SETTLEMENT AGREEMENT AND CONSENT ORDER

NEW DAY FINANCIAL, LLC d/b/a **NEWDAY USA**

WHEREAS, New Day Financial, LLC d/b/a NewDay USA ("New Day") is a limited liability company formed in Delaware in 2002, with headquarters located at 8160 Maple Lawn Boulevard, Suite 300, Fulton, Maryland 20759.

WHEREAS, the States of Alabama, Alaska, Arizona, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Washington, Wisconsin, Wyoming, the Commonwealths of Kentucky, Massachusetts, Pennsylvania and Virginia, and the District of Columbia (individually, a "Participating State," and collectively, the "Participating States") have agreed, through their respective state mortgage regulatory agency, to negotiate and enter into this Settlement Agreement and Consent Order (hereinafter referred to as the "Agreement").

WHEREAS, the state mortgage regulators of the Participating States (hereinafter referred to individually as a "State Mortgage Regulator," and collectively as the "State Mortgage Regulators") are members of the Conference of State Bank Supervisors ("CSBS") and have agreed to address enforcement concerns with New Day in a collective and coordinated manner, working through the Multi-State Mortgage Committee ("MMC").

WHEREAS, New Day is licensed as a mortgage broker and/or lender under the respective laws of each Participating State.

WHEREAS, the State Regulatory Registry LLC ("SRR"), a wholly owned subsidiary of CSBS, owns and operates the Nationwide Mortgage Licensing System & Registry ("NMLS"). SRR administers continuing education ("CE") and Uniform State Test protocols. Title V of Public Law 110-289, the Secure and Fair Enforcement for Mortgage Licensing Act of 2008 (the "SAFE Act"), requires that state-licensed mortgage loan originators ("MLOs") complete annual continuing education. In order to meet CE requirements contemplated under the SAFE Act, state-licensed MLOs must complete 8

hours of NMLS approved education.

WHEREAS, on October 7, 2013, a former employee of New Day filed a complaint with SRR, alleging that employees of New Day had violated the rules of conduct of the NMLS by providing or receiving assistance on and misusing study materials for the SAFE mortgage loan originator testing program. Specifically, the complainant alleged that the Director of Training for New Day encouraged MLOs to report information that they acquired while taking the SAFE mortgage loan originator test for the purpose of updating New Day's internal test preparation materials. Additionally, the complainant alleged that a Senior Vice President and Account Executive at New Day shared with MLOs employed at New Day the answers to quizzes and/or tests that are included in the NMLS approved pre-licensure and continuing education courses. Sharing this information allowed those MLOs to more quickly complete the courses and to circumvent the intent of the courses.

WHEREAS, the Mortgage Testing and Education Board ("MTEB"), which was created by the SRR, investigated the complaint. On October 25, 2013, the SRR notified New Day of the complaint and investigation.

WHEREAS, on November 26, 2013, New Day submitted a written response to the SRR regarding New Day's investigation into the allegations in the complaint (the "November Letter"). New Day informed the SRR in the November Letter of the following:

1) That upon being made aware of the SRR complaint and investigation, New Day retained an outside law firm to conduct an internal investigation (hereinafter the "Internal Investigation") into the veracity of the allegations against New Day. The Internal Investigation included staff interviews, a review of pertinent documents, and a consideration of company policies and procedures applicable to the matters at issue.
2) That the Internal Investigation determined that New Day employees had violated the NMLS Rules of Conduct for Test Takers and Standards of Conduct for Course Providers.
3) That during the course of the Internal Investigation it also became known that certain New Day MLOs had engaged New Day compliance staff to sit through

the multi-hour online continuing education program and take the associated quizzes on their behalf. As a result, New Day directed the scope of the Internal Investigation to be broadened in an effort to determine the full extent of these additional matters. Based on the findings of the expanded Internal Investigation, it became clear that certain midlevel and senior managers at New Day had knowledge of and had participated in the conduct at issue.

4) That as a result of the Internal Investigation findings, New Day terminated the head of its Virginia sales division, the head of its television division, the head of recruiting, the Delaware Branch Manager, and a Vice President for Sales. Additionally, the head of New Day's reverse mortgage division resigned.

5) That New Day demoted and/or reduced the pay of certain MLOs who acknowledged allowing others to complete their continuing education requirements.

6) That New Day also implemented the following additional remedial measures:

    a. All New Day employees with a continuing education requirement for 2013 were required to retake those courses in a proctored and controlled environment provided by a third-party vendor;

    b. All New Day employees with continuing education requirements now and in the future will meet those obligations in a proctored and controlled environment using either "live" or "live-equivalent" teaching modalities and overseen by New Day;

    c. The implementation of a "tip line" for the anonymous reporting of compliance concerns by New Day employees. The tip line is maintained by a third-party service provider who reports to a designated compliance executive;

    d. The development and implementation of a Whistle Blower Policy encouraging the reporting of compliance violations, and safeguarding the rights of those who report such violations;

    e. On a quarterly basis, all middle and senior level managers are required to certify in writing to their supervisors that they are appropriately overseeing the activities of their subordinates, that those activities

comply with all applicable federal and state laws and regulations to the best of their knowledge, and that they are aware of no conduct that violates applicable federal and/or state laws and regulations; and

f. All employees are and will continue to be provided with business ethics education above and beyond what is required by federal and state mortgage lender licensure requirements on an annual basis.

WHEREAS, upon receipt of New Day's letter stating the results of the Internal Investigation, the SRR's Review Committee issued a report on its investigation into New Day. The Review Committee found that "[New Day] through the conduct of some of its loan officers in sharing with [the Director of Training] confidential NMLS test information, and especially through the conduct of [the Director of Training] in regularly eliciting such information from the loan officers, violated Rule of Conduct [for Test Takers] 7." The Review Committee also found that New Day violated Rule of Conduct for Test Takers 11 "by fostering, through the actions and inactions of its executive leadership, in at least some of its offices, a culture apparently based primarily on production quotas . . ." The Review Committee did credit New Day for making "some significant remedial changes" and noted that "any violations do not appear to be continuing."

WHEREAS, on May 8, 2014, New Day declined to appeal the Review Committee's determinations and requested that the SRR refer this matter to the MMC for review and consideration.

WHEREAS, based on the referral from the SRR, the MMC coordinated an additional investigation into this matter. Specifically, as requested by the MMC, on July 9, 2014, the State Mortgage Regulator for the State of Maryland began an investigation into this matter focusing on identifying the extent of knowledge senior management at New Day had of the misconduct described herein (the "Maryland Investigation").

WHEREAS, as a result of the Maryland Investigation, the following relevant facts and determinations were made, including, but not limited to:

1) That employees of New Day had in fact violated the NMLS Rules of Conduct for Test Takers by having employees take information from the testing program and storing that information so as to teach other employees what was

on the test.

2) That certain New Day employees admitted to participating in a practice where certain members of the New Day compliance staff would take continuing education course and quiz requirements on their behalf, at times for compensation. Specifically, the Maryland Investigation determined that at least twenty (20) employees had continuing education requirements taken for them by other New Day employees.

3) That the practice of New Day employees taking continuing education courses and quiz requirements on behalf of other employees began as early as December 7, 2005 and continued until it was uncovered by the Internal Investigation.

4) That New Day notified the SRR that, as a result of the Internal Investigation, several senior managers and employees were terminated, resigned or retired. The Maryland Investigation determined, however, that one of those individuals was subsequently rehired by New Day under a part-time consulting contract. The Maryland Investigation also determined that another of those employees was subsequently hired by Chrysalis Holdings LLC ("Chrysalis"), the parent company of New Day. Neither the SRR nor the MMC were made aware of the hiring of these two individuals into these positions.

5) That Robert Posner, the Chief Executive Officer of New Day, acknowledged that continuing education courses were taken for him by members of the New Day staff. The Maryland Investigation determined that Mr. Posner had continuing education requirements completed for him by other employees at least eighteen (18) times. He stated that he was unaware of his requirements and only became aware of this activity after the initial complaint was disclosed to New Day by the SRR.

6) That Paul Alger, the Chief Operating Officer of New Day, acknowledged that continuing education courses were taken for him by members of the New Day compliance team. The Maryland Investigation determined that Mr. Alger had continuing education requirements completed for him by other employees at

least eighteen (18) times. He claimed that he was unaware of his requirements and only became aware of this activity after the initial complaint was disclosed to New Day by the SRR. Contrary to this assertion, however, the Maryland Investigation uncovered evidence demonstrating that Mr. Alger did indeed have direct knowledge of and condoned these practices while they were occurring.

WHEREAS, New Day represents to the State Mortgage Regulators that New Day is implementing measures to comply with its obligations under this Agreement, and that New Day will hereafter continue to comply with all regulatory requirements imposed by each State Mortgage Regulator.

WHEREAS, New Day acknowledges that the State Mortgage Regulators are relying, in part, upon New Day's representations and warranties stated herein in making their determinations in this matter. New Day further acknowledges that this Agreement may be revoked and the State Mortgage Regulators may pursue any and all remedies available under the law against New Day if the State Mortgage Regulators later find that New Day knowingly or willfully withheld information from the State Mortgage Regulators.

WHEREAS, New Day enters into this Agreement solely for the purpose of resolving disputes with the State Mortgage Regulators concerning the conduct described herein in their entirety and without admitting any allegations or implications of fact, and without admitting any violations of applicable laws, regulations, or rules governing the conduct and operation of its mortgage lending business. New Day acknowledges that the State Mortgage Regulators have and maintain jurisdiction over the underlying dispute and therefor have the authority to fully resolve the matter.

WHEREAS, New Day represents that it has implemented its self-imposed remedial actions discussed in its November Letter, and will continue implementing said practices until the State Mortgage Regulators agree, through amendment of this Agreement, to modify any or all of the terms laid out thereto.

WHEREAS, New Day agrees to fully cooperate with any State Mortgage Regulator in any other related investigation involving business entities or individuals not a party to this Agreement, including providing testimony at any administrative or other

legal proceeding that may arise.

WHEREAS, the State Mortgage Regulators and New Day (the "Parties") acknowledge and agree that the State Mortgage Regulators have legal authority to initiate administrative actions based on the conduct described herein, but the State Mortgage Regulators agree not to initiate separate actions and instead will remediate all of the alleged deficient and unlawful conduct of New Day identified herein by executing this Agreement.

WHEREAS, New Day hereby knowingly, willingly, voluntarily, and irrevocably consents to the execution of this Agreement pursuant to the authority vested in each State Mortgage Regulator and agrees that it understands all of the terms and conditions contained herein. New Day acknowledges that it has full knowledge of its rights to notice and a hearing pursuant to the laws of the respective Participating States. By voluntarily entering into this Agreement, New Day waives any right to notice and a hearing, and review of such hearing, and also herein waives all rights to any other judicial appeal concerning the terms, conditions, and related obligations set forth in this Agreement. New Day further acknowledges that it has had an opportunity to consult with independent legal counsel in connection with its waiver of rights and with the negotiation and execution of this Agreement, and that New Day has either consulted with independent legal counsel or has knowingly elected not to do so.

WHEREAS, New Day represents that the person below is authorized to execute this Agreement and to legally bind New Day.

NOW, THEREFORE, this Agreement having been negotiated by the Parties in order to resolve the issues identified herein without incurring the costs, inconvenience and delays associated with protracted administrative and judicial proceedings, it is by the State Mortgage Regulators listed below hereby **ORDERED**:

I. JURISDICTION

1. That pursuant to the licensing and supervision laws of the Participating States, the Participating States have jurisdiction over New Day as described herein and may enforce the terms of this Agreement thereon unless otherwise stated in this Agreement.

II. ADMINISTRATIVE PENALTY AND INVESTIGATION FEE

2. *Administrative Penalty.* That New Day shall pay an administrative penalty of five million one hundred and sixty thousand dollars ($5,160,000.00) to be divided equally among the State Mortgage Regulators.

3. That New Day shall pay this administrative penalty by the means designated by each Participating State in two (2) equal installment payments over the course of six (6) months, with the first payment made upon the Agreement being fully executed, and final payment being made on or before six (6) months thereafter.

4. *Investigation Fee.* That New Day shall pay an investigation fee of five thousand nine hundred six dollars and twenty five cents ($5,906.25) to the State Mortgage Regulator for the State of Maryland through the NMLS immediately upon the Agreement being fully executed.

III. INDEPENDENT AUDITOR

5. That within sixty (60) days upon its execution of this Agreement, New Day will retain an independent auditing firm (the "Auditor"), which Auditor shall have been previously approved by the State Mortgage Regulator for the State of Maryland in consultation with the State Mortgage Regulators, to conduct an independent analysis and provide recommendations in the following areas: 1) a review of New Day policies and procedures, to ensure that New Day is, and will continue to be, in compliance with all of its obligations and duties arising under any federal or state law, as well as ensuring that it is operating in compliance with accepted business practices for a mortgage company of its size and scope of business; and 2) a review of New Day's training and education program, including, but not limited to, its training and education program for MLOs and Qualified Individuals, as defined under NMLS standards, to ensure that New Day is, and will continue to be, in compliance with all of its obligations and duties arising under any contract or agreement, or under any federal or state law, as well as to evaluate New Day's program compared to accepted best business practices for mortgage companies of its size and scope of business.

6. That the Auditor shall produce an initial report, with recommendations, within two

hundred seventy (270) days after being retained pursuant to the terms of this Agreement, and a follow-up report within two hundred seventy (270) days thereafter, with such reports being simultaneously furnished to New Day and the MMC. The Auditor should allow a reasonable timeframe for New Day to evaluate and implement any of the recommendations from the initial report before conducting its follow-up work. However, the Auditor must complete the obligations described herein within five hundred forty (540) days after being retained pursuant to the terms of this Agreement.

7. That New Day shall submit a report to the MMC, that has been reviewed and approved by the Board of Directors of Chrysalis, within two hundred and seventy (270) days of the execution of the Agreement providing a comprehensive plan (the "Plan") for appropriate corporate management and governance structures, incorporating best business practices for a mortgage company of its size and scope of business. Two hundred and seventy (270) days thereafter, New Day shall submit to the Board of Directors of Chrysalis and the MMC a follow-up report detailing the steps it has taken to implement the Plan.

IV. CHIEF OPERATING OFFICER

8. That immediately upon the Agreement being fully executed, Paul Alger will be removed as the Chief Operating Officer of New Day. Paul Alger may retain his minority ownership interest in New Day and may remain employed with New Day, however, he shall not hold any position that would be deemed a "control person" under the NMLS standards or a position in senior management, either by title or by action.

9. That within one hundred and eighty (180) days upon its execution of the Agreement, New Day will employ and/or appoint an individual other than the President and/or Chief Executive Officer of the company to be the Chief Operating Officer ("COO") for the company. The COO shall have the authority, responsibilities, and duties commonly understood for the position of a chief operating officer for a mortgage company having the size and scope of business of that of New Day. The COO shall have the requisite background, experience, and skill set necessary to fulfill the duties of a chief operating officer for a mortgage company having the size and scope of business of that of New Day.

10. That nothing in this Agreement should be construed to limit the obligation of New Day to notify and receive approval for a change in management requirement imposed under the laws of any Participating State, including any obligations with regard to the appointment of the COO described herein.

V. ENFORCEMENT

11. *No Restriction on Existing Examination and Investigative Authority.* That this Agreement shall in no way preclude the State Mortgage Regulators from exercising their examination or investigative authority authorized under the laws of the Participating States in the instance a determination is made wherein New Day is found not to be adhering to the requirements of the Agreement or involving any unrelated matter not subject to the terms of this Agreement.

12. *Sharing of Information and Cooperation.* That the State Mortgage Regulators may collectively or individually request and receive any information or documents in the possession of the MMC. This Agreement shall not limit New Day's obligations, as licensees of the State Mortgage Regulators, to cooperate with any examination or investigation, including but not limited to, any obligation to timely provide requested information or documents to the State Mortgage Regulators.

VI. GENERAL PROVISIONS

13. *Effectiveness.* That this Agreement shall become effective upon execution by all of the named State Mortgage Regulators (the "Effective Date").

14. *Standing and Choice of Law.* That each State Mortgage Regulator has standing to enforce this Agreement in the judicial or administrative process otherwise authorized under the laws and regulations of the corresponding Participating State. Upon entry, this Agreement shall be deemed a final order of the respective State Mortgage Regulators unless adoption of a subsequent order is necessary under the laws of the Participating States. In the event of any disagreement between any State Mortgage Regulator and New Day regarding the enforceability or interpretation of this Agreement and compliance therewith, the courts or administrative agency authorized under the laws of the Participating State shall have exclusive jurisdiction over the dispute, and the laws of the

Participating State shall govern the interpretation, construction, and enforceability of this Agreement. Additionally, a State Mortgage Regulator may consider this Agreement and the facts set forth herein in connection with, and in deciding, any examination, action, or proceeding under the jurisdiction of that State Mortgage Regulator; and that this Agreement may, if relevant, be admitted into evidence in any matter before a State Mortgage Regulator.

15. *Adoption of Subsequent Orders to Incorporate Terms.* That a State Mortgage Regulator, if deemed necessary under the laws and regulations of the corresponding Participating State, may issue a separate administrative order to adopt and incorporate the terms and conditions of this Agreement. A State Mortgage Regulator may *sua sponte* issue such subsequent order without the review and approval of New Day provided the subsequent order does not amend, alter, or otherwise change the terms of the Agreement. In the event a subsequent order amends, alters, or otherwise changes the terms of the Agreement, the terms of the Agreement as set forth herein will control.

16. That except as otherwise agreed to in this Agreement, each party to this Agreement will bear its own costs and attorneys' fees associated with this enforcement action.

17. That nothing in this Agreement shall relieve New Day of its obligation to comply with applicable state and federal law.

18. That this Agreement supersedes any prior oral or written discussion or agreement, and constitutes the entire agreement between the Parties relating to the subject matter herein.

It is so **ORDERED**.

IN WITNESS WHEREOF, in consideration of the foregoing, including the recital paragraphs, and with the Parties intending to be legally bound do hereby execute this Agreement on this 13th day of April, 2015.

(SIGNATURE PAGES WITHHELD)