

**UNITED STATES OF AMERICA**

**BUREAU OF CONSUMER FINANCIAL PROTECTION**

ADMINISTRATIVE PROCEEDING

File No. 2020-BCFP-0001

In the Matter of:

Cottonwood Financial Ltd., d/b/a Cash Store

**CONSENT ORDER**

The Consumer Financial Protection Bureau (Bureau) has reviewed the installment lending, payday lending, title lending, marketing, collections, and furnishing practices of Cottonwood Financial Ltd., d/b/a Cash Store (Respondent, as defined below) and has identified violations of the Consumer Financial Protection Act of 2010 (CFPA), 12 U.S.C. §§ 5531(a), 5536(a)(1)(B); section 623 of the Fair Credit Reporting Act (FCRA), 15 U.S.C. §§ 1681 *et seq.*, and its implementing regulation, Regulation V, 12 C.F.R. pt. 1022; and the Truth in Lending Act (TILA), 15 U.S.C. §§ 1601-1666j, and its implementing regulation, Regulation Z, 12 C.F.R. pt. 1026. Under sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563, 5565, the Bureau issues this Consent Order (Consent Order).

**I  
Jurisdiction**

1. The Bureau has jurisdiction over this matter under the CFPA, 12 U.S.C. §§ 5563 and 5565; the FCRA, 15 U.S.C. § 1681s-2; and TILA, 15 U.S.C. §§ 1601-1666j.

## **II Stipulation**

2. Respondent has executed a “Stipulation and Consent to the Issuance of a Consent Order,” dated March 16, 2020 (Stipulation), which is incorporated by reference and is accepted by the Bureau. By this Stipulation, Respondent has consented to the issuance of this Consent Order by the Bureau under sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563 and 5565. Respondent admits only those facts necessary to establish the Bureau’s jurisdiction over Respondent and the subject matter of this action.

## **III Definitions**

3. The following definitions apply to this Consent Order:
- a. “Affected Consumers” are the 1,228 consumers identified by the Bureau who purchased installment loans using a discount code associated with Respondent’s television advertisements between January 1, 2013 and June 1, 2015.
  - b. “Clearly and Prominently” means:
    - i. In textual communications (e.g., printed publications or words displayed on the screen of an electronic device), the disclosure must be of a type size and location sufficiently noticeable for an ordinary consumer to read and comprehend it, in print that contrasts with the background on which it appears;
    - ii. In communications disseminated orally or through audible means (e.g., radio or streaming audio), the disclosure must be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it;

- iii. In communications disseminated through video means (e.g., television or streaming video), the disclosure must be in writing in a form consistent with subsection (i), and must appear on the screen for a duration sufficient for an ordinary consumer to read and comprehend it; and
    - iv. In communications that contain both audio and visual portions, the disclosure must be presented simultaneously in both the audio and visual portions of the communication.
- c. “Consumer Reporting Agency” or “CRA” refers to a Consumer Reporting Agency as defined by 15 U.S.C. § 1681a(f), and means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.
- d. “Effective Date” means the date on which the Consent Order is issued.
- e. “Regional Director” means the Regional Director for the Southeast Region for the Office of Supervision for the Bureau of Consumer Financial Protection, or his or her delegate.
- f. “Related Consumer Action” means a private action by or on behalf of one or more consumers or an enforcement action by another governmental agency brought against Respondent based on substantially the same facts as described in Section IV of this Consent Order.

- g. “Relevant Period” includes the period from January 1, 2013 to December 4, 2015.
- h. “Respondent” means Cottonwood Financial, Ltd., d/b/a/ Cash Store, and its successors and assigns.

#### **IV Bureau Findings and Conclusions**

The Bureau finds the following:

- 4. Respondent is a financial services company headquartered in Irving, Texas.
- 5. Respondent owns and operates approximately 340 locations across the following states: Idaho, Illinois, Michigan, New Mexico, Texas, Utah, and Wisconsin.
- 6. Respondent makes or, in certain states, assists consumers in obtaining, short-term, small-dollar loans, including payday, installment, and auto title loans. Since at least 2013, Respondent has offered multiple-payment loans in varying amounts, with installment payments due periodically. Respondent also makes or, in certain states, assists consumers in obtaining, loans secured by consumers’ vehicles and unsecured, short-term, single-installment loans.
- 7. Respondent is a covered person under the CFPB because it is in the business of making consumer loans and collecting debt related to such loans. 12 U.S.C. § 5481(6), (15)(A)(i), (15)(A)(x).
- 8. Respondent is a creditor under TILA and Regulation Z to the extent that it regularly extends consumer credit that is payable by agreement in more than four installments or for which the payment of a finance charge is or may be required, and is the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by agreement. 15 U.S.C. § 1602(g); 12 C.F.R. § 1026.2(a)(17).

9. Respondent is a person under FCRA, 15 U.S.C. § 1681a(b).
10. Respondent furnishes information relating to consumers to CRAs for inclusion in consumer reports. Respondent is therefore a furnisher under Regulation V, 12 C.F.R. § 1022.41(c).

#### **Findings and Conclusions as to Unfair Collection Call Practices**

11. As part of its loan-application process, Respondent asked consumers to list their primary telephone number and to provide the names and contact information for at least two references.
12. As references, consumers often identified their employers, family, or friends, and listed their employers' telephone numbers, along with the telephone numbers of family or friends.
13. When consumers failed to make payments on loans originated by Respondent, it frequently made numerous calls to the consumers themselves, their employers, and other third parties.
14. Respondent called some consumers more than 15 times daily, and a smaller portion more than 20 times daily.
15. Until at least December 2015, Respondent routinely called consumers' employers, consumers' other references, and other third parties as a tactic to obtain payments from the consumer rather than when unable to locate the consumer.
16. In numerous instances when making such calls, Respondent disclosed to third parties, or risked disclosing to third parties, the existence of consumers' delinquent debts.
17. In some instances, Respondent called consumers' workplaces multiple times a day, even after being told that the consumers were not allowed to receive calls at work and that future calls could endanger their employment.

18. In some instances, Respondent called consumers' references or other third parties it thought might be related to consumers even after being asked to stop.
19. Respondent's acts or practices have caused or were likely to cause substantial injury to the consumers from whom it sought to collect and to third parties. Respondent's repeated calls to consumers' workplaces caused or were likely to cause consumers harm including disciplinary action from employers, lost productivity and wages, and other negative employment consequences.
20. Respondent's high volume of calls to consumers also caused or was likely to cause harm to consumers as the repeated calls aggravated, annoyed, and distressed consumers.
21. Respondent's calling practices also caused or were likely to cause harm to persons who acted as third-party references.
22. Consumers, including the third parties who Respondent contacted, could not reasonably have avoided the harm because they did not know whether, when, or how these calls might occur and had no control over Respondent's use of these collection tactics. Consumers had no way of knowing Respondent would engage in such conduct before entering the loan transaction as Respondent does not disclose in its loan agreements that it will use these collection tactics if a loan becomes delinquent.
23. The injury resulting from these calls is not outweighed by countervailing benefits to consumers or competition. Many other means to collect debt that do not disrupt consumers' workplaces or otherwise harm consumers are available to Respondent. Any marginal benefit to consumers or to competition stemming from additional recoveries by Respondent is outweighed by substantial injury or likelihood of injury to consumers resulting from these practices.

24. Respondent's acts or practices therefore constitute unfair acts or practices in violation of the CFPA, 12 U.S.C. §§ 5531(a), 5536(a)(1)(B).

**Findings and Conclusions as to Deceptive Television Marketing**

25. Before June 2015, certain television advertising by Respondent stated that consumers could save 50% on finance charges.
26. In fact, Respondent did not give consumers who responded to the advertisements a 50% discount on all of the finance charges associated with the loan.
27. Instead, consumers would pay the first finance charge in full. Consumers would then receive a 50% rebate of that charge, which was mailed to them some time later. Consumers were required to pay 100% of the remaining finance charges and received no rebates of those payments.
28. Certain of Respondent's television advertisements ended with a screen displaying text urging consumers to call Respondent and "Save 50%" in large font at the top of the screen. Underneath, the screen included fine print text indicating that the promised discount was available only as a rebate, and applied only to the finance charge for the first scheduled payment. At the same time, the advertisements included voice-overs telling viewers to call now and "save up to 50%," or other substantially similar language, without reference to the limitations on the purported discount.
29. Respondent's representations in the advertisements were likely to mislead consumers acting reasonably because they presented the false impression that consumers would only have to pay 50% of a loan's finance charges. In fact, consumers actually had to pay all of the finance charges on these loans; the discount code provided them the opportunity to receive a rebate after they made their first scheduled payment, and then only of 50% of the finance charge portion of that payment.

30. From January 1, 2013 to June 1, 2015, more than 1,200 consumers redeemed codes related to Respondent's misleading television ads.
31. The statements in these television advertisements were material because they related to the cost of Respondent's loan products.
32. Respondent's representations set forth above constitute deceptive acts or practices in violation of the CFPA. 12 U.S.C. §§ 5531, 5536(a)(1)(B).

#### **Findings and Conclusions as to Deceptive Telemarketing Calls**

33. From at least January 2013 through January 2015, Respondent made thousands of marketing calls promoting its supposed 50% discounts after consumers expressed interest in a loan online.
34. When Respondent's telemarketers mentioned the discount, they typically described it as a 50% discount on the finance charge payment, and in most cases failed to mention the limitations that it would apply only to finance charges applicable to the first payment due, that it would be paid as a rebate, and that it would be provided only if the first payment was received in full on or before the due date.
35. Respondent's telemarketing agents did not direct consumers to review any disclosures related to the offer, and often encouraged consumers to write down the discount code, which the agents provided orally, without directing them to go to their website where the consumer might have seen the disclosures associated with the website coupon.
36. Respondent's representations in these calls misled or were likely to mislead consumers acting reasonably because they presented the false impression that consumers would only have to pay 50% of a loan's finance charges. In fact, consumers had to pay all of the finance charges on these loans; the discount code provided them the opportunity to



receive a rebate after they made their first scheduled payment, and then only of 50% of the finance charge portion of that payment.

37. Respondent's statements were material because they related to the cost of Respondent's loan products.
38. Respondent's representations set forth above constitute deceptive acts or practices in violation of the CFPA. 12 U.S.C. §§ 5531, 5536(a)(1)(B).

**Findings and Conclusions as to Respondent's Failure to Establish Consumer Reporting Policies and Procedures**

39. Respondent furnishes information relating to consumers to one or more CRAs for inclusion in a consumer report. 12 C.F.R. § 1022.41(c). It is therefore a furnisher under Regulation V.
40. Regulation V requires a furnisher to establish and implement reasonable written policies and procedures regarding the accuracy and integrity of the information relating to consumers that it furnishes to a consumer reporting agency. 12 C.F.R. § 1022.42(a).
41. Regulation V also requires furnishers to consider the guidelines provided in Appendix E when developing its policies and procedures and to incorporate those guidelines that are appropriate. 12 C.F.R. § 1022.42(b).
42. Regulation V also requires each furnisher to review its policies and procedures periodically and update them as necessary to ensure their continued effectiveness. 12 C.F.R. § 1022.42(c).
43. Between 2013 and 2015, Respondent furnished information—including loan amount, consumer's loan status, whether the loan was in default, and whether the consumer had disputed the debt in some way or entered into bankruptcy—for about 20,000 accounts.

44. From at least January 2013 to May 2015, Respondent did not have reasonable written policies and procedures concerning the accuracy and integrity of the consumer information that it furnished to CRAs, nor did it consider federal guidelines in developing its policies and procedures as required by federal law.
45. Respondent failed to review its policies and procedures periodically and update them as necessary to ensure their continued effectiveness.
46. Respondent therefore violated 12 C.F.R. § 1022.42(a)-(c).
47. Respondent's violations of the FCRA and Regulation V constitute violations of the CFPA. 12 U.S.C. § 5536(a)(1)(A).

**Findings and Conclusions as to Inadequate Disclosures of the APR in Telemarketing Calls**

48. Respondent is a creditor under Regulation Z. 15 U.S.C. § 1602(g); 12 C.F.R. § 1026.2(a)(17).
49. Respondent's telemarketers call consumers who have expressed interest in a loan online.
50. From January 1, 2013 through July 2015, Respondent made hundreds of thousands of telemarketing calls to consumers.
51. TILA requires that when creditors respond orally to consumers' inquiries about the cost of closed-end credit (for example, the interest rate), they must disclose the cost as an APR. 15 U.S.C. § 1665a; 12 C.F.R. § 1026.26(b).
52. Often, when consumers asked Respondent's telemarketing agents about the interest on loans or other questions relating to cost, the agents responded orally but failed to provide the APR as required by federal law.
53. Respondent's call scripts provided no guidance on how to answer a consumer's question about the interest rate or other costs of the loan.

54. In September 2014, a member of Respondent's compliance team raised, in writing, a concern that Respondent's lack of guidance about how to lawfully disclose a loan's cost and APR could result in violations of TILA. Respondent did not revise or update its script, nor provide further guidance to telemarketers in response to this issue.
55. The failure to state the APR when orally responding to consumers' questions about the costs of the loans violates Regulation Z. 12 C.F.R. § 1026.26.
56. Respondent's violations of TILA and Regulation Z constitute violations of the CFPA. 12 U.S.C. § 5536(a)(1)(A).

## **ORDER**

### **V Conduct Provisions**

**IT IS ORDERED**, under sections 1053 and 1055 of the CFPA, that:

57. Respondent and its officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly, must take the following affirmative actions:
  - a. Respondent, whether acting directly or indirectly, is permanently restrained from:
    - i. Engaging in collections conduct the consequence of which is to harass or annoy a person, including, but not limited to, calling consumers repeatedly with the intent to harass or annoy, calling consumers after requests to stop, and repeatedly calling consumers' places of work after requests to stop;
    - ii. Placing a call to any person about an account after that person has notified Respondent, orally or in writing, that the person wishes Respondent to cease further contact with the person;

- iii. Placing a call to a consumer's workplace if the consumer has asked Respondent not to, or if Respondent knows, or has reason to know, that such calls are prohibited by the employer; and
  - iv. In connection with collecting or attempting to collect a delinquent debt, disclosing the existence of such a debt to any employer, co-worker, or third-party reference, unless the consumer, after default, provided his or her documented, voluntary, affirmative, and specific permission on an opt-in basis for the third-party communication.
- b. Respondent, and its officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, sale, or performance of any consumer financial product or service, may not misrepresent, or assist others in misrepresenting, expressly or impliedly:
  - i. The terms of any discounts it offers, including in its television advertisements and telemarketing calls with consumers;
  - ii. That any discount involves a certain percentage discount, unless the discount is on the total cost of the product, or the advertisement Clearly and Prominently discloses the limitations of the discount; or
  - iii. That any discount provides for a reduction in the cost of a product, including that it provides a certain percentage "off" the cost of a product, unless the discount reduces the payments due from the

consumer, or, if the discount is provided via a rebate, the representation Clearly and Prominently discloses that the discount is in the form of a rebate.

- c. Respondent and its officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, and whether acting directly or indirectly, may not violate the FCRA, 15 U.S.C. §§ 1681-1681x, and its implementing regulation, Regulation V, 12 C.F.R. pt. 1022, and must take the following affirmative actions: within 90 days of the Effective Date, Respondent will review its written policies and procedures regarding the accuracy and integrity of the information relating to consumers that it furnishes to CRAs, to confirm that they comply with Regulation V, and update them as necessary to comply. In so doing, Respondent must consider the guidelines in Appendix E of the Furnisher Rule and incorporate those guidelines that are appropriate. Respondent must review its policies and procedures periodically and update them, as necessary, to ensure their continued effectiveness.
- d. Respondent, and its officers, agents, servants, employees, and attorneys who have actual notice of this Consent Order, whether acting directly or indirectly, must:
  - i. Ensure that employees who respond orally to inquiries about the cost of loan products disclose the APR of the loan product;
  - ii. Within 90 days of the Effective Date, review and update as necessary, and implement, a training program including: (1) information on how to correctly disclose the APR of a loan

product; and (2) information on what constitutes an inquiry about the cost of a loan;

- iii. Review and update as necessary, and implement, policies and procedures that include specific instructions on how to respond orally to an inquiry about the cost of a loan product with the APR. At a minimum, the policies and procedures for TILA compliance will require that Respondent examine a randomly selected sample of telemarketing calls, which at Respondent's discretion may be live or recorded, for failures to properly disclose the APR of a loan product on a monthly basis using industry-accepted standards for selection and testing. If telemarketing agents are identified as having violated TILA, Respondent will require those agents to participate in additional TILA compliance training.
- iv. Respondent will fully implement the TILA compliance policies and procedures within 120 days of the Effective Date.

Nothing in this Consent Order shall be read as an exception to this Paragraph.

## **VI Compliance Plan**

**IT IS FURTHER ORDERED** that:

58. Within 90 days of the Effective Date, Respondent must submit to the Regional Director for review and determination of non-objection a comprehensive compliance plan designed to ensure that Respondent's installment lending, payday lending, title lending, marketing, collections, and furnishing practices comply with the terms of this Consent Order (Compliance Plan). The Compliance Plan must, at a minimum:

- a. Include detailed steps for addressing each action required by this Consent Order;
  - b. Require that Respondent regularly monitor its records of incoming and outgoing consumer telephone calls;
  - c. Require that Respondent implement an effective method of logging requests by consumers and third parties not to be contacted about consumer's accounts and ensuring that those requests are honored;
  - d. Require ongoing education and training in TILA, FCRA and the applicable terms of this Consent Order for all appropriate employees, with training tailored to each individual's job duties or other role within the company. Respondent will document its training program and will review and update its training program at least annually to ensure that it provides appropriate individuals with the most relevant information. The training described in this paragraph must occur at least once per year during the term of this Consent Order, and may occur more frequently at the sole discretion of Respondent. Applicable new employees must receive the training described in this paragraph within 60 days of hire.
  - e. Require that the Compliance Plan be updated at least annually—or as required by changes in laws or regulations, or changes in Respondent's business strategies or activities—to ensure that the Compliance Plan remains current and effective; and
  - f. Include specific timeframes and deadlines for implementation of the steps described above.
59. The Regional Director will have the discretion to make a determination of non-objection to the Compliance Plan or direct the Respondent to revise it. If the Regional Director

directs the Respondent to revise the Compliance Plan, the Respondent must make the revisions and resubmit the Compliance Plan to the Regional Director within 45 days.

60. After receiving notification that the Regional Director has made a determination of non-objection to the Compliance Plan, the Respondent must implement and adhere to the steps, recommendations, deadlines, and timeframes outlined in the Compliance Plan.

## **VII Order to Pay Redress**

**IT IS FURTHER ORDERED** that:

61. Within 20 days of the Effective Date, Respondent must reserve or deposit into a segregated deposit account \$286,675.64, for the purpose of providing redress to Affected Consumers as required by this Section.
62. Within 60 days of the Effective Date, Respondent must submit to the Regional Director for review and non-objection a comprehensive written plan for providing redress consistent with this Consent Order (Redress Plan). The Regional Director will have the discretion to make a determination of non-objection to the Redress Plan or direct the Respondent to revise it. If the Regional Director directs the Respondent to revise the Redress Plan, the Respondent must make the revisions and resubmit the Redress Plan to the Regional Director within 15 days. After receiving notification that the Regional Director has made a determination of non-objection to the Redress Plan, the Respondent must implement and adhere to the steps, recommendations, deadlines, and timeframes outlined in the Redress Plan.



63. The Redress Plan must:
- a. Provide for full restitution of the total difference between what Affected Consumers actually received from the discount advertised on television and the full amount of a 50% discount on all finance charges on their loans;
  - b. Provide that the redress will be provided as a bank check mailed to each Affected Consumer;
  - c. Include a detailed description of the procedures to be used to issue and track redress payments;
  - d. Provide that Respondent shall pay for all costs of administering the Redress Plan as required by this Section;
  - e. Include the forms of the letters (Notification Letters) to be sent notifying Affected Consumers of the redress described in this Section, and a description of the process of sending the Notification Letters to consumers, which must include the following:
    - i. Respondent must send the Notification Letters by United States Postal Service first-class mail, address correction service requested, to the consumer's last address as maintained by Respondent's records;
    - ii. Respondent must mail a redress check with the Notification Letter and include language in the Notification Letter explaining how the amount of the redress payment to the consumers was calculated; a statement that the provision of the redress payment is in accordance with the terms of this Consent Order; and a statement

explaining that the redress payment will not subject the consumer to any new debt collection or credit reporting activities;

- iii. If the consumer, as of the Effective Date, has an allegedly outstanding debt with Respondent from a title or installment loan, the Notification Letter must state the amount of the consumers' outstanding debt. Respondent may not offset the amount of the redress payment against the allegedly outstanding debt;
  - iv. Respondent must not include in any envelope containing a Notification Letter any materials other than the approved Notification Letter and redress check;
- f. Require Respondent to make attempts to obtain a current address for any consumer whose redress check is returned for any reason, using at least the National Change of Address System, and to promptly re-mail all returned redress checks to current addresses. If a redress check for any consumer is returned to Respondent after such second mailing, or if a current mailing address cannot be identified using the National Change of Address System, Respondent must retain the redress amount of such consumer for a period of one hundred and eighty (180) days from the date the check was originally mailed, during which period such amount may be claimed by such consumer upon appropriate proof of identity;
- g. Include the form of a notification to be posted Clearly and Prominently on the home page of its website, [www.cashstore.com](http://www.cashstore.com), with information about the class of Affected Consumers, the redress provided by Respondent, and contact

information for consumers to inquire about whether they qualify as an Affected Consumer;

- h. Require a report be prepared by an internal auditor or third party documenting completion of redress, including any funds that Respondent was not able to return to Affected Consumers.
64. The total amount of redress payable to Affected Consumers under this Order shall not exceed \$286,675.64.
65. After completing the Redress Plan, if the amount of redress provided to Affected Consumers is less than \$286,675.64, within 30 days of the completion of the Redress Plan, Respondent must pay to the Bureau, by wire transfer to the Bureau or to the Bureau's agent, and according to the Bureau's wiring instructions, the difference between the amount of redress provided to Affected Consumers and \$286,675.64.
66. The Bureau may use these remaining funds to pay additional redress to Affected Consumers. If the Bureau determines, in its sole discretion, that additional redress is wholly or partially impracticable or otherwise inappropriate, or if funds remain after the additional redress is completed, the Bureau will deposit any remaining funds in the U.S. Treasury as disgorgement. Respondent will have no right to challenge any actions that the Bureau or its representatives may take under this Section.
67. Respondent may not condition the payment of any redress to any Affected Consumer under this Consent Order on that Affected Consumer waiving any right.

**VIII**  
**Order to Pay Civil Money Penalties**

**IT IS FURTHER ORDERED** that:

68. Under section 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the violations of law described in Section IV of this Consent Order, and taking into account the factors in 12 U.S.C. § 5565(c)(3), Respondent must pay a civil money penalty of \$1,100,000 to the Bureau.
69. Respondent must make the following payments by wire transfer to the Bureau or the Bureau's agent, in compliance with the Bureau's wiring instructions, to satisfy the penalty described in Paragraph 68. Within 30 days of the Effective Date, Respondent must pay \$500,000. Within 60 days of the Effective date, Respondent must pay an additional \$300,000. Within 90 days of the Effective Date, Respondent must pay the remaining \$300,000.
70. The civil money penalty paid under this Consent Order will be deposited in the Civil Penalty Fund of the Bureau as required by section 1017(d) of the CFPA, 12 U.S.C. § 5497(d).
71. Respondent must treat the civil money penalty paid under this Consent Order as a penalty paid to the government for all purposes. Regardless of how the Bureau ultimately uses those funds, Respondent may not:
  - a. Claim, assert, or apply for a tax deduction, tax credit, or any other tax benefit for any civil money penalty paid under this Consent Order; or
  - b. Seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made under any insurance policy, with regard to any civil money penalty paid under this Consent Order.

72. To preserve the deterrent effect of the civil money penalty in any Related Consumer Action, Respondent may not argue that Respondent is entitled to, nor may Respondent benefit by, any offset or reduction of any compensatory monetary remedies imposed in the Related Consumer Action because of the civil money penalty paid in this action. If the court in any Related Consumer Action offsets or otherwise reduces the amount of compensatory monetary remedies imposed against Respondent based on the civil money penalty paid in this action or based on any payment that the Bureau makes from the Civil Penalty Fund, Respondent must, within 30 days after entry of a final order granting such offset or reduction, notify the Bureau, and pay the amount of the offset or reduction to the U.S. Treasury. Such a payment will not be considered an additional civil money penalty and will not change the amount of the civil money penalty imposed in this action.

**IX**  
**Additional Monetary Provisions**

**IT IS FURTHER ORDERED** that:

73. In the event of any default on Respondent's obligations to make payment under this Consent Order, interest, computed under 28 U.S.C. § 1961, as amended, will accrue on any outstanding amounts not paid from the date of default to the date of payment, and will immediately become due and payable.
74. Respondent must relinquish all dominion, control, and title to the funds paid to the fullest extent permitted by law and no part of the funds may be returned to Respondent.
75. Under 31 U.S.C. § 7701, Respondent, unless it already has done so, must furnish to the Bureau its taxpayer identifying numbers, which may be used for purposes of collecting and reporting on any delinquent amount arising out of this Consent Order.

76. Within 30 days of the entry of a final judgment, consent order, or settlement in a Related Consumer Action, Respondent must notify the Regional Director of the final judgment, consent order, or settlement in writing. That notification must indicate the amount of redress, if any, that Respondent paid or is required to pay to consumers and describe the consumers or classes of consumers to whom that redress has been or will be paid.

**X**  
**Reporting Requirements**

**IT IS FURTHER ORDERED** that:

77. Respondent must notify the Bureau of any development that may affect compliance obligations arising under this Consent Order, including but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor company; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Consent Order; the filing of any bankruptcy or insolvency proceeding by or against Respondent; or a change in Respondent's name or address. Respondent must provide this notice, if practicable, at least 30 days before the development, but in any case no later than 14 days after the development.
78. Within 7 days of the Effective Date, Respondent must:
- a. Designate at least one telephone number and email, physical, and postal address as points of contact, which the Bureau may use to communicate with Respondent; and
  - b. Identify all businesses for which Respondent is the majority owner, or that Respondent directly or indirectly controls, by all of their names, telephone numbers, and physical, postal, email, and Internet addresses.

- c. Describe the activities of each such business, including the products and services offered, and the means of advertising, marketing, and sales.
79. Respondent must report any change in the information required to be submitted under Paragraph 78 at least 30 days before the change or as soon as practicable after the learning about the change, whichever is sooner.
  80. Within 90 days of receiving notice of non-objection to the Compliance Plan, and again one year after receiving notice of non-objection to the Compliance Plan, Respondent must submit to the Regional Director an accurate written compliance progress report (Compliance Report) that has been approved by the CEO, which, at a minimum:
    - a. Lists each applicable paragraph and subparagraph of the Order and describes in detail the manner and form in which Respondent has complied with each such paragraph and subparagraph of the Consent Order;
    - b. Describes in detail the manner and form in which Respondent has complied with the Compliance Plan and Redress Plan; and
    - c. Attaches a copy of each Order Acknowledgment obtained under Section XI, unless previously submitted to the Bureau.

## **XI**

### **Order Distribution and Acknowledgment**

**IT IS FURTHER ORDERED** that:

81. Within 30 days of the Effective Date, Respondent must deliver a copy of this Consent Order to each of its executive officers, as well as to any managers, employees, Service Providers, or other agents and representatives who have responsibilities related to the subject matter of the Consent Order.

82. For 5 years from the Effective Date, Respondent must deliver a copy of this Consent Order to any business entity resulting from any change in structure referred to in Section X, any future board members and executive officers, as well as to any managers, employees, Service Providers, or other agents and representatives who will have responsibilities related to the subject matter of the Consent Order before they assume their responsibilities.
83. Respondent must secure a signed and dated statement acknowledging receipt of a copy of this Consent Order, ensuring that any electronic signatures comply with the requirements of the E-Sign Act, 15 U.S.C. § 7001 *et seq.*, within 30 days of delivery, from all persons receiving a copy of this Consent Order under this Section.

## **XII Recordkeeping**

**IT IS FURTHER ORDERED** that:

84. Respondent must create, or if already created, must retain for the duration of the Consent Order, the following business records:
- a. All documents and records necessary to demonstrate full compliance with each provision of this Consent Order, including all submissions to the Bureau; and
  - b. Copies of all sales scripts; training materials; advertisements; websites; and other marketing materials relating to the subject of this Consent Order, including any such materials used by a third party on behalf of Respondent.
  - c. For each individual Affected Consumer: the consumer's name, address, phone number, email address; amount paid, and quantity of loans.
85. Respondent must retain the documents identified in Paragraph 84 for the duration of the Consent Order.



86. Respondent must make the documents identified in Paragraph 84 available to the Bureau upon the Bureau's request.

**XIII**  
**Notices**

**IT IS FURTHER ORDERED** that:

87. Unless otherwise directed in writing by the Bureau, Respondent must provide all submissions, requests, communications, or other documents relating to this Consent Order in writing, with the subject line, "*In re* Cottonwood Financial Ltd., File No. 2020-BCFP-0001" and send them by overnight courier or first-class mail to the below address and contemporaneously by email to [Enforcement\\_Compliance@cfpb.gov](mailto:Enforcement_Compliance@cfpb.gov):

James L. Carley  
Regional Director, Bureau Southeast Region  
Consumer Financial Protection Bureau  
1700 G Street, N.W.  
Washington D.C. 20552

**XIV**  
**Cooperation with the Bureau**

**IT IS FURTHER ORDERED** that:

88. Respondent must cooperate fully to help the Bureau determine the identity and location of, and the amount of injury sustained by, each Affected Consumer. Respondent must provide such information in its or its agents' possession or control within 14 days of receiving a written request from the Bureau.

**XV**  
**Compliance Monitoring**

**IT IS FURTHER ORDERED** that, to monitor Respondent's compliance with this Consent Order:

89. Within 14 days of receipt of a written request from the Bureau, Respondent must submit additional Compliance Reports or other requested non-privileged information, related to requirements of this Consent Order, which must be made under penalty of perjury; provide sworn testimony related to requirements of this Consent Order and Respondent's compliance with those requirements; or produce non-privileged documents related to requirements of this Consent Order and Respondent's compliance with those requirements.
90. Respondent must permit Bureau representatives to interview about the requirements of this Consent Order and Respondent's compliance with those requirements any employee or other person affiliated with Respondent who has agreed to such an interview. The person interviewed may have counsel present.
91. Nothing in this Consent Order will limit the Bureau's lawful use of civil investigative demands under 12 C.F.R. § 1080.6 or other compulsory process.

**XVI**  
**Modifications to Non-Material Requirements**

**IT IS FURTHER ORDERED** that:

92. Respondent may seek a modification to non-material requirements of this Consent Order (e.g., reasonable extensions of time and changes to reporting requirements) by submitting a written request to the Regional Director.
93. The Regional Director may, in his or her discretion, modify any non-material requirements of this Consent Order (e.g., reasonable extensions of time and changes to

reporting requirements) if he or she determines good cause justifies the modification. Any such modification by the Regional Director must be in writing.

## **XVII Administrative Provisions**

**IT IS FURTHER ORDERED** that:

94. The provisions of this Consent Order do not bar, estop, or otherwise prevent the Bureau, or any other governmental agency, from taking any other action against Respondent, except as described in Paragraph 95.
95. The Bureau releases and discharges Respondent from all potential liability for law violations that the Bureau has or might have asserted based on the practices described in Section IV of this Consent Order, to the extent such practices occurred before the Effective Date and the Bureau knows about them as of the Effective Date. The Bureau may use the practices described in this Consent Order in future enforcement actions against Respondent and its affiliates, including, without limitation, to establish a pattern or practice of violations or the continuation of a pattern or practice of violations or to calculate the amount of any penalty. This release does not preclude or affect any right of the Bureau to determine and ensure compliance with the Consent Order, or to seek penalties for any violations of the Consent Order.
96. This Consent Order is intended to be, and will be construed as, a final Consent Order issued under section 1053 of the CFPA, 12 U.S.C. § 5563, and expressly does not form, and may not be construed to form, a contract binding the Bureau or the United States.
97. This Consent Order will terminate 5 years from the Effective Date. The Consent Order will remain effective and enforceable until such time, except to the extent that any

provisions of this Consent Order have been amended, suspended, waived, or terminated in writing by the Bureau or its designated agent.

98. Calculation of time limitations will run from the Effective Date and be based on calendar days, unless otherwise noted.
99. Should Respondent seek to transfer or assign all or part of its operations that are subject to this Consent Order, Respondent must, as a condition of sale, obtain the written agreement of the transferee or assignee to comply with all applicable provisions of this Consent Order.
100. The provisions of this Consent Order will be enforceable by the Bureau. For any violation of this Consent Order, the Bureau may impose the maximum amount of civil money penalties allowed under section 1055(c) of the CFPA, 12 U.S.C. § 5565(c). In connection with any attempt by the Bureau to enforce this Consent Order in federal district court, the Bureau may serve Respondent wherever Respondent may be found and Respondent may not contest that court's personal jurisdiction over Respondent.
101. This Consent Order and the accompanying Stipulation contain the complete agreement between the parties. The parties have made no promises, representations, or warranties other than what is contained in this Consent Order and the accompanying Stipulation. This Consent Order and the accompanying Stipulation supersede any prior oral or written communications, discussions, or understandings.
102. Nothing in this Consent Order or the accompanying Stipulation may be construed as allowing the Respondent, its officers, or employees to violate any law, rule, or regulation.

**IT IS SO ORDERED**, this 30th day of March, 2020.

A handwritten signature in black ink, appearing to read "Kathleen L. Kraninger". The signature is written in a cursive style with a large initial "K".

Kathleen L. Kraninger

Director

Bureau of Consumer Financial Protection