

NEW YORK STATE  
DEPARTMENT OF FINANCIAL SERVICES

In the Matter of  
NEW DAY FINANCIAL LLC  
FULTON, MARYLAND

**CONSENT ORDER**

The New York State Department of Financial Services (the “Department”) and New Day Financial LLC d/b/a New Day USA (“New Day”) (collectively, the “Parties”) stipulate that:

WHEREAS New Day, a Delaware corporation headquartered in Fulton, Maryland, is licensed to offer and negotiate mortgage loans in 44 states, including New York;

WHEREAS numerous investigations of New Day have uncovered that, over the course of several years, certain New Day employees, including certain now-former senior managers, violated the Nationwide Multistate Licensing System & Registry (“NMLS”) Rules of Conduct and engaged in organized cheating relating to continuing education courses and exams.

Specifically, certain now-former New Day managers permitted and encouraged members of its compliance staff – individuals responsible for ensuring New Day’s compliance with applicable laws and regulations – to complete the continuing education requirements on behalf of New Day’s Mortgage Loan Originators (“MLOs”), Chief Executive Officer, and now-former Chief Operating Officer. Further, New Day MLOs shared information acquired during licensing exams with New Day senior management, despite the fundamental obligation of test-takers to preserve the confidentiality of all such information;

WHEREAS the Department’s own examination of New Day revealed a number of violations of New York mortgage banking laws. Specifically, and as detailed more thoroughly herein, New Day failed to provide necessary disclosures for at least 110 subprime loans,

misstated applicable late fees on at least three loans, failed to maintain the requisite minimum line of credit at all times with a Department-approved credit line provider, and understated its total New York revenue for 2010 and 2011 in annual reports submitted to the Department;

WHEREAS New Day's violations of law enabled New Day to deceive the Department and other state regulators and deprive the public of properly educated MLOs; and

WHEREAS the Department must act to prevent and deter similar conduct, protect the public interest, and ensure that its supervisory concerns regarding New Day are addressed in a satisfactory manner;

NOW, THEREFORE, to resolve this matter without further proceedings pursuant to the Superintendent's authority under Sections 39 and 44 of the Banking Law, the Department and New Day agree to the following:

#### **Factual Background**

1. Through 2014, New Day's primary business had been originating refinance home loans for military service members, veterans and eligible surviving spouses. In 2014, New Day's revenues exceeded \$117 million, while its total assets exceeded \$178 million.

2. As with all MLOs licensed in the State of New York, New Day's New York-licensed MLOs must complete continuing education courses and testing, as required under Article 12-E of the New York Banking Law and Part 420 of the Superintendent's Regulations (3 NYCRR Part 420) ("Part 420") and Title V of Public Law 110-289, the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (the "SAFE Act").

3. The purpose of the continuing education requirements is to ensure that MLOs – who offer and extend mortgage loans to all types of borrowers – understand federal and state laws and regulations governing the mortgage lending industry; receive instruction on fraud,

consumer protection, and fair lending issues; are knowledgeable about lending standards in the nontraditional mortgage market; and are informed of other important lending matters.

4. In completing the education requirements, MLOs must agree to abide by the Rules of Conduct of the NMLS, which prohibit any person from taking required courses and related exams on behalf of another person (NMLS Rule of Conduct 1), require MLOs to maintain the confidentiality of testing materials (NMLS Rule of Conduct 7), and oblige MLOs to refrain from any conduct that is dishonest, fraudulent, or that would adversely impact the integrity of the test (NMLS Rule of Conduct 11).

#### Fraudulent and Dishonest Conduct of New Day Employees

5. On October 7, 2013, a former employee of New Day filed a complaint with the State Regulatory Registry (“SRR”) alleging that employees of New Day had violated the NMLS Rules of Conduct by providing or receiving assistance on and misusing study materials for the SAFE mortgage loan originator testing program. Multiple investigations of New Day ensued, including investigations conducted by the SRR, by the Maryland Department of Labor on behalf of the Multistate Mortgage Committee (“MMC”), and by New Day itself, which revealed the fraudulent and dishonest conduct detailed below.

6. Over the course of several years, until at least 2013, certain New Day employees, including certain now-former senior managers, deceived state regulators in New York and elsewhere by systematically violating NMLS Rules of Conduct 1, 7 and 11. In doing so, New Day deprived the public of properly educated MLOs.

7. More specifically, at least twenty New Day MLOs did not personally take the required continuing education courses and exams, but rather had New Day compliance staff take the required courses and exams on their behalf.

8. At least three now-former New Day compliance staff either improperly attempted to satisfy continuing education requirements on behalf of New Day MLOs or coordinated with others to attempt to satisfy such education requirements on behalf of New Day MLOs.

9. On multiple occasions, New Day MLOs reported to New Day's now-former Vice President of Training information that they learned while taking SAFE MLO licensing exams.

10. On multiple occasions, New Day MLOs took and shared with now-former senior management and other MLOs screen-shots of questions included in the continuing education courses.

#### Fraud and Dishonesty Perpetrated by New Day Officers and Senior Managers

11. New Day's Chief Executive Officer had continuing education requirements completed on his behalf by other employees on at least eighteen occasions.

12. New Day's now-former Chief Operating Officer had continuing education requirements completed on his behalf by other employees on at least eighteen occasions, and, in at least one instance, directly asked a compliance staff member to take the required courses in his place.

13. The now-former head of licensing arranged for compliance staff to take the required continuing education exams on behalf of New Day MLOs.

14. The now-former Vice President of Training encouraged MLOs to report back to New Day staff with information that MLOs acquired while taking SAFE MLO licensing exams in order to update New Day's internal test preparation materials for new MLOs.

15. The now-former Senior Vice President of the Reverse Division was aware that New Day MLOs took and shared screen-shots of materials included in the continuing education courses, and had personally received copies of these materials.

16. At least six other New Day senior managers participated in or had knowledge of some or all of the conduct described above.

17. Despite New Day's decision to terminate or separate from certain senior managers for their participation in or knowledge of some or all of the conduct described above, New Day's parent corporation – Chrysalis Holdings LLC – subsequently rehired two of the former senior managers – raising doubts regarding New Day's purported concern for remedying its culture of fraud and dishonesty.

The Department's Mortgage Banking Examination of New Day

18. As part of the Department's effort to ensure that the residential mortgage lending industry is operating fairly, honestly, efficiently, and free from deceptive and anti-competitive practices, the Department periodically examines mortgage bankers' compliance with Articles 12-D and 12-E of the New York Banking Law, along with other applicable federal and state laws and regulations.

19. The Department's examination of New Day was conducted as of March 31, 2012 and focused on a sample of mortgage loan files. In the course of its examination, the Department uncovered a multitude of compliance failures, as detailed below.

20. For at least 110 subprime home loans in New York originated between August 28, 2008 and March 26, 2012, New Day failed to (a) provide the borrowers with information on the availability of loan counseling, and (b) include a legend on top of each borrower's mortgage stating that the mortgage is a subprime loan.

21. For at least three home loans in New York originated between January 1, 2009 and March 31, 2012, New Day stated in the Truth-In-Lending disclosures that any late charge

would be 2% of any delinquent payment, even though the respective mortgage notes stated that any late charge would be 4% of any delinquent payment.

22. For at least 30 home loans in New York originated between January 1, 2009 and March 31, 2012, New Day collected loan discount fees to reduce the initial interest rate, but failed to make the requisite application disclosure to the corresponding borrowers.

23. Between March 30, 2012 and June 28, 2012, New Day failed to maintain the requisite minimum line of credit with a credit line provider approved by the Department.

24. For New Day's annual Volume of Operation Report submitted to the Department in 2010 and 2011, New Day underreported its total New York revenue by \$272,009 and \$3,960, respectively.

#### Other Fraudulent and Dishonest Conduct

25. Further illustrating New Day's insufficient concern for consumer protection or regulatory compliance, on February 10, 2015, the Consumer Financial Protection Bureau (the "CFPB") found that New Day had engaged in deceptive acts or practices by failing to disclose payments to a veteran's organization that endorsed New Day. The CFPB also found that New Day had made payments to third parties in connection with the marketing of home loans that constituted illegal payments for referrals of mortgage origination business.

## Violations of Law

### Practices relating to MLO Education Requirements

#### *First Violation*

*(Failing to Ensure the Character, Fitness, and Education of MLOs; 3 N.Y.C.R.R. § 420.18)*

26. New Day permitted numerous MLOs subject to education requirements to engage in mortgage loan originating, even though New Day failed to ensure such MLOs had the requisite character, fitness, and education qualifications.

#### *Second Violation*

*(Lacking Proof of Completion of Education Requirements; 3 N.Y.C.R.R. § 420.20)*

27. New Day permitted numerous MLOs subject to education requirements to engage in mortgage loan originating, even though New Day failed to obtain acceptable proof of completion of such education requirements.

#### *Third Violation*

*(Failing to Maintain Responsibility, Experience, Character, and Fitness; NYBL § 595(1)(b))*

28. New Day and New Day's Chief Executive Officer and now-former Chief Operating Officer failed to maintain the financial responsibility, experience, character, and general fitness such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly, and efficiently.

### Department's Mortgage Banking Examination

#### *Fourth Violation*

*(Improper Issuance of Subprime Home Loans; NYBL §§ 6-M(2)(j) and 6-M(5))*

29. For at least 110 subprime home loans in New York originated between August 28, 2008 and March 26, 2012, New Day failed to (a) provide the borrowers with information on the availability of loan counseling, and (b) include a legend on top of each borrower's mortgage stating that the mortgage is a subprime loan.

*Fifth Violation*  
*(Misrepresenting Loan Terms; 3 N.Y.C.R.R. § 38.7(a)(1))*

30. For at least three home loans in New York originated between January 1, 2009 and March 31, 2012, New Day stated in the Truth-In-Lending disclosures that any late charge would be 2% of any delinquent payment, even though the respective mortgage notes stated that any late charge would be 4% of any delinquent payment.

*Sixth Violation*  
*(Failing to Provide Discount Points Notification; 3 N.Y.C.R.R. § 38.3(b)(1)(v))*

31. For at least 30 home loans in New York originated between January 1, 2009 and March 31, 2012, New Day charged discount points but failed to make the requisite pre-application disclosure to the borrowers.

*Seventh Violation*  
*(Failing to Maintain Minimum Line of Credit; 3 N.Y.C.R.R. § 410.1(b)(2))*

32. Between March 30, 2012 and June 28, 2012, New Day failed to maintain the requisite minimum line of credit with a credit line provider approved by the Department.

*Eighth Violation*  
*(Submitting False Volume of Operations Report; NYBL § 597)*

33. For New Day's annual Volume of Operations Report submitted to the Department in 2010 and 2011, New Day underreported its total New York revenue by \$272,009 and \$3,960, respectively.

**Settlement Provisions**

**License Surrender:**

34. New Day has elected to surrender its mortgage banker's license pursuant to Banking Law § 591 to engage in the business of making mortgage loans in New York. New Day shall immediately cease taking new loan applications from New York customers. No later than seven days after the execution of this Consent Order, New Day shall provide a written report to

the Department listing all loans for which New Day has received applications, but which have yet to close. The report must identify each loan and the projected closing dates. New Day will close these applications within thirty days of the date of this Consent Order. Any pending loan application that does not close by said date shall be transferred to a third party lender of the applicant's choosing, subject to the Department's approval. New Day shall bear all costs and fees related to the transfer. At the end of the 30-day period following the execution of this Consent Order, New Day shall surrender to the Department its mortgage banker's license. Neither New Day nor its principal owners or executive officers shall be permitted to engage in the mortgage banking business in the State of New York following the surrender of New Day's license.

35. New Day, its principal owners and executive officers shall be eligible to reapply for a mortgage banker's license no sooner than three years from the date of execution of this Consent Order.

36. New Day shall immediately surrender its status as an exempt mortgage servicer in New York. New Day shall have 90 days from the date of execution of this Consent Order to transfer the servicing rights for all New York loans to a third-party servicer of New Day's choosing, subject to the Department's approval. At the expiration of the 90-day period, New Day shall report to the Department in writing that it has complied with this provision. If, prior to the expiration of this 90-day period, New Day anticipates being unable to complete the transfer of servicing rights within the allotted time, New Day shall contact the Department in writing to request an extension of the 90-day period, which the Department may grant in its discretion, which shall not be unreasonably withheld. New Day shall submit any such request no later than 10 business days prior to the expiration of the 90-day period. In the case of Federal National

Mortgage Association (“FNMA”) or Federal Home Loan Mortgage Corporation (“FHLMC”) loans serviced by New Day, New Day shall provide notice to FNMA or FHLMC of New Day’s obligation to transfer servicing rights no later than 14 days from the date of execution of this Consent Order. New Day shall notify the Department in writing that it has provided the requisite notice immediately thereafter. Neither New Day nor its principal owners or executive officers shall be permitted to engage in the mortgage servicing business in the State of New York following the transfer of servicing rights for New York loans to a third-party servicer.

37. New Day shall be eligible to reapply for the status of exempt mortgage servicer no sooner than three years from the execution of this Consent Order.

**Monetary Payment:**

38. New Day shall pay a civil monetary penalty pursuant to Banking Law § 44 to the Department in the amount of \$1,000,000. New Day shall pay the entire amount within ten business days of executing this Consent Order. New Day agrees that it will not claim, assert, or apply for a tax deduction or tax credit with regard to any U.S. federal, state, or local tax, directly or indirectly, for any portion of the civil monetary penalty paid pursuant to this Consent Order.

**Breach of Consent Order:**

39. In the event that the Department believes New Day to be in breach of the Consent Order, the Department will provide written notice to New Day. Within ten business days of receiving such notice, or on a later date if so determined in the Department’s sole discretion, New Day shall appear before the Department to demonstrate that no breach has occurred or, to the extent pertinent, that the breach is not material or has been cured.

40. The Parties understand and agree that New Day’s failure to make the required showing within the designated time period shall be presumptive evidence of New Day’s breach.

Upon a finding that New Day has breached this Consent Order, the Department has all the remedies available to it under New York Banking and Financial Services Law and may use any evidence available to the Department in any ensuing hearings, notices, or orders.

**Waiver of Rights:**

41. The parties understand and agree that no provision of this Consent Order is subject to review in any court or tribunal outside the Department.

**Parties Bound by the Consent Order:**

42. This Consent Order is binding on the Department and New Day, as well as any successors and assigns that are under the Department's supervisory authority.

43. No further action will be taken by the Department against New Day for the conduct set forth in this Consent Order, provided that New Day complies with the terms of the Consent Order.

44. Notwithstanding any other provision in this Consent Order, however, the Department may undertake additional action against New Day for conduct that New Day did not disclose to the Department in writing in connection with this matter.

**IN WITNESS HEREOF**, the Parties have caused this Consent Order to be signed this 18 day of November, 2015.

NEW DAY FINANCIAL LLC

By:   
**ROBERT POSNER**  
Chief Executive Officer

NEW YORK STATE DEPARTMENT OF  
FINANCIAL SERVICES

By:   
**ANTHONY J. ALBANESE**  
Acting Superintendent of Financial  
Services