shipowitz
President and Chief Operating Officer
ACE Cash Express, Inc.

10/25/02

Date