

ORDER NO. 2018-029

IN THE MATTER OF:	§	BEFORE:
	§	
UPHOLD HQ, Inc. f/k/a	§	THE BANKING
BITRESERVE HQ, Inc.	§	COMMISSIONER OF TEXAS
	§	
LARKSPUR, CALIFORNIA	§	AUSTIN, TRAVIS COUNTY, TEXAS

CONSENT ORDER

On this day, in the matter of Uphold HQ, Inc. f/k/a Bitreserve HQ, Inc. (“Uphold” or “Respondent”) was submitted to me, Charles G. Cooper, the Banking Commissioner (“Commissioner”) of the State of Texas, for consideration and action.

1. Uphold HQ, Inc. is a corporation with its principal office located in Larkspur, California.
2. The Texas Department of Banking (“Department”) has jurisdiction over Uphold and the subject matter of this proceeding pursuant to *Texas Finance Code* (“Finance Code”) Chapter 151 (“Chapter 151”).
3. The Commissioner has the authority to issue this Consent Order (“Order”) and to assess administrative penalties pursuant to Finance Code §§ 151.706 and 151.707.
4. Uphold has been properly notified of its right to an administrative hearing under Chapter 151.
5. The undersigned representative of Uphold has full authority to enter into and bind Uphold to the terms and conditions of this Consent Order.
6. The statutory provisions at issue in this matter include, but are not limited to, Finance Code §§ 151.203, 151.301, 151.302, 151.306, 15.307, 151.702, 151.706, and 151.707.
7. Any violation of this Order could subject Uphold to additional regulatory or enforcement actions authorized by Chapter 151 and other provisions of Texas law. Nothing in this Order

diminishes the regulatory or enforcement powers of the Department, the Commissioner, or the Finance Commission of Texas under Chapter 151 or other applicable law.

8. For purposes of this proceeding, Uphold knowingly and voluntarily waives:
 - a. Service upon Uphold of this Order;
 - b. The right to present defenses to the allegations in this proceeding;
 - c. Notice and hearing prior to imposition of this Order;
 - d. The filing of proposed findings of fact and conclusions of law;
 - e. The issuance of a proposal for decision by an administrative law judge;
 - f. The filing of exceptions and briefs with respect to such proposal for decision;
 - g. Any review of this Order by the Texas Finance Commission; and
 - h. Judicial review of this Order as provided by *Texas Government Code* § 2001.171 et seq., and any other challenge to the validity of this Order.
9. Uphold and the Commissioner agree to this Order solely for the purpose of this proceeding, and without Uphold admitting or denying any violations of law or regulations. This Order does not constitute an admission by Uphold that Chapter 151 or a rule adopted or order issued under Chapter 151 has been violated.
10. Uphold has agreed to comply with the terms that are set out in the Order below. Additionally, Uphold has obtained a temporary license from the Department, and has submitted a permanent license application to the Department.
11. Nothing in this Order shall prohibit Uphold from obtaining a money transmission license from the Department in the future.
12. This Order does not restrict the Department with respect to any enforcement action or other recourse regarding any past, current, or future violations by Uphold that come to the

attention of the Department. However, nothing herein shall be construed to limit Uphold's right to contest any future finding or determination of non-compliance.

I. Findings of Fact

13. The Commissioner has considered this matter and finds as follows:
 - a. Uphold operates a proprietary cloud-based digital currency platform and provides a digital wallet service ("Uphold wallet") to its customers that allows them to fund, transfer, convert and exchange certain virtual currencies, fiat currency, and precious metals. Uphold entered into a Banking Services and Licensing agreement with a FDIC insured national bank that acted as Uphold's agent in providing its banking and remittance services to Uphold customers, and thus these transactions involved money transmission as defined by the Chapter 151. Likewise, when Uphold customers fund their Uphold wallets with fiat currency, Uphold receives money in exchange for the promise to make the money available at a later time. When a withdrawal of fiat currency is processed, Uphold is performing money transmission by making money available at a later time. Additionally, once fiat currency is uploaded to the Uphold Wallet, its exchange into other fiat currency of another denomination (i.e. U.S.D to Yen, etc.) is currency exchange under the Texas Finance Code. Uphold receives a fee for performing these services.
 - b. In 2018, the Department became aware that Uphold has been offering its services to Texas residents since 2015.
 - c. Under Finance Code § 151.301(b)(4), money transmission means "the receipt of money or monetary value by any means in exchange for a promise to make the money or monetary value available at a later time or different location." The Finance Code defines engaging in the business of money transmission as receiving compensation or

- expecting to receive compensation, directly or indirectly, for conducting money transmission. Finance Code § 151.302(b). In receiving customers' funds and compensation for a promise to make the funds available at a later time and/or location, Uphold is engaging in the business of money transmission.
- d. Finance Code § 151.302(a) provides that “a person may not engage in the business of money transmission or advertise, solicit, or hold itself out as a person that engages in the business of money transmission” without a license unless it is an authorized delegate of a license holder, is excluded from licensure under Chapter 151, or has been granted an exemption under Chapter 151.
 - e. As described above, Uphold is conducting money transmission in Texas. The Department has not licensed Uphold; Uphold is not an authorized delegate of a license holder; Uphold is not excluded from licensure under Chapter 151; and Uphold has not been granted an exemption under Chapter 151. Consequently, the Commissioner finds that Uphold is in violation of Finance Code § 151.302.
 - f. As required by Finance Code § 151.707(d), the Commissioner has considered the seriousness of the violations, Uphold's compliance history, and Uphold's good faith in attempting to comply with Chapter 151. The Commissioner finds that Uphold's violations were serious because Uphold conducted money transmission activities in Texas without a license and therefore did not provide Texas customers with requisite protections. Additionally, the Commissioner finds Uphold's prior compliance history inadequate because it conducted money transmission without a license.
 - g. Based on these findings and based on the representations made by Uphold as to the volume of **transactions** and length of time it has been conducting an unlicensed money

transmission business in Texas, the Commissioner finds that a penalty of \$56,891.94 is appropriate.

II. Order

It is hereby ORDERED, ADJUDGED and DECREED that:

14. By October 15, 2018, Uphold will have delivered to the Department a check made payable to the Texas Department of Banking in the amount of \$56,891.94 or wired these funds per instructions from the Department, as payment in full of the administrative penalty assessed herein.
15. In the event that Uphold's permanent license application is: 1) not timely completed within 180 calendar days after its temporary license was granted, 2) abandoned, or is 3) denied, Uphold shall do the following:
 - a. Within fifteen (15) calendar days of the Department's notification to Uphold of said incomplete filing, abandonment, or denial, Uphold shall notify its existing Texas customers that it will cease providing money transmission services to them. This includes business conducted directly or through the activity of others and includes but is not limited to advertising and soliciting persons in Texas, and the acceptance of customers who are located in Texas. This notification must be made in writing, and a copy of the notice must be sent contemporaneously to the Department;
 - b. Within thirty (30) calendar days of the Department's notification to Uphold of said late filing, abandonment or denial, Uphold shall cease and desist from engaging in the unauthorized business of money transmission in Texas;
 - c. Within sixty (60) days of the Department's notification to Uphold of said incomplete filing, abandonment or denial, Uphold shall return to its customers all customer funds held by Uphold; and

- d. Within seven (7) days of achieving full compliance with this paragraph, Uphold must confirm to the Department in writing that it has ceased all unlicensed activities in Texas and that any pending transactions with Texas customers have been completed or funds have been returned to the original customer.

III. Effective Dates

16. This Order against Uphold is effective on the date signed by the Commissioner and is final and non-appealable as of that date.

Signed on this 16th day of October, 2018.

/s/ Stephanie Newberg for _____
Charles G. Cooper
Commissioner, Texas Department of Banking

AGREED AS TO FORM AND SUBSTANCE

Signature: /s/ Leland Westerfield
Uphold HQ, Inc. f/k/a Bitreserve HQ, Inc., through
its authorized representative and Chief Financial Officer,
Mr. Leland Westerfield

Date: October 10, 2018

APPROVED AS TO FORM:

/s/ Chris Daniel
Mr. Chris Daniel
Paul Hastings, LLP
Counsel for Uphold HQ, Inc.

Date: October 15, 2018

/s/ Cristina Nahidi
Cristina M. Nahidi
Texas Department of Banking
Assistant General Counsel

Date: October 16, 2018