

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

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In the Matter of:	)	
	)	
WEX BANK	)	CONSENT ORDER
SANDY, UTAH	)	
	)	
(INSURED STATE NONMEMBER BANK)	)	FDIC-21-0113b
	)	
_____	)	

The Federal Deposit Insurance Corporation (FDIC) is the appropriate Federal banking agency for WEX Bank, Sandy, Utah (Bank) under Section 3(q) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. § 1813(q).

The Bank, by and through its duly elected and acting Board of Directors (Board), has executed a Stipulation to the Issuance of a Consent Order (Stipulation), dated May 6, 2022, that is accepted by the FDIC. With the Stipulation, the Bank has consented, without admitting or denying any charges of unsafe or unsound banking practices relating to the Bank Secrecy Act, 31 U.S.C. §§ 5311-36, 12 U.S.C. § 1829b, and 12 U.S.C. §§ 1951-60 and the implementing regulations, 31 C.F.R. Chapter X and 12 C.F.R. Part 353, and 12 U.S.C. § 1818(s) and its implementing regulation, 12 C.F.R. § 326.8 (collectively referred to as the Bank Secrecy Act or BSA), to the issuance of this Consent Order (Order) by the FDIC pursuant to Section 8(b)(1) of the FDI Act.

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

**COMPLIANCE WITH BSA**

1. Within 90 days of the effective date of this Order, the Bank shall comply in all material respects with the BSA and its rules and regulations.

**VIOLATIONS OF LAW**

2. Within 90 days of the effective date of this Order, the Bank shall correct all BSA

violations of law, as more fully set forth in the Report of Examination dated September 13, 2021 (ROE), as well as the Report of Visitation dated April 12, 2021. In addition, the Bank shall take all necessary steps to ensure future compliance with all applicable BSA laws and regulations.

### **ACTION PLAN**

3. Within 45 days of the effective date of this Order, the Bank shall develop and implement a written action plan (Plan) that details the actions, including the relevant timelines, that the Board and management will take to correct the BSA/Anti-Money Laundering (BSA/AML) deficiencies and apparent violations cited in the ROE, and to comply with this Order. Such Plan and its implementation shall be acceptable to the Regional Director of the FDIC's San Francisco Regional Office (Regional Director), as determined at subsequent examinations and/or visitations.

### **BOARD OVERSIGHT**

4. Within 90 days of the effective date of this Order, the Board shall increase its oversight of the Bank's compliance with the BSA.

(a) Within 90 days of the effective date of this Order, the Board shall take all necessary steps to ensure that it receives, at least monthly, clear and comprehensive reports from the qualified officer appointed in Paragraph 5 of this Order regarding compliance with the BSA, including all issues impacting BSA/AML regulatory compliance, including but not limited to: issues/concerns with the Third-Party Oversight (TPO) Program and Third-Party Relationship (TPR) customers; BSA/AML process/documentation backlogs; issues/concerns related to Customer Identification Program (CIP) information collection and verification; and issues/concerns related to Customer Due Diligence (CDD) and Beneficial Ownership (BO) information collection and verification. In addition, effective with the first Board meeting within 90 days of the effective date of this Order, and at each Board meeting thereafter, the qualified officer appointed in Paragraph 5 of this Order shall review with the Board all monthly reports received by the Board since the prior Board meeting.

(b) Within 90 days of the effective date of this Order, the Board shall monitor and confirm the completion of actions taken by management to comply with the terms of this Order. The Board shall certify in writing to the Regional Director when all of the above actions have been accomplished. All actions taken by the Board pursuant to this Order shall be duly noted in the minutes of its meetings. The Board shall ensure that the Bank has sufficient processes, personnel, resources, and systems to effectively implement and adhere to all provisions of this Order.

### **BSA COMPLIANCE PROGRAM**

5. Within 90 days of the effective date of this Order, the Bank shall develop, adopt, and implement written policies and procedures that establish a satisfactory BSA compliance program, designed to, among other things, ensure and maintain compliance by the Bank with the BSA. The program shall ensure that clear and comprehensive BSA compliance reports are provided to the Board on a monthly basis. Such program and its implementation shall be in a manner acceptable to the Regional Director as determined at subsequent examinations and/or visitations of the Bank. At a minimum, the program shall establish the following components or pillars: a system of internal controls to assure ongoing compliance with the BSA, including policies and procedures to detect and report all suspicious activity and which fully comply with the requirements of Part 353 of the FDIC Rules and Regulations; independent testing for BSA/AML compliance; a designated individual or individuals responsible for coordinating and monitoring BSA/AML compliance; and training for appropriate personnel.

### **INTERNAL CONTROLS**

#### **6. Risk Assessments**

Within 90 days of the effective date of this Order, and at least annually thereafter, the Bank shall perform a Money Laundering/Terrorist Financing (ML/TF) Risk Assessment (RA). The RA shall address all pertinent risk factors that affect the overall

ML/TF risk profile of the Bank, including but not limited to, all products, services, types of customers, business lines, TPRs, process/documentation backlogs, staffing levels, mitigating controls, and any identified BSA issues/concerns. Further, the Bank shall ensure that such information contained within the RA is current, complete, and accurate. The completed RA must be reviewed and approved by the Board, with risk mitigation strategies adopted and implemented as appropriate.

7. **Customer Due Diligence**

Within 90 days of the effective date of this Order, the Bank shall develop, adopt, and implement a written CDD program, as set forth in 31 C.F.R. § 1020.210(a)(2)(v), which includes the requirement to maintain and update BO information. Such program and its implementation shall be in a manner acceptable to the Regional Director as determined at subsequent examinations and/or visitations of the Bank. At a minimum, the CDD program shall provide for the following:

(a) Appropriate risk-based policies, procedures and processes for conducting ongoing CDD for new and existing customers. The CDD program shall include written processes for identifying and verifying BO information of legal entity customers in compliance with 31 CFR § 1010.230. The Bank shall collect and/or verify, as appropriate, BO information on any customer accounts for which such information has not been collected and/or verified and develop policies and procedures to address accounts when the Bank is not able to form a reasonable belief that it knows the true identity of a customer or if the Bank does not receive the required information.

(b) A customer risk rating system that ensures that all customers of the Bank are appropriately risk-rated to capture the ML/TF risk they pose. For each customer, the risk rating assessment shall take into account, but shall not necessarily be limited to: the nature and purpose of the account; the anticipated type and volume of account activity; and

the types of products and services offered. In addition, all customers of the Bank shall be risk rated under the customer risk rating system as soon as possible, but in no event later than 180 days from the effective date of this Order. The Bank's CDD shall operate in conjunction with its CIP (described below) to enable the Bank to understand the nature and purpose of customer relationships and develop sufficient customer risk profiles.

(c) Appropriate policies, procedures and processes for monitoring and updating customer information including policies to address when and what customer information will be collected to ensure the Bank's customer risk ratings are current and serve as an accurate reflection of risk.

(d) For those customers who the Bank has reason to believe pose a heightened risk of illicit activities at or through the Bank and consequently whose transactions require additional due diligence, procedures to:

(i) determine the appropriate documentation necessary to confirm the identity and business activities of the customer; and

(ii) understand the nature and purpose of the customer relationship and transactions.

#### 8. **Customer Identification Program**

Within 90 days from the effective date of this Order, the Bank shall review and enhance its written CIP such that it is consistent with the requirements of BSA regulations, particularly the requirements on collection and verification of required customer identification information. Further, within 90 days from the effective date of this Order, the Bank shall collect and/or verify, as appropriate, CIP information on any customer accounts for which such information has not been collected and/or verified and develop policies and procedures to address accounts when the Bank is not able to form a reasonable belief that it knows the true identity of a customer or if the Bank does not receive the required information.

9. **Suspicious Activity Reporting**

Within 90 days of the effective date of this Order, the Bank shall develop and implement effective processes, across all business lines, for identifying and monitoring unusual or unexpected activity in order to detect, investigate, and, if applicable, report suspicious activity. The Bank shall ensure that such processes are in place and are operating effectively at all times. Should the Bank proceed with implementation of its selected vendor supplied automated transaction monitoring system, the Bank shall ensure that the monitoring system's rule set has been appropriately refined/customized, and that the system is producing meaningful suspicious activity alerts, prior to terminating any existing processes for identifying potentially suspicious activity.

(a) The Bank shall ensure that decisions not to file a Suspicious Activity Report (SAR) are fully documented, including the rationale for concluding that a SAR filing is not necessary, by both the Bank and any relevant third-party service provider(s) that have been contracted to perform this function. The Bank shall retain such documentation in accordance with applicable laws and regulations.

(b) The Bank shall establish and implement policies and procedures to ensure that SARs are filed within 30 days of identifying a suspect or unusual and suspicious activity (or a total of 60 days if a suspect is unknown or once every 120 days for ongoing unusual or suspicious activity). Such a program must also ensure that timely identification of suspicious activity occurs; that timely investigation into unusual activity is undertaken; that related accounts are considered and discussed in the SARs filing, as appropriate; and that a detailed, accurate, comprehensive, and readable narrative description of the activity is included in the SARs filing.

(c) Within 60 days of the effective date of this Order, the Bank shall establish and implement policies and procedures to advise the Board of significant SARs. At

a minimum, the Board shall be advised in detail of all SARs involving employees, contractors, officers, and directors. The policies and procedures shall also include guidelines to determine what SARs are significant.

10. **BSA-Related Third-Party Service Providers**

Within 60 days from the effective date of this Order, the Bank shall improve its control and oversight of TPRs that are performing BSA/AML services on behalf of the Bank, including affiliates, by:

- (a) Improving Bank staff's understanding of such third parties' processes and procedures and how well they align with the Bank's RA and BSA/AML policies and procedures;
- (b) Ensuring that such third parties' policies and processes, and any changes to such policies and processes, are consistent with the Bank's RA and BSA/AML policies and procedures;
- (c) Revising the Service Level Agreement (SLAs) within the Master Services Agreement (MSA) with WEX Inc. to consider and incorporate additional BSA/AML-related metrics that could be utilized to better ensure compliance with BSA/AML rules and regulations.

11. **Backlogs**

Within 120 days of the effective date of this Order, the Bank shall clear the backlogs noted in the ROE in the areas of: priority/high-risk customer reviews; money transfer service alert reviews; and suspicious activity investigations. The Bank shall also ensure, on an ongoing basis, allocation of appropriate resources to the BSA/AML compliance program to prevent formation of backlogs.

**INDEPENDENT TESTING AND AUDIT**

12. Within 30 days from the effective date of this Order, the Bank shall ensure that the scope of future BSA/AML independent reviews are comprehensive and include a

review of compliance with all BSA rules and regulations, policies and procedures, the RA, BSA functions, and BSA oversight of TPR activities. In addition, the Bank shall ensure that future BSA independent reviews, whether conducted by internal or external parties, are appropriately staffed with respect to both resources and expertise to adequately perform a comprehensive review, reach a sound conclusion, and provide appropriate support for their assessment. Further, the Bank shall obtain such an independent review within 270 days from the effective date of this Order, and the results of such review shall be reported to the Board.

### **BSA STAFFING AND RESOURCES**

13. Within 90 days from the effective date of this Order, the Bank shall conduct a comprehensive assessment of BSA/AML staffing needs, both at the Bank level and at the relevant affiliate service providers' level to ensure that BSA/AML staffing resources are sufficient. The Bank shall consider including the following items as part of the staffing assessment: process/documentation backlogs; the collection and verification of CIP and BO information on customer accounts; the recent increase in SAR activity; and the need to appropriately supervise and control all TPRs. The staffing analysis should include the hours spent each month to complete and review key function deliverables. In addition, management should periodically reassess staffing levels based on BSA/AML compliance needs including the implementation of all required internal controls. Furthermore, the staffing assessment shall be reviewed and approved by the Board.

### **SAR LOOKBACK REVIEW**

14. The Board shall ensure completion of a SAR Lookback Review (Lookback Review) as specified in the revised written SAR lookback plan (Lookback Plan) which was submitted by the Bank to the FDIC on January 15, 2022, and for which the FDIC granted non-disapproval on January 25, 2022. In accordance with the Lookback Plan, the Lookback Review shall be completed by no later than January 25, 2023. If, as a result of the Lookback Review, the



Bank identifies any suspicious activities that should have resulted in the filing of SARs, but for which SARs were not filed, the Bank shall file the SARs promptly. Upon completion of the Lookback Review, the Bank shall submit the written findings of the review to the Board and the Regional Director.

### **PROGRESS REPORTS**

15. Within 30 days of the end of the first quarter following the effective date of this Order and within 30 days of the end of each 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. Such reports shall include a copy of the Bank's Report of Condition and the Bank's Report of Income. Such reports may be discontinued when the corrections required by this Order have been accomplished and the Regional Director has released the Bank in writing from making further reports.

### **DISCLOSURE OF ORDER TO SHAREHOLDER(S)**

16. Following the effective date of this Order, the Bank shall send to its shareholder(s) or otherwise furnish a description of this Order in conjunction with the Bank's next shareholder communication and also in conjunction with its notice or proxy statement preceding the Bank's next shareholder meeting. The description shall fully describe the Order in all material 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 shareholders. Any changes requested to be made by the FDIC shall be made prior to dissemination of the description, communication, notice, or statement.

**BINDING EFFECT**

17. The provisions of this Order shall not bar, estop, or otherwise prevent the FDIC or any other federal or state agency or department 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).

This Order will become effective upon its issuance by the FDIC.

The provisions of this Order shall be binding upon the Bank, its institution-affiliated parties, 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.

Violation of any provisions of this Order will be deemed to be conducting business in an unsafe or unsound manner and will subject the Bank to further regulatory enforcement action.

Issued pursuant to delegated authority.

Dated this 6<sup>th</sup> day of May, 2022.

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/s/  
Paul P. Worthing  
Deputy Regional Director  
Division of Risk Management Supervision  
San Francisco Region  
Federal Deposit Insurance Corporation