

UNITED STATES OF AMERICA  
DEPARTMENT OF THE TREASURY  
COMPTROLLER OF THE CURRENCY

In the Matter of:	)	
	)	
Capital One Bank (USA), N.A.	)	AA-EC-2012-62
Glen Allen, Virginia	)	

**CONSENT ORDER**

The Comptroller of the Currency of the United States of America (“Comptroller”), through his national bank examiners, has examined the affairs of Capital One Bank (USA), N.A., Glen Allen, Virginia (hereinafter the “Bank”), and has identified deficiencies in the Bank’s practices that resulted in: (1) violations of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1), related to: (a) the marketing and sales practices that occurred between August 1, 2010 and December 17, 2011 with regard to certain debt cancellation and credit and identity monitoring products, coupled with the Bank’s failure, during this same time period, to appropriately manage the risks presented by these products; (b) retention practices that occurred during cancellation calls between August 1, 2010 and January 9, 2012 with regard to certain debt cancellation and credit and identity monitoring products; (c) billing practices that occurred between May 13, 2002 and June 21, 2011 with regard to certain credit and identity monitoring products; and (2) a violation of 12 C.F.R. § 37.8 as a result of the Bank’s failure, between August 1, 2010 and December 17, 2011, to appropriately manage the risks presented by the debt cancellation product.

The Bank, by and through its duly elected and acting Board of Directors (“Board”), has executed a Stipulation and Consent to the Issuance of a Consent Order,

dated July 17, 2012 (“Stipulation and Consent”), that is accepted by the Comptroller. By this Stipulation and Consent, which is incorporated by reference, the Bank has consented to the issuance of this Consent Cease and Desist Order (“Order”) by the Comptroller. The Bank has committed to taking all necessary and appropriate steps to remedy the deficiencies. The Bank has begun implementing procedures to remediate the practices addressed in this Order.

## ARTICLE I

### COMPTROLLER’S FINDINGS

The Comptroller finds, and the Bank neither admits nor denies, the following:

- (1) For purposes of this Article and the Order, the following definitions shall apply:
  - (a) “Affinion Credit Monitoring” products are two credit and identity monitoring products, “Privacy Guard” and “Credit Line,” previously marketed and sold by the Bank and Bank Vendors, as defined herein, to consumers regardless of whether they had a Bank credit card or other relationship with the Bank.
  - (b) “Affinion or Intersections Customer” or “Customer” is a consumer who enrolled in either an Affinion Credit Monitoring or Intersections Credit Monitoring product, as defined herein, and who is not a Cardholder, as defined herein. Once fully activated, the Affinion and Intersections Credit Monitoring products provide:
    - (i) quarterly updates to Cardholders and Customers regarding their credit score and information reported to a credit reporting agency;

- (ii) assessments of the Cardholder's or Customer's credit rating; and/or (iii) identity theft protection.
- (c) "Bank Vendor" is a third-party vendor that provides marketing, sales, delivery, servicing, and/or fulfillment of services for consumer products offered by the Bank as optional add-ons to Bank credit cards or as a co-branded consumer product of the Bank to any consumer pursuant to a contractual obligation to the Bank.
- (d) "Cardholder" is a consumer who has applied or applies for and received or receives a Bank consumer credit card. This definition excludes any consumer who has applied or applies for and received or receives a consumer credit card from non-U.S. divisions or subsidiaries of the Bank, Capital One Bank (Canada Branch), or Capital One (Europe) plc, a UK Authorized Payment Institution.
- (e) "Intersections Credit Monitoring" products are three credit and identity monitoring products, "Credit Inform," "Credit Inform Premier," and "ID Alert," marketed and sold by the Bank through Bank Vendors to consumers regardless of whether they had a Bank credit card or other relationship with the Bank.
- (f) "Payment Protection" product is any debt cancellation product marketed and sold by the Bank or Bank Vendors that allows a Cardholder who is enrolled in the product to request cancellation of the entire credit card account balance up to the credit limit in the event of death or permanent disability, or cancellation of up to

twelve months of minimum payments in certain circumstances such as unemployment, temporary disability, or certain life events such as hospitalization, change in marital status, relocation, or a new child. The Payment Protection product is subject to various eligibility requirements and exclusions, and a process for claiming benefits.

- (g) “Pending Status” refers to the status in which an Affinion or Intersections Customer was placed because the authorization or verification required for activation of the full benefit of the Affinion Credit Monitoring or Intersections Credit Monitoring product had not yet been provided.

(2) From August 1, 2010 through December 17, 2011, Cardholders who activated, by telephone, newly issued and re-issued credit cards that were in the Bank’s subprime portfolio or were in the Bank’s prime portfolio with an initial credit line of \$5,000 or less were routinely routed to a Bank Vendor’s call center. The Bank Vendor call agents marketed and sold the Payment Protection and/or Intersections Credit Monitoring products during these credit card activation telephone calls.

(3) From August 1, 2010 through December 17, 2011, during the credit card activation telephone calls described in Paragraph (2) of this Article, some of the Bank Vendor call agents utilized certain high-pressure sales tactics and made materially false, deceptive, or otherwise misleading oral statements relating to the cost, coverage terms, benefits, and other features of the Payment Protection and Intersections Credit

Monitoring products marketed and sold to the Cardholders described in Paragraph (2) of this Article.

(4) From August 1, 2010 through January 9, 2012, Cardholders with credit cards that were in the Bank's subprime portfolio or were in the Bank's prime portfolio with an initial credit line of \$5,000 or less who called to cancel their enrollment in the Payment Protection and/or Intersections Credit Monitoring products were routinely routed to a Bank Vendor's call-center where the Bank Vendor call agents engaged in efforts to retain the Cardholders in the Payment Protection and/or Intersections Credit Monitoring products during these cancellation telephone calls.

(5) From August 1, 2010 through January 9, 2012, during the cancellation telephone calls described in Paragraph (4) of this Article, some Bank Vendor call agents engaged in certain high-pressure retention tactics and made many of the same materially false, deceptive, or otherwise misleading oral statements as in the credit card activation telephone calls.

(6) From August 1, 2010 through January 9, 2012, the Bank failed to maintain effective risk management and control processes over the marketing and sales by Bank Vendors of the Payment Protection and Intersections Credit Monitoring products to the Cardholders described in Paragraphs (2) and (4) of this Article.

(7) Until 2001, the Bank and Bank Vendors marketed and sold the Affinion Credit Monitoring products to consumers.

(8) From May 13, 2002 to May 31, 2011, the Bank and Bank Vendors marketed and sold the Intersections Credit Monitoring products to consumers.

(9) Following enrollment in the Affinion Credit Monitoring and Intersections Credit Monitoring products, Cardholders and Customers were in some cases required to provide additional verification information or proper authorization before their credit bureau reports could be accessed. Until the Cardholder or Customer provided this information or authorization, he or she was in Pending Status and was being billed for, but not receiving the full benefit of, the Affinion Credit Monitoring or Intersections Credit Monitoring product in which he or she was enrolled.

(10) From May 13, 2002 through May 31, 2011, the Bank billed Cardholders and Customers enrolled in Intersections Credit Monitoring products that were in Pending Status for the full fee of the product, even though the Cardholders and Customers were not receiving the full benefit of the product.

(11) From March 1, 2006 through June 21, 2011, the Bank billed Affinion Customers enrolled in Affinion Credit Monitoring products that were in Pending Status for the full fee of the product, even though the Customers were not receiving the full benefit of the product.

(12) By reason of the foregoing marketing, sales, and retention practices of its Bank Vendors for Payment Protection and Intersections Credit Monitoring products as described in Paragraphs (2) to (6) of this Article, the Bank engaged in unfair and deceptive practices in violation of Section 5 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45(a)(1).

(13) By reason of the foregoing billing practices for Affinion Credit Monitoring and Intersection Credit Monitoring products as described in Paragraphs (9) to

(11) of this Article, the Bank engaged in unfair practices in violation of Section 5 of the FTC Act.

(14) The Bank's violations of Section 5 of the FTC Act caused substantial consumer injury or were likely to cause substantial consumer injury.

(15) From August 1, 2010 through December 17, 2011, the Bank violated 12 C.F.R. § 37.8 by failing to maintain effective risk management and control processes in connection with the marketing and sale of the Payment Protection product by Bank Vendors.

(16) The Bank's violations of Section 5 of the FTC Act and 12 C.F.R. § 37.8 are part of a pattern of misconduct that resulted in financial gain to the Bank.

Pursuant to the authority vested in him by the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818(b), the Comptroller hereby ORDERS that:

## ARTICLE II

### COMPLIANCE COMMITTEE

(1) The Board's Audit and Risk Committee ("ARC") shall be responsible for monitoring and overseeing the Bank's compliance with the provisions of this Order. The ARC shall maintain minutes of its meetings at which compliance with this Order is discussed.

(2) Within seventy-five (75) days of this Order, and within twenty (20) days after the end of each quarter thereafter, the ARC shall ensure that the Bank monitors and reports, in writing, to the ARC on the Bank's compliance with the provisions of this Order.

(3) Within ninety (90) days of this Order, and within thirty-five (35) days after the end of each quarter thereafter, the ARC shall submit a written progress report to the Board setting forth in detail:

- (a) actions taken since the prior report (if any) to comply with each Article of this Order;
- (b) the results of those actions; and
- (c) a description of the actions needed and the anticipated time frame to achieve full compliance with each Article of this Order.

(4) Within thirty (30) days of the receipt of the ARC's initial report and within thirty (30) days of the receipt of each quarterly report thereafter, the Board shall submit progress reports to the Examiner-in-Charge. These reports shall:

- (a) include the ARC's report to the Board for the applicable quarter, with any additional comments by the Board; and
- (b) describe any actions initiated by the Board or the Bank to comply with each Article of this Order.

### ARTICLE III

#### COMPREHENSIVE ACTION PLAN

(1) Within fifteen (15) days of this Order, the Bank shall submit to the Deputy Comptroller for Large Bank Supervision ("Deputy Comptroller") and the Examiner-in-Charge an acceptable plan containing a complete description of the actions that are necessary and appropriate to achieve compliance with Articles IV through XIII of this Order ("Action Plan"). In the event the Deputy Comptroller or the Examiner-in-Charge asks the Bank to revise the Action Plan, the Bank shall promptly make the requested

revisions and resubmit the Action Plan to the Deputy Comptroller and the Examiner-in-Charge. Following acceptance of the Action Plan by the Deputy Comptroller, the Bank shall not take any action that would constitute a significant deviation from, or material change to, the requirements of the Action Plan or this Order, unless and until the Bank has received a prior written determination of supervisory non-objection from the Deputy Comptroller.

(2) The Board shall ensure that the Bank achieves and thereafter maintains compliance with this Order, including, without limitation, successful implementation of the Action Plan. The Board shall further ensure that, upon implementation of the Action Plan, the Bank achieves and maintains an effective and sustainable enterprise-wide risk management program that is required by Article VIII of this Order. In order to comply with these requirements, the Board shall:

- (a) require the timely reporting by the Bank of such actions directed by the Board to be taken under this Order;
- (b) follow-up on any non-compliance with such actions in a timely and appropriate manner; and
- (c) require corrective action be taken in a timely manner for any non-compliance with such actions.

(3) The Action Plan shall specify timelines for completion of each of the requirements of Articles IV through XIII of this Order. The timelines in the Action Plan shall be consistent with any deadlines set forth in this Order.

#### ARTICLE IV

#### CONSUMER RESTITUTION FOR UNFAIR AND DECEPTIVE SALES AND MARKETING PRACTICES

(1) For the purposes of this Article and Article VI of this Order, the following definitions shall apply:

- (a) “Cardholder” has the meaning given in Paragraph 1(d) of Article I of this Order.
- (b) “Eligible Cardholder” is any Cardholder, as defined herein, who:
  - (i) is currently enrolled in a Product(s), as defined herein, who enrolled or was retained in the Product(s) on or after August 1, 2010, through a Bank Vendor call agent, and remains enrolled in the Product until his or her Restitution End Date, as defined herein, and who, after initial enrollment in a Intersections Credit Monitoring product, did not affirmatively request in writing to remain enrolled; or
  - (ii) is no longer enrolled in a Product(s) but who enrolled or was retained in a Product(s) on or after August 1, 2010, through a Bank Vendor call agent, and cancelled his or her enrollment before the issuance of the restitution required by this Article to him or her.
  - (iii) The definition of “Eligible Cardholder” excludes any individual who (1) was enrolled in Payment Protection and received benefits; or (2) was enrolled in Intersection Credit

Monitoring and then registered for delivery of product services and features online before cancelling such enrollment.

(c) “Product” refers to the Payment Protection and Intersections Credit Monitoring products.

(d) “Restitution End Date” is:

(i) For an Eligible Cardholder described in Paragraph (1)(b)(i) of this Article, the date on which the restitution required by this Article is issued to that Eligible Cardholder.

(ii) For an Eligible Cardholder described in Paragraph (1)(b)(ii) of this Article, the date on which the Eligible Cardholder’s Enrollment in the Product(s), as defined herein, was cancelled.

(e) “Restitution Start Date” is:

(i) For an Eligible Cardholder who enrolled in a Product(s), as defined herein, on or after August 1, 2010, the date of his or her enrollment in the Product(s).

(ii) For an Eligible Cardholder who had enrolled in a Product(s) prior to August 1, 2010 but was retained in a Product(s) on or after August 1, 2010, the date on which he or she was retained.

(2) Funds from the segregated deposit account required by Paragraph (1) of Article VI of this Order shall be used to make full restitution, as defined in Paragraphs (3)

and (4) of this Article and in accordance with the restitution plan required by Paragraph (2) of Article VI of this Order (“Restitution Plan”), to each Eligible Cardholder.

(3) The restitution amount shall include, as applicable to each Eligible Cardholder:

- (a) The sum of:
  - (i) The full amount of fees paid by an Eligible Cardholder for the Product(s) from his or her Restitution Start Date through his or her Restitution End Date.
  - (ii) The full amount of any overlimit fees paid by an Eligible Cardholder from his or her Restitution Start Date through his or her Restitution End Date, if such fees were incurred because the amount of fees charged by the Bank for the Product(s) resulted in the Eligible Cardholder exceeding his or her credit limit.
  - (iii) The amount of the estimated finance charges, as calculated pursuant to the methodology in the Restitution Plan, paid by an Eligible Cardholder on the fees charged by the Bank for the Product(s) from his or her Restitution Start Date through his or her Restitution End Date.
  - (iv) The amount of the estimated interest, as calculated pursuant to the methodology in the Restitution Plan, that an Eligible Cardholder would have earned on the sum of the amounts

described in Paragraphs (3)(a) through (3)(c) of this Article.

(b) Less any amount that was a previous refund of the fees that the Eligible Cardholder had paid for the Product(s).

(4) Notwithstanding Paragraph (3) of this Article, Eligible Cardholders who were enrolled in Payment Protection and submitted a claim for Payment Protection coverage which was denied because of ineligibility at the time of enrollment for the coverage requested shall receive restitution in the higher of the amount described in subparagraphs (a) or (b) below.

(a) restitution equal to the average amount of the benefit, based upon the type of claim, which the Eligible Cardholder would have received under the Payment Protection product in which he or she was enrolled had his or her claim not been denied; or

(b) restitution in the amount described in Paragraph (3) of this Article.

## ARTICLE V

### CONSUMER RESTITUTION FOR UNFAIR BILLING PRACTICES

(1) For the purposes of this Article and Article VI of this Order, the following definitions shall apply:

(a) “Credit Monitoring Fees” is the amount of fees charged by the Bank for the Affinion Credit Monitoring or Intersections Credit Monitoring product.

- (b) “Eligible Affinion Customer” is any consumer who, between March 1, 2006 and June 21, 2011, enrolled in an Affinion Credit Monitoring product and who was in Pending Status.
- (c) “Eligible Intersections Customer” is any consumer who, between May 13, 2002 and May 31, 2011, enrolled in an Intersections Credit Monitoring product and who was in Pending Status.
- (d) “Restitution End Date” is the date:
  - (i) on which the Eligible Affinion or Intersections Customer’s, as defined herein, Pending Status, ended by the cancellation of the Customer’s enrollment in the Affinion Credit Monitoring or Intersections Credit Monitoring product(s);
  - or
  - (ii) on which the Eligible Affinion or Intersections Customer provided additional verification information or authorization and began receiving the full benefits of the product.
- (e) “Restitution Start Date” is the date on which the Eligible Affinion or Intersections Customer, as defined herein, enrolled in the Affinion Credit Monitoring or Intersections Credit Monitoring product or first entered Pending Status.

(2) Funds from the segregated deposit account required by Paragraph (1) of Article VI of this Order shall be used to make full restitution, as defined in Paragraph (3)

of this Article and in accordance with the Restitution Plan required by Article VI of this Order, to each Eligible Affinion or Intersections Customer.

(3) The restitution amount paid to each Eligible Affinion or Intersections Customer shall include, as applicable to each Eligible Affinion or Intersections Customer:

- (a) The sum of:
  - (i) The full amount of Credit Monitoring Fees paid by an Eligible Affinion or Intersections Customer from his or her Restitution Start Date through his or her Restitution End Date.
  - (ii) The full amount of any overlimit fees paid by an Eligible Affinion or Intersections Customer from his or her Restitution Start Date through his or her Restitution End Date because the amount of the Credit Monitoring Fees resulted in the Eligible Affinion or Intersections Customer exceeding his or her credit limit.
  - (iii) The amount of the estimated finance charges, as calculated pursuant to the methodology in the Restitution Plan, paid by an Eligible Affinion or Intersections Customer on Credit Monitoring Fees from his or her Restitution Start Date through his or her Restitution End Date.
- (b) Less any amount that was a previous refund of the fees that the Eligible Affinion or Intersections Customer had paid for the Affinion Credit Monitoring or Intersections Credit Monitoring

product.

## ARTICLE VI

### SEGREGATED RESTITUTION ACCOUNT AND RESTITUTION PLAN

(1) Within fifteen (15) days of this Order, the Bank shall deposit into a segregated deposit account at the Bank an amount not less than one hundred fifty million dollars (\$150,000,000) which represents an estimate of the maximum potential restitution that may be required by Articles IV and V of this Order; actual restitution may be a lesser amount. Additional amounts shall be deposited into this segregated deposit account if necessary to fully comply with Articles IV and V of this Order.

(2) Within thirty (30) days of this Order, the Bank shall develop a restitution plan, approved by its Board, and submit it to the Deputy Comptroller for prior determination of supervisory non-objection. The Restitution Plan shall include the following:

- (a) A description of the methods to be used and the time necessary to compile a list of potential Eligible Cardholders and Eligible Affinities and Intersections Customers.
- (b) A description of the methods used to calculate the amount of restitution to be paid to each Eligible Cardholder as required by Paragraphs (3) and (4) of Article IV of this Order.
- (c) A description of the methods used to calculate the amount of restitution to be paid to each Eligible Affinity and Intersections Customer as required by Paragraph (3) of Article V of this Order.

- (d) A description of the procedures for issuance and tracking of restitution payments to Eligible Cardholders and Eligible Affinion and Intersections Customers.
- (e) With regard to Eligible Cardholders who receive the restitution required by Paragraphs (3) and (4) of Article IV of this Order in the form of a credit to their Bank credit card account, a description of procedures:
  - (i) for reporting updated balances, as applicable, to each credit reporting agency to which the Bank had previously furnished balance information for the account; and
  - (ii) with regard to accounts sold to unaffiliated third parties, for requesting such third parties to report updated balances, as applicable, to each credit reporting agency to which the Bank or the third party had previously furnished balance information for the account.
- (f) A description of the procedures for monitoring compliance with the Restitution Plan.
- (g) A description of any restitution with respect to the Payment Protection, Affinion Credit Monitoring, or Intersections Credit Monitoring products previously provided to Eligible Cardholders or Eligible Affinion and Intersections Customers that reduces the restitution that would have been provided pursuant to Article IV or Article V but for that previous restitution.

(3) The Bank initiated and is in the process of completing a plan to reimburse Eligible Affinion and Intersections Customers for certain Credit Monitoring Fees that they paid. This plan shall be incorporated into the Restitution Plan required by this Article and be subject to the requirements of this Article and Article V of this Order, including the requirement for reimbursement of overlimit fees and finance charges incurred by each Eligible Affinion and Intersections Customer, including those who have already received restitution of the Credit Monitoring Fees that they paid.

(4) The Bank's Internal Audit shall periodically conduct an assessment of the Restitution Plan and the methodology used to determine the population of Eligible Cardholders and Eligible Affinion and Intersections Customers, the amount of restitution for each Eligible Cardholder and Eligible Affinion and Intersections Customer, the procedures used to issue and track restitution payments, and the procedures used for reporting and requesting the reporting of updated balances to the credit reporting agencies. Such assessments shall occur at appropriate intervals during the development and execution of the Restitution Plan and within forty-five (45) days of completion of restitution, and the findings shall be memorialized in writing. Within ten (10) days of completing each assessment, Internal Audit shall provide its written findings to the ARC, the Deputy Comptroller, and the Examiner-in-Charge.

(5) Upon receipt of a determination of supervisory non-objection to the Restitution Plan submitted pursuant to Paragraph (2) of this Article, the Board shall adopt, and thereafter ensure that the Bank implements and adheres to, the Restitution Plan. Any proposed changes to or deviations from the approved Restitution Plan shall be

submitted in writing to the Deputy Comptroller for prior supervisory review and non-objection.

## ARTICLE VII

### DISCONTINUATION OF SALES AND MARKETING OF PAYMENT PROTECTION INSURANCE, CREDIT MONITORING, AND OTHER SIMILAR PRODUCTS

The Bank shall discontinue the sales and marketing of any debt suspension product, debt cancellation product, credit and identity monitoring products, and any other similar products, and shall not re-enroll Eligible Cardholders in the Payment Protection product or any of the Intersections Credit Monitoring products, until such time as the Bank receives a supervisory non-objection from the Deputy Comptroller.

## ARTICLE VIII

### RISK MANAGEMENT PROGRAM AND OVERSIGHT

(1) Within ninety (90) days of this Order, the Bank shall develop a written enterprise-wide risk management program for any consumer products marketed or sold by the Bank or through Bank Vendors to the Bank's customers, including, but not limited to the Bank's credit cardholders, and/or other consumers of the Bank's consumer products, including Bank co-branded consumer products (collectively "Bank Customers"). The Board shall approve and cause the Bank to submit this Risk Management Program to the Deputy Comptroller for prior determination of supervisory non-objection. At a minimum, the Risk Management Program shall require:

- (a) A written comprehensive assessment, to be conducted on an annual basis, of the unfair and deceptive practices ("UDAP") risk for these products and for changes to these products, including, but not limited to:

- (i) the UDAP risk of the governance, control, marketing, sales, delivery, servicing, and fulfillment of services for new products and existing products, including the UDAP risk of marketing and sales practices; and
  - (ii) compliance with disclosure obligations, including, but not limited to, compliance with the Truth in Lending Act, 15 U.S.C. 1601 *et. seq.*, and 12 C.F.R. Part 37.
- (b) The development and implementation of written policies and procedures to effectively manage, prevent, detect, and mitigate, on an on-going basis, the risks identified in the written assessment required by Paragraph (1)(a) of this Article.
- (c) The recording of all telephone calls in which products are marketed or sold by the Bank or through a Bank Vendor to Bank Customers, which recordings shall be retained for a period of at least twelve (12) months from the date the Bank Customer is no longer enrolled in the product.
- (d) The recording of all telephone calls in which a Bank Customer enrolled in a product marketed or sold by the Bank or through a Bank Vendor indicates that he or she did not authorize, does not want, does not need, or wishes to cancel the product, which recordings shall be retained for a period of at least two (2) years from the date of the telephone call or at least twelve (12) months from the date the Bank Customer is no longer enrolled in the

product and has been provided a full refund of any applicable fees, whichever period is longer.

- (e) Comprehensive written procedures for providing adequate training on applicable consumer protection laws and Bank policies and procedures, including, but not limited to unfair or deceptive practices, to all Bank employees and Bank Vendor call agents who market or sell products during both in-bound and out-bound telephone calls and who engage in retention efforts during telephone calls in which a Bank Customer indicates that he or she did not authorize, does not want, does not need, or wishes to cancel the product.
- (f) Comprehensive written procedures for providing adequate training on applicable consumer protection laws and Bank policies and procedures, including, but not limited to, the FTC Act, to Bank employees and Bank Vendor employees or agents monitoring telephone calls.
- (g) Comprehensive written policies and procedures for identifying and reporting any violation of applicable consumer protection laws and Bank policies and procedures by Bank employees and Bank Vendor employees or agents, in a timely manner, to a specified executive risk manager at the Bank. The executive risk manager to whom such violations are reported shall be independent of the unit overseeing the sales and marketing of the products.

- (h) Independent telephone call monitoring by qualified personnel who have training in identifying and reporting any violation of applicable consumer protection laws and Bank policies and procedures, including but not limited to, the FTC Act.
- (i) Reporting, on at least a monthly basis, by the independent unit responsible for conducting the monitoring required by Paragraph (1)(h) of this Article of its findings from the telephone call monitoring to a specified executive risk manager who is independent of the unit overseeing the sales and marketing of these products.
- (j) Written policies and procedures to ensure that risk management, quality control, internal audit, and corporate compliance programs have the requisite authority and status within the Bank so that appropriate reviews of products marketed or sold by the Bank or through Bank Vendors may occur and deficiencies are identified and properly remedied.

(2) Upon receipt of a determination of supervisory non-objection to the Risk Management Program submitted pursuant to Paragraph (1) of this Article, the Board shall adopt, and thereafter ensure that the Bank implements and adheres to, the Risk Management Program. Any proposed changes to or deviations from the approved Risk Management Program shall be submitted in writing to the Deputy Comptroller for prior supervisory review and non-objection.

(3) Within ninety (90) days of this Order, the Bank shall develop training materials relating to identifying and responding to unfair and deceptive practices and incorporate the new training materials into the existing annual compliance training for all employees at all levels.

(4) The Bank shall complete its review of the process used to change incentives for the three vendors used by the Cross-Sell business unit for the marketing and sales of the Payment Protection and Intersections Credit Monitoring products. Within forty-five (45) days of this Order, the Bank shall have taken the corrective action necessary to control the risk of Bank Vendor-related incentives, and shall forward the findings from the review to the Examiner-in-Charge.

(5) The Board shall ensure that there is oversight of the Risk Management Program required by this Article by the Bank's senior risk managers, senior management, and the Board.

## ARTICLE IX

### CROSS-SELL BUSINESS UNIT

(1) Within forty (40) days of this Order, the Bank's Cross-Sell business unit shall conduct a comprehensive review of its Bank Vendor Monitoring Program and set forth its findings in writing, and develop and implement a written revised Bank Vendor Monitoring Program that addresses any weaknesses or deficiencies identified in the review and in the June 30, 2011 Internal Audit Report. The revised Bank Vendor Monitoring Program shall, at a minimum, include improvements to the quality control processes to ensure that Bank Vendors adhere to the terms and requirements of their contracts with the Bank. Within fifteen (15) days of completing this review and revising

the Bank Vendor Monitoring Program, the Cross-Sell business unit shall submit its findings and the revised Bank Vendor Monitoring Program to Corporate Compliance and Internal Audit for review.

(2) Within ninety (90) days of this Order, the Corporate Compliance and Internal Audit units shall have reviewed the findings and the revised Bank Vendor Monitoring Program required by Paragraph (1) of this Article to ensure that the review conducted by the Cross-Sell business unit was thorough, its findings accurate, and that the revised Bank Vendor Monitoring Program adequately addresses the weaknesses or deficiencies identified in the review and in the June 30, 2011 Internal Audit Report.

(3) Within ninety (90) days of this Order, the Cross-Sell business unit shall have taken corrective action to address the weaknesses or deficiencies identified in the review and in the June 30, 2011 Internal Audit Report.

(4) Within ninety (90) days of this Order, and quarterly thereafter, the Bank shall provide the Examiner-in-Charge with updates on the improvements and corrective action required by this Article.

## ARTICLE X

### PRODUCTS AND MARKETING REVIEW

(1) In addition to the requirements of Article VIII of this Order, the Bank's New Products and Marketing Initiatives Governance ("NPMIG") forum or other appropriate independent qualified group within the Bank shall prepare a written analysis of:

- (a) any changes to the governance, control, marketing, sales, delivery, servicing, and fulfillment of services for consumer products

considered to be at high risk for unfair and deceptive practices (“UDAP”) that are marketed and sold by the Bank or through Bank Vendors; and

- (b) any new consumer products considered to be at high risk for UDAP that are marketed and sold by the Bank or through Bank Vendors.

(2) The analysis required by Paragraph (1) of this Article shall be conducted prior to the implementation of any changes to existing consumer products or prior to the Bank’s involvement in any new consumer products. The analysis shall, at a minimum, include the following:

- (a) an assessment of the UDAP risks of the product and of the governance, control, marketing, sales, delivery, servicing, and fulfillment of services for the product, including the marketing and sales practices for the product; and
- (b) an evaluation of the adequacy of the Bank’s internal controls and written policies and procedures to identify, measure, monitor, and control the UDAP risks associated with the consumer product or service.

## ARTICLE XI

### CORPORATE COMPLIANCE AND INTERNAL AUDIT

(1) Within ninety (90) days of this Order, the Bank shall review and revise, in writing, the existing monitoring and testing program of the Corporate Compliance unit.

The Board shall oversee the revision of the Bank's program, and thereafter ensure Bank adherence to the revised program. The revised program shall include, at a minimum:

- (a) written policies and procedures for reviewing, on a timely basis, the assessment and policies and procedures required by Paragraphs (1)(a) and (1)(b) of Article VIII of this Order;
- (b) written policies and procedures to ensure independent testing and telephone call monitoring by personnel trained in identifying violations of applicable consumer protection laws and Bank policies and procedures, including, but not limited to, the FTC Act; and
- (c) comprehensive written procedures for providing adequate training to all Corporate Compliance personnel on identifying violations of applicable consumer protection laws and Bank policies and procedures, including, but not limited to, unfair or deceptive practices.

(2) Within ninety (90) days of this Order, the Bank shall review and revise, in writing, the existing monitoring and testing program of the Internal Audit unit. The Board shall oversee the revision of the Bank's program, and thereafter ensure Bank adherence to the revised program. The revised program shall include, at a minimum:

- (a) written policies and procedures for expanding its sampling when exceptions based on potential violations of consumer protection laws and unfair or deceptive practices are detected;

- (b) written policies and procedures for challenging the exception tolerance established by Bank management; and
- (c) comprehensive written procedures for providing adequate training to all Internal Audit personnel on identifying violations of applicable consumer protection laws and Bank policies and procedures, including, but not limited to, unfair or deceptive practices.

(3) The Bank shall provide copies of the revised programs required by Paragraphs (1) and (2) of this Article to the Examiner-in-Charge.

## ARTICLE XII

### BANK VENDOR MANAGEMENT

(1) Within ninety (90) days of this Order, the Bank shall develop a written policy governing the management of Bank Vendors. The Board shall approve and submit this Bank Vendor Management Policy to the Deputy Comptroller for prior determination of supervisory non-objection. At a minimum, the Bank Vendor Management Policy shall require:

- (a) An analysis, to be conducted by Corporate Compliance prior to the Bank entering into a contract with the Bank Vendor, of the capacity of the Bank Vendor to perform the marketing, sales, delivery, servicing, and fulfillment of services for the product(s) in compliance with all applicable consumer protection laws and Bank policies and procedures.
- (b) A written contract between the Bank and the Bank Vendor which sets forth the responsibilities of each party, especially:

- (i) the Bank Vendor's specific performance responsibilities and duty to maintain adequate internal controls over the marketing, sales, delivery, servicing, and fulfillment of services for the products;
  - (ii) the Bank Vendor's responsibilities and duty to provide adequate training on applicable consumer protection laws and Bank policies and procedures to all Bank Vendor employees or agents engaged in the marketing, sales, delivery, servicing, and fulfillment of services for the product(s);
  - (iii) granting the Bank the authority to conduct periodic onsite reviews of the Bank Vendor's controls, performance, and information systems as they relate to the marketing, sales, delivery, servicing, and fulfillment of services for the product(s); and
  - (iv) the Bank's right to terminate the contract if the Bank Vendor materially fails to comply with the terms specified in the contract, including the terms required by this Paragraph.
- (c) Periodic onsite audit review by the Bank of the Bank Vendor's controls, performance, and information systems.
  - (d) Approval of any Bank Vendor by the NPMIG forum or other appropriate independent qualified group within the Bank

responsible for conducting the products and marketing review required by Article X of this Order.

(2) Upon receipt of a determination of supervisory non-objection to the Bank Vendor Management Policy submitted pursuant to Paragraph (1) of this Article, the Board shall adopt, and thereafter ensure that the Bank implements and adheres to, the Bank Vendor Management Policy. Any proposed changes or deviations from the approved Bank Vendor Management Policy shall be submitted in writing to the Deputy Comptroller for prior supervisory review and non-objection.

### ARTICLE XIII

#### PAYMENT PROTECTION BENEFIT PAYMENTS AND REFUNDS REPORTS

(1) In addition to the reporting requirements of Article II of this Order, within ninety (90) days of this Order, and quarterly thereafter, the Bank shall monitor and report, in writing, to the ARC:

- (a) the number of claims approved and the amount of the Payment Protection benefit payments; and
- (b) the amount of the total fees refunded pursuant to the terms and conditions of the Payment Protection product as a result of cancellations by Payment Protection Customers.

(2) Within ten (10) days of receiving the written reports required by Paragraph (1) of this Article, the ARC shall forward copies of the reports to the Examiner-in-Charge.

## ARTICLE XIV

### OTHER PROVISIONS

(1) Although this Order requires the Bank to submit certain actions, plans, programs, policies, and procedures for the review or prior written determination of supervisory non-objection by the Deputy Comptroller or the Examiner-in-Charge, the Board has the ultimate responsibility for proper and sound management of the Bank.

(2) In each instance in this Order in which the Board is required to ensure adherence to, or undertake to perform certain obligations of the Bank, it is intended to mean that the Board shall:

- (a) authorize and adopt such actions on behalf of the Bank as may be necessary for the Bank to perform its obligations and undertakings under the terms of this Order;
- (b) require the timely reporting by Bank management of such actions directed by the Board to be taken under the terms of this Order;
- (c) follow-up on any material non-compliance with such actions in a timely and appropriate manner; and
- (d) require corrective action be taken in a timely manner of any material non-compliance with such actions.

(3) If, at any time, the Comptroller deems it appropriate in fulfilling the responsibilities placed upon him by the several laws of the United States to undertake any action affecting the Bank, nothing in this Order shall in any way inhibit, estop, bar, or otherwise prevent the Comptroller from so doing.

(4) This Order is and shall become effective upon its execution by the Comptroller, through his authorized representative whose hand appears below. The Order shall remain effective and enforceable, except to the extent that, and until such time as, any provision of this Order shall be amended, suspended, waived, or terminated in writing by the Comptroller.

(5) Any time limitations imposed by this Order shall begin to run from the effective date of this Order, as shown below, unless the Order specifies otherwise.

(6) This Order is intended to be, and shall be construed to be, a final order issued pursuant to 12 U.S.C. § 1818(b), and expressly does not form, and may not be construed to form, a contract binding the Comptroller or the United States. Nothing in this Order shall affect any action against the Bank or its institution-affiliated parties by a bank regulatory agency, the United States Department of Justice, or any other law enforcement agency, to the extent permitted under applicable law.

(7) The terms of this Order, including this Paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements, or prior arrangements between the parties, whether oral or written.

IT IS SO ORDERED, this 17th day of July, 2012.

\_\_\_\_\_/s/\_\_\_\_\_  
Vance S. Price  
Deputy Comptroller  
Large Bank Supervision

**UNITED STATES OF AMERICA  
DEPARTMENT OF THE TREASURY  
COMPTROLLER OF THE CURRENCY**

**In the Matter of:**

Capital One Bank (USA), N.A.  
Glen Allen, Virginia

AA-EC-2012-62

**STIPULATION AND CONSENT TO THE ISSUANCE  
OF A CONSENT ORDER**

The Comptroller of the Currency of the United States of America (“Comptroller”) intends to impose a cease and desist order on Capital One Bank (USA), N.A., Glen Allen, Virginia (“Bank”) pursuant to 12 U.S.C. § 1818(b), for its unfair and deceptive practices in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1), and its failure to appropriately manage the risks presented by a payment protection product, in violation of 12 C.F.R. § 37.8.

The Bank, in the interest of compliance and cooperation, enters into this Stipulation and Consent to the Issuance of a Consent Order (“Stipulation”) and consents to the issuance of a Consent Order, dated July 17, 2012 (“Consent Order”).

In consideration of the above premises, the Comptroller, through his authorized representative, and the Bank, through its duly elected and acting Board of Directors, stipulate and agree to the following:

ARTICLE I

JURISDICTION

(1) The Bank is a national banking association chartered and examined by the Comptroller pursuant to the National Bank Act of 1864, as amended, 12 U.S.C. § 1 *et seq.*

(2) The Comptroller is “the appropriate Federal banking agency” regarding the Bank pursuant to 12 U.S.C. §§ 1813(q) and 1818(b).

(3) The Bank is an “insured depository institution” within the meaning of 12 U.S.C. § 1818(b)(1).

(4) For purposes of, and within the meaning of 12 C.F.R. §§ 5.3(g)(4), 5.51(c)(6), and 24.2(e)(4), this Consent Order shall not be construed to be a “cease and desist order” or “consent order,” unless the OCC informs the Bank otherwise in writing.

## ARTICLE II

### CONSENT

(1) The Bank, without admitting or denying any wrongdoing, consents and agrees to issuance of the Consent Order by the Comptroller.

(2) The Bank consents and agrees that the Consent Order shall be deemed an “order issued with the consent of the depository institution” pursuant to 12 U.S.C. § 1818(h)(2), and consents and agrees that said Order shall become effective upon its issuance and shall be fully enforceable by the Comptroller pursuant to 12 U.S.C. § 1818(i).

(3) Notwithstanding the absence of mutuality of obligation, or of consideration, or of a contract, the Comptroller may enforce any of the commitments or obligations herein undertaken by the Bank under his supervisory powers, including 12 U.S.C. § 1818(i), and not as a matter of contract law. The Bank expressly acknowledges that neither the Bank nor the Comptroller has any intention to enter into a contract.

(4) The Bank expressly acknowledges that no officer or employee of the Comptroller has statutory or other authority to bind the United States, the United States Treasury Department, the Comptroller, or any other federal bank regulatory agency or entity, or any officer or

employee of any of those entities to a contract affecting the Comptroller's exercise of his supervisory responsibilities.

(5) The terms and provisions of the Stipulation and the Consent Order shall be binding upon, and inure to the benefit of, the parties hereto and their successors in interest. Nothing in this Stipulation or the Consent Order, express or implied, shall give to any person or entity, other than the parties hereto, and their successors hereunder, any benefit or any legal or equitable right, remedy or claim under this Stipulation or the Consent Order.

### ARTICLE III

#### WAIVERS

- (1) The Bank, by consenting to this Stipulation, waives:
  - (a) the issuance of a Notice of Charges pursuant to 12 U.S.C. § 1818(b);
  - (b) any and all procedural rights available in connection with the issuance of the Consent Order;
  - (c) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(b) and (h), 12 C.F.R. Part 19;
  - (d) all rights to seek any type of administrative or judicial review of the Consent Order;
  - (e) any and all claims for fees, costs or expenses against the Comptroller, or any of his agents or employees, related in any way to this enforcement matter or this Consent Order, whether arising under common law or under the terms of any statute, including, but not limited to, the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412; and
  - (f) any and all rights to challenge or contest the validity of the Consent Order.

## ARTICLE IV

### CLOSING

(1) The provisions of this Stipulation shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any other action affecting the Bank if, at any time, it deems it appropriate to do so to fulfill the responsibilities placed upon it by the several laws of the United States of America.

(2) Nothing in this Stipulation shall preclude any proceedings brought by the Comptroller to enforce the terms of this Consent Order, and nothing in this Stipulation constitutes, nor shall the Bank contend that it constitutes, a waiver of any right, power, or authority of any other representative of the United States or an agency thereof, including, without limitation, the United States Department of Justice, to bring other actions deemed appropriate.

(3) The OCC releases and discharges the Bank from all potential liability for a cease and desist order that has been or might have been asserted by the OCC based on the banking practices described in the Comptroller's Findings set forth in Article I of the Consent Order, to the extent known to the OCC as of the effective date of the Consent Order. However, the banking practices alleged in Article I of the Consent Order may be utilized by the OCC in other future enforcement actions against the Bank or its institution-affiliated parties, including, without limitation, to establish a pattern or practice of violations or the continuation of a pattern or practice of violations. This release shall not preclude or affect any right of the OCC to determine and ensure compliance with the terms and provisions of this Stipulation or the Consent Order.

(4) The terms of the Stipulation and the Consent Order are not subject to amendment or modification by any extraneous expression, prior agreements or prior arrangements between the parties, whether oral or written.

IN TESTIMONY WHEREOF, the undersigned, authorized by the Comptroller as his representative, has hereunto set his hand on behalf of the Comptroller.

/s/

\_\_\_\_\_  
Vance S. Price  
Deputy Comptroller for  
Large Bank Supervision

7/17/2012

\_\_\_\_\_  
Date

IN TESTIMONY WHEREOF, the undersigned, as the duly elected and acting Board of Directors of the Bank, have hereunto set their hands on behalf of the Bank.

/s/  
W. Ronald Dietz

07/13/2012  
Date

/s/  
Richard D. Fairbank

07/16/2012  
Date

/s/  
Ann Fritz Hackett

07/16/2012  
Date

/s/  
Lewis Hay, III

07/16/2012  
Date

/s/  
Gary L. Perlin

07/16/2012  
Date

/s/  
Ryan M. Schneider

07/16/2012  
Date