



NEW YORK STATE
DEPARTMENT OF FINANCIAL SERVICES
ONE STATE STREET
NEW YORK, NEW YORK 10004

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In the Matter of :

METROPOLITAN COMMERCIAL BANK :

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CONSENT ORDER

The New York State Department of Financial Services (the “Department” or “DFS”) and Metropolitan Commercial Bank (“MCB” or the “Bank”) are willing to resolve the matters described herein without further proceedings.

WHEREAS, MCB is a New York State chartered banking institution that is supervised by the Department, with more than \$6 billion in assets and a net income of \$59.4 million as of December 31, 2022;

WHEREAS, MCB operates six branches in the State of New York and has more than 200 employees;

WHEREAS, MCB maintained a third-party debit card program through which certain third-party companies, including MovoCash, Inc. (“MovoCash”) offered debit cards;

WHEREAS, compliance deficiencies at MovoCash and with respect to how the Bank oversaw the MovoCash program occurred such that unidentified, third-party fraud actors were able to misdirect hundreds of millions of dollars through MovoCash card accounts;

WHEREAS, MCB was successful in blocking approximately one-third of these funds for return to governmental authorities and voluntarily terminated its relationship with MovoCash in August of 2020;

WHEREAS, MCB has cooperated with the Department's investigation and has undertaken enhancements to its third-party debit card programs in an effort to prevent similar problems from recurring;

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 finds as follows:

THE DEPARTMENT'S FINDINGS FOLLOWING INVESTIGATION

Introduction

1. MCB is a commercial bank headquartered in New York, New York, with a small branch network operating within the state. In addition to its commercial real estate and commercial and industrial loan origination programs, the Bank has served as the issuer for third-party debit card programs nationwide.

2. After an investigation that included the review of documents, the taking of testimony of certain employees at MCB, and multiple factual submissions and a presentation by the Bank, the Department has determined that MCB failed to properly oversee the relationship with MovoCash and did not act quickly enough to address serious deficiencies in the MovoCash program.

3. The federal Bank Secrecy Act (“BSA”) requires financial institutions to establish, implement, and maintain an effective anti-money laundering (“AML”) program. New York law imposes these same requirements on regulated financial institutions.

4. A core component of an effective BSA/AML program is an institution’s Customer Identification Program (“CIP”). Regulated financial institutions must implement a CIP that is appropriate for its size and type of business. The CIP is intended to enable the bank to form a reasonable belief that it knows the true identity of each of its customers through the use of reasonable and risk-based procedures.

5. A bank may contract for the bank’s CIP responsibilities to be performed by a third party and use an agent to perform services on its behalf. Where a bank does so, the bank remains ultimately responsible for that third party’s compliance with the requirements of the bank’s CIP. As such, banks must establish adequate controls and review procedures for such relationships.

Factual Findings

6. In 2016, MCB and MovoCash entered into a Prepaid Card Issuer and Program Management Agreement (the “MovoCash Agreement”) pursuant to which MCB became the issuing bank for MovoCash’s Digital Prepaid Visa Card program (the “MovoCash Prepaid Card Program”). In connection with the MovoCash Prepaid Card Program, MovoCash marketed prepaid, stored value, or payment cards to consumers as a third-party program manager for MCB. MovoCash’s prepaid cards were issued by the Bank and constituted MCB accounts for purposes of CIP. Pursuant to the MovoCash Agreement, the Bank was responsible for ensuring that MovoCash’s customer identification process met the Bank’s CIP as required by applicable

law, including that the program manager form a reasonable belief as to the identity of the customers for these accounts.

7. As early as January 2020, senior compliance personnel at the Bank became aware that a primary risk associated with the Bank's third-party prepaid card programs, including MovoCash, was fraudulent account openings. Specifically, senior compliance personnel observed that the primary complaint received by the Bank in connection with these programs was that fraud actors opened these prepaid card accounts using another individual's identity and directed payments, including direct deposit payroll payments and government benefits, onto the fraudulently opened cards.

8. Additionally, in late January 2020, senior compliance personnel at the Bank were alerted by a third-party business partner of the Bank that there had been an increase in the volume of unusual transaction activity in connection with MovoCash prepaid accounts. Specifically, the primary transaction activity observed in connection with certain MovoCash accounts was wire transfer activity, which is indicative of money laundering or other illicit activity. The Bank inquired about this transaction activity with MovoCash, which responded that the relevant activity had been identified and addressed, and that the volume of such activity had substantially diminished. At that time, the Bank took no further steps to ensure that this type of transaction activity would not recur within the MovoCash program.

9. Beginning in March 2020, the Bank was on notice that it needed to be on heightened alert for fraud in connection with the then-emerging COVID-19 pandemic. On March 10, 2020, for example, the Department issued its Guidance to New York State Regulated Institutions and Request for Assurance of Operational Preparedness Relating to the Outbreak of the Novel Coronavirus (the "March 10, 2020, DFS Guidance"). The March 10, 2020, DFS

Guidance instructed regulated institutions, such as MCB, to establish plans to address and manage the potential effects of the coronavirus outbreak and assess potential disruptions and risks to their services and operations. This included an assessment of potential increased cyber-attacks and fraud, and the need for adequate governance and oversight, including ongoing review, updates, and tracking of relevant information from government sources and the institution's own monitoring.

10. At the same time, compliance personnel at the Bank observed that they were experiencing significantly more fraudulent account openings in connection with the MovoCash program than in connection with any other third-party program manager. In a March 2020 email concerning historic MovoCash transaction activity, a compliance officer noted that MovoCash's explanation as to why some accounts appeared to only attempt wire transfer money orders was that it was "most likely because organized fraud/crime groups identified a way to use MovoCash cards for this purpose."

11. In late March 2020, the Congress passed the CARES Act, which, among other things, expanded unemployment insurance benefits for millions of Americans. Notwithstanding the Department's call for heightened caution and monitoring, senior executives at the Bank failed to take adequate steps to address the major fraud problem with the MovoCash Prepaid Card Program following enactment of the CARES Act.

12. Immediately after enactment of the CARES Act, senior executives at the Bank became aware of a surge in new MovoCash account openings. At the same time, the Bank was receiving an increasing number of complaints from consumers relating to fraudulent MovoCash accounts that had been opened in their name.

13. By April 2020, the surge of new MovoCash account openings had abated, but it was evident that weak controls at MovoCash were continuing to create substantial fraud problems in connection with the MovoCash prepaid accounts. Senior executives at MCB discussed the possibility of terminating the relationship with MovoCash, but the Bank chose not to do so at that time, and, instead, continued to allow new accounts to be opened. An internal suggestion that more stringent CIP controls be implemented — e.g., documentary ID verification for new accounts — might be worth considering on a temporary basis was not ultimately acted upon. Around the same time, the same third-party business partner that warned the Bank in January about unusual transaction activity in connection with MovoCash accounts reached out to the Bank again. This time, the third-party business partner communicated to the Bank an observation that the unusual volume and transaction activity on MovoCash accounts was continuing, demonstrating that the previous response to that issue was ineffective.

14. In late May 2020, senior executives at the Bank were aware that additional controls that had been discussed with MovoCash in response to these issues were either not implemented or ineffective, and that the CIP processes were not working. The Bank demanded that MovoCash institute heightened controls to prevent fraudulent account openings and identify and block fraudulent accounts. While MovoCash agreed to do so, the measures it took to abate the fraud were inadequate.

15. In June 2020, the Bank was contacted by federal law enforcement about extensive unemployment fraud that was being facilitated by MovoCash accounts managed by the Bank, a fact that was already well known to the Bank. Compliance personnel directed these communications to several senior executives and the Bank committed to cooperating with law enforcement to assist in ongoing investigations. Accordingly, by this point, it was apparent to the

Bank that MCB's and MovoCash's previous actions had been ineffective at stopping the ongoing fraud. However, the Bank continued to allow MovoCash to open new accounts for another month. A large percentage of these funds were unemployment insurance payments issued pursuant to the CARES Act.

16. On July 6, 2020, the Bank was informed that at least 60,000-80,000 fraudulent MovoCash accounts were opened each week, and at least \$2 million was being taken out of the system through ACH card-to-bank transactions per day. On July 8, 2020, a senior executive at the Bank was informed by federal law enforcement that not a single unemployment benefit claim from New York State paid to MovoCash accounts was legitimate. Four days later, on July 12, 2020, MCB halted new account openings for the MovoCash Prepaid Card Program. That pause ultimately led to the Bank's decision to terminate the program altogether on August 19, 2020. The Bank's failure to act sooner helped facilitate more than \$300 million in pandemic unemployment benefits to be misdirected to the MCB-sponsored MovoCash accounts of unidentified, third-party fraud actors. The Bank was successful in blocking approximately one-third of these funds for return to governmental authorities.

17. Moreover, despite all of the Bank's awareness and acknowledgement of the ongoing fraud concerns with MovoCash, the Bank failed to submit a report to the Superintendent immediately upon discovering the fraud as is legally required.

Violations of Law and Regulations

18. MCB failed to maintain an effective and compliant anti-money laundering program, in violation of 3 N.Y.C.R.R. § 116.2.

19. MCB conducted its banking business in an unsafe and unsound manner, in violation of New York Banking Law § 44.

20. MCB failed to submit a report to the Superintendent, in violation of 23 N.Y.C.R.R. §§ 300.1 and 300.4.

NOW THEREFORE, to resolve this matter without further proceedings, the Department and the Bank stipulate and agree to the following terms and conditions:

SETTLEMENT PROVISIONS

Monetary Penalty

21. No later than ten (10) days after the Effective Date (as defined below) of this Consent Order, the Bank shall pay a total civil monetary penalty pursuant to New York Banking Law §§ 39 and 44 to the Department in the amount of fifteen million and 00/100 U.S. dollars (\$15,000,000.00). The payment shall be in the form of a wire transfer in accordance with instructions provided by the Department.

22. The Bank shall 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.

23. The Bank shall neither seek nor accept, directly or indirectly, reimbursement or indemnification with respect to payment of the penalty amount, including but not limited to, payment made pursuant to any insurance policy.

Remediation and Reporting

24. Within ninety (90) days of this Consent Order's effective date, MCB shall submit to the Department for its review a detailed, written description of all elements of its current program to supervise its third-party program managers, including without limitation:

- a. due diligence efforts with respect to new partnerships with third-party program managers;

- b. ongoing due diligence efforts of current third-party program managers;
- c. MCB's transaction monitoring of third-party program managers' activity;
a summary of all suspicious activity reporting, including with respect to any changes in reporting thresholds and any reporting backlogs;
- d. any terminations of agreements with third-party program managers including a description of the reason(s) therefor.

BSA/AML Compliance Program

25. Within ninety (90) days of the execution of this Consent Order, the Bank shall submit a status report that is acceptable to the Department with updates on any changes to the Bank's BSA/AML compliance program that are planned and/or underway, or have been implemented, in connection with its oversight of third-party program managers of the Bank's prepaid debit card program. At a minimum, the Status Report shall include updates on:

- a. a system of internal controls reasonably designed to ensure compliance with BSA/AML requirements and relevant state laws and regulations;
- b. a comprehensive BSA/AML risk assessment that identifies and considers all products and services of the Bank, customer types, geographic locations, and transaction volumes, as appropriate, in determining inherent and residual risks;
- c. management of the Bank's BSA/AML compliance program by a qualified compliance officer, who is given full autonomy, independence, and responsibility for implementing and maintaining an effective BSA/AML compliance program that is commensurate with the Bank's size and risk profile, and is supported by adequate staffing levels and resources;
- d. identification of management information systems used to achieve compliance with BSA/AML requirements and relevant state laws and regulations, and a timeline to review key systems to ensure they are configured to mitigate BSA/AML risks;
- e. comprehensive and timely independent testing for the Bank's compliance with applicable BSA/AML requirements and relevant state laws and regulations; and
- f. effective training for all appropriate MCB personnel that perform BSA/AML compliance-related functions for the Bank in all aspects of BSA/AML

requirements, relevant state laws and regulations, and relevant internal policies and procedures.

Corporate Governance and Management Oversight

26. Within ninety (90) days of the execution of this Consent Order, the Bank shall submit to the Department a Status Report acceptable to the Department on updates to the Bank's sustainable governance framework in connection with its oversight of third-party program managers of the Bank's prepaid debit card programs that, at a minimum, addresses, considers, and includes:

- a. actions the Bank has undertaken and will continue to undertake to maintain effective control over, and oversight of, MCB management's compliance with BSA/AML requirements and relevant state laws and regulations;
- b. clearly defined roles, responsibilities, and accountability regarding compliance with BSA/AML requirements and state laws and regulations for the Bank's respective management, compliance personnel, and internal audit staff;
- c. measures to ensure BSA/AML issues are appropriately tracked, escalated, and reviewed by the Bank's senior management;
- d. measures to ensure that the person or groups at the Bank charged with the responsibility of overseeing the Bank's compliance with BSA/AML requirements and relevant state laws and regulations possess appropriate subject matter expertise and are actively involved in carrying out such responsibilities;
- e. adequate resources to ensure the Bank's compliance with this Order, BSA/AML requirements, and state laws and regulations; and
- f. an appropriate and effective reporting structure that permits the Bank's BSA/AML compliance officer to report information in a timely and complete manner to the Bank thereof.

Customer Identification Program

27. Within ninety (90) days of the execution of this Consent Order, the Bank shall submit a Status Report acceptable to the Department on an enhanced Customer Identification

Program in connection with its oversight of third-party program managers of the Bank's prepaid debit card program. At a minimum, the Status Report shall include updates on:

- a. risk-based policies, procedures, and controls to ensure that complete and accurate customer information for all account holders is collected, analyzed, and retained consistent with the requirements of the Bank's CIP;
- b. a plan to remediate deficient due diligence for existing customer accounts of any third-party program manager;
- c. a revised methodology for assigning risk ratings to account holders that considers factors such as type of customer, type of products and services, geographic locations, and transaction volume;
- d. for each customer whose transactions require enhanced due diligence, risk-based procedures to:
 - i. determine the appropriate documentation necessary to verify the identity and business activities of the customer; and
 - ii. understand the normal and expected transactions of the customer;
- e. periodic reviews and evaluations of customer and account information for the entire customer base to ensure that information is current, complete, and that the risk rating reflects the current information, and if applicable, documenting rationales for any revisions made to the customer risk rating.

28. Every six months from the Effective Date of this Consent Order (as defined below), for a period of two years from the Effective Date, the Bank shall submit to the Department written progress reports detailing the form, manner, and anticipated completion date of all actions taken to secure compliance with the provisions of this Order and the results thereof, including, but not limited to, the steps enumerated in paragraphs 24 to 27 above. This reporting obligation may be extended by the Department, in its sole regulatory discretion, by providing written notice to the Bank. To the extent the Bank exits all existing relationships with its third-party program managers that provide retail services to consumers, the Bank may request that the two-year period referenced above be reduced by the Department.

Full and Complete Cooperation

30. The Bank commits and agrees that it will fully cooperate with the Department regarding all terms of this Consent Order.

Further Action by the Department

31. No further action will be taken by the Department against the Bank or its successors for the specific conduct set forth in this Consent Order — *i.e.*, concerning the Bank's failures related to the MovoCash prepaid card program — or in connection with the remediation set forth in this Consent Order, provided that the Bank fully complies with the terms of the Consent Order.

32. Notwithstanding any other provision in this Consent Order, however, the Department may undertake additional action against the Company for transactions or conduct that was not disclosed in the written materials submitted to the Department in connection with this matter.

Waiver of Rights

33. The Bank submits to the authority of the Superintendent to effectuate this Consent Order.

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

Parties Bound by the Consent Order

35. This Consent Order is binding on the Department and the Bank, as well as any successors and assigns. This Consent Order does not bind any federal or other state agency or any law enforcement authority.

Breach of Consent Order

36. In the event that the Department believes the Bank to be in material breach of the Consent Order, the Department will provide written notice to the Bank, and the Bank must, within ten (10) days of receiving such notice, or on a later date if so determined in the Department's sole discretion, appear before the Department to demonstrate that no material breach has occurred or, to the extent pertinent, that the breach is not material or has been cured.

37. The Bank understands and agrees that its failure to make the required showing within the designated time period shall be presumptive evidence of the Bank's breach. Upon a finding that a breach of this Consent Order has occurred, the Department has all the remedies available to it under New York Banking and Financial Services Law, and any other applicable laws, and may use any evidence available to the Department in any ensuing hearings, notices, or orders.

Notices

38. All notices or communications regarding this Consent Order shall be sent to:

For the Department:

Kathryn A. Taylor
Senior Assistant Deputy Superintendent for
Consumer Protection and Financial Enforcement
New York State Department of Financial Services
One State Street
New York, NY 10004

Ariana F. Reinhertz
Assistant Deputy Superintendent for
Consumer Protection and Financial Enforcement
New York State Department of Financial Services
One State Street
New York, NY 10004

For Metropolitan Commercial Bank:

Fred Erikson, Esq.
General Counsel
Metropolitan Commercial Bank
99 Park Avenue, 12th Floor
New York, New York 10016

Nicole Friedlander, Esq.
Sullivan & Cromwell LLP
125 Broad Street
New York, New York 10004

Miscellaneous

39. This Consent Order and any dispute thereunder shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.

40. This Consent Order may not be altered, modified, or changed unless in writing and signed by the parties hereto.

41. This Consent Order constitutes the entire agreement between the Department and the Bank and supersedes any prior communication, understanding, or agreement, whether written or oral, concerning the subject matter of this Consent Order.

42. Each provision of this Consent Order shall remain effective and enforceable against the Bank, its successors, and assigns, until stayed, modified, suspended, or terminated by the Department.

43. In the event that one or more provisions contained in this Consent Order shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Consent Order.

44. No promise, assurance, representation, or understanding other than those contained in this Consent Order has been made to induce any party to agree to the provisions of this Consent Order.

45. Nothing in this Consent Order shall be construed to prevent any consumer or any other third party from pursuing any right or remedy at law.

46. This Consent Order may be executed in one or more counterparts and shall become effective when such counterparts have been signed by each of the parties hereto (the “Effective Date”).

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IN WITNESS WHEREOF, the parties have caused this Consent Order to be signed on the dates set forth below.

**NEW YORK STATE DEPARTMENT OF
FINANCIAL SERVICES**

**METROPOLITAN
COMMERCIAL BANK**

By: /s/ Kathryn A. Taylor
KATHRYN A. TAYLOR
Senior Assistant Deputy Superintendent
Consumer Protection and Financial
Enforcement

October 18, 2023

By: /s/ Mark R. DeFazio
MARK R. DEFAZIO
President

October 18, 2023

By: /s/ Kevin R. Puvalowski
KEVIN R. PUVALOWSKI
Acting Executive Deputy Superintendent
for Consumer Protection and Financial
Enforcement

October 18, 2023

THE FOREGOING IS HEREBY APPROVED. IT IS SO ORDERED.

/s/ Adrienne A. Harris
ADRIENNE A. HARRIS
Superintendent of Financial Services

October 18, 2023