

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

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**In the Matter of:** )  
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Wells Fargo Bank, National Association ) AA-EC-2015-06  
Sioux Falls, South Dakota )  
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**CONSENT ORDER**

The Comptroller of the Currency of the United States of America (“Comptroller”), through his national bank examiners and other staff of the Office of the Comptroller of the Currency (“OCC”), has conducted examinations of Wells Fargo Bank, National Association, Sioux Falls, South Dakota (“Wells Fargo” or “Bank”). The OCC has identified deficiencies in the Bank’s practices that resulted in violations of Section 5 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45(a)(1), related to billing and marketing practices with regard to identity protection and debt cancellation products, and has informed the Bank of the findings resulting from the examinations.

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 June 3, 2015, that is accepted by the Comptroller (“Stipulation”). By this Stipulation, which is incorporated herein by reference, the Bank has consented to the issuance of this Consent Cease and Desist Order (“Order”) by the Comptroller.

## ARTICLE I

### COMPTROLLER'S FINDINGS

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

(1) Since April 2004, the Bank and an identity protection product vendor, on behalf of the Bank, have marketed and sold Identity Theft Protection, an identity protection product, to Bank customers. Identity Theft Protection included credit monitoring services.

(2) Since May 2009, the Bank and an identity protection product vendor, on behalf of the Bank, have marketed and sold Enhanced Identity Theft Protection, an identity protection product, to Bank customers. Enhanced Identity Theft Protection included credit monitoring and credit report retrieval services.

(3) Between at least January 2004 and May 2007, the Bank and identity protection product vendors, on behalf of the Bank, marketed and sold PrivacyGuard, Privacy Advantage, and/or My Privacy Matters, separate identity protection products, to Bank customers. These products included credit monitoring services.

(4) Wells Fargo's identity protection product vendors continued to service existing Privacy Advantage and My Privacy Matters customers until July 2014 and existing PrivacyGuard customers until December 2014, at which time Wells Fargo terminated these three identity protection products.

(5) Between April 2005 and December 2010, Wachovia Bank, National Association, Charlotte, North Carolina ("Wachovia"), and identity protection product vendors, on behalf of Wachovia, marketed and sold Identity Guard, an identity protection product, to Wachovia customers. Between November 2008 and March 2009, Wachovia, and identity protection product vendors, on behalf of Wachovia, marketed and sold iWatch Pro, a separate identity protection product, to Wachovia customers. Both of Wachovia's identity protection products

included credit monitoring.

(6) Wells Fargo's parent bank holding company acquired Wachovia, and Wachovia was merged with and into Wells Fargo in March 2010. Wells Fargo assumed all of Wachovia's liabilities as part of this merger.

(7) Wells Fargo's identity protection product vendors continued to service existing iWatch Pro customers until August 2013 and existing Identity Guard customers until December 2013, at which time Wells Fargo terminated these two identity protection products.

(8) Bank customers who enrolled in the Identity Theft Protection, Enhanced Identity Theft Protection, PrivacyGuard, Privacy Advantage, and My Privacy Matters products, and the Wachovia customers who enrolled in the Identity Guard and iWatch Pro products (collectively, the "Identity Protection Products"), were required to provide sufficient personal verification information and consent before their credit bureau reports could be accessed. Customers of the Identity Protection Products were provided the materials necessary to submit this information and consent. Customers could not receive the credit monitoring services of the Identity Protection Products in which they were enrolled until the information and consent was submitted. For some Wells Fargo customers, the vendor failed to establish credit monitoring, or failed to maintain credit monitoring without interruption, after submission of the information and consent. For some Wells Fargo customers, the vendor failed to ensure that electronic benefit notifications were successfully delivered to the customer. For some Wachovia customers, the vendor initiated billing prior to verification of the customers' information and consent and establishment of credit monitoring, and for other Wachovia customers, the vendor initiated billing prior to the customers' submission of the information and consent.

(9) From April 2004 to May 2014, the Bank, through its identity protection product vendor, billed some Identity Theft Protection and Enhanced Identity Theft Protection

customers for the full fee of the products, even though those customers were not receiving all of the credit monitoring services of the products.

(10) From April 2004 to May 2014, the Bank retained a portion of the fees paid by the Identity Theft Protection and Enhanced Identity Theft Protection customers, including fees paid by the customers who were not receiving the credit monitoring services.

(11) Between at least January 2004 and July or December 2014 (depending upon the product), the Bank, through its identity protection product vendors, billed some PrivacyGuard, Privacy Advantage, and My Privacy Matters customers for the full fee of the products, even though those customers were not receiving all of the credit monitoring services of the products.

(12) Between at least January 2004 and July or December 2014 (depending upon the product), the Bank retained a portion of the fees paid by the PrivacyGuard, Privacy Advantage, and My Privacy Matters customers, including fees paid by the customers who were not receiving the credit monitoring services.

(13) Between April 2005 and August or December 2013 (depending upon the product), Wachovia and Wells Fargo, through its identity protection product vendors, billed some Identity Guard and iWatch Pro customers for the full fee of the products, even though those customers were not receiving all of the credit monitoring services of the products.

(14) Between April 2005 and August or December 2013 (depending upon the product), Wachovia and Wells Fargo retained a portion of the fees paid by the Identity Guard and iWatch Pro customers, including fees paid by the customers who were not receiving the credit monitoring services.

(15) By reason of the foregoing billing practices for the Identity Protection Products as described in Paragraphs (1) to (5) and (7) to (14) of this Article, the Bank engaged in unfair practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a)(1).

(16) The Bank's violations of Section 5 of the FTC Act caused substantial consumer injury.

(17) From March 2012 to October 2013, the Bank, through its identity protection product vendors, informed customers during telemarketing calls that Enhanced Identity Theft Protection was the only one of the Bank's identity protection products that offered the ability to access product benefits electronically. In fact, customers could access the benefits of both Identity Theft Protection and Enhanced Identity Theft Protection electronically.

(18) Some Bank customers purchased the more expensive Enhanced Identity Theft Protection instead of the less expensive Identity Theft Protection solely to access the product's benefits online.

(19) By reason of the foregoing marketing practice for its Identity Protection Products as described in Paragraphs (17) and (18) of this Article, the Bank engaged in a deceptive practice in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a)(1).

(20) Since August 2005, the Bank has marketed and sold Credit Defense Platinum, a debt cancellation product, to Bank credit card customers. Credit Defense Platinum includes cancellation of some or all of a customer's credit card balance upon the occurrence of certain qualifying events. The Bank's debt cancellation product vendor is responsible for approving and directing payment of such benefits. When benefits are approved, credit card payments are not cancelled. Rather, the customer continues to be billed monthly, and the debt cancellation product vendor directs payment of the Credit Defense Platinum benefit to cover all or a portion of the credit card's minimum payment due.

(21) From August 2005 through November 2013, the debt cancellation product vendor directed recurring Credit Defense Platinum benefit payments to post on the same day of each month without regard to when customers' monthly payments were due. As a result, some Bank

credit card customers were charged recurring late fees because the day on which the vendor directed recurring benefit payments to post was later in the billing cycle than the day on which those customers' payments were due.

(22) By reason of the foregoing billing practices for the Credit Defense Platinum product as described in Paragraphs (20) and (21) of this Article, the Bank engaged in an unfair practice in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a)(1).

(23) The Bank's violation of Section 5 of the FTC Act caused substantial consumer injury.

(24) Since August 2005, the Bank has marketed Credit Defense Platinum as having a "risk-free review period" of thirty (30) days, during which the Bank would credit any product fees imposed on an account if the customer decided to cancel his or her enrollment in the product.

(25) From August 2005 through November 2012, some customers were not credited for Credit Defense Platinum product fees imposed upon their accounts despite cancelling their enrollments within the 30-day "risk-free review period," contrary to the Bank's marketing of the product.

(26) By reason of the foregoing marketing practice for its debt cancellation product as described in Paragraphs (24) and (25) of this Article, the Bank engaged in a deceptive practice in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a)(1).

(27) The Bank's violations of Section 5 of the FTC Act discussed in Paragraphs (1) through (26) of this Article are part of a pattern of misconduct that resulted in financial gain to the Bank.

## ARTICLE II

### COMPLIANCE COMMITTEE

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:

(1) The Board shall appoint and maintain an active committee (“Committee”) of at least three (3) members, of which a majority shall be directors who are not employees or officers of the Bank or any of its subsidiaries or affiliates. The Committee shall be responsible for monitoring and overseeing the Bank’s compliance with the provisions of this Order. The Committee shall maintain minutes of its meetings at which compliance with this Order is discussed.

(2) Within one hundred twenty (120) days of the effective date of this Order, and thereafter within thirty (30) days after the end of each quarter, the Committee shall submit a written progress report to the Board setting forth in detail the actions taken to comply with each Article of this Order, and the results and status of those actions. The progress report shall include information sufficient to validate compliance with this Order.

(3) Upon receiving the Committee’s report, the Board shall forward a copy of the report, with any additional comments by the Board, to the Examiner-in-Charge within ten (10) days of the first Board meeting following receipt of such report, unless additional time is granted by the Examiner-in-Charge through a written determination of no supervisory objection.

(4) The OCC may, in writing, discontinue the requirement for written progress reports required by Paragraphs (2) and (3) of this Article, or modify the reporting schedule set forth in Paragraphs (2) and (3) of this Article.

ARTICLE III

COMPREHENSIVE ACTION PLAN

(1) Within sixty (60) days of this Order, the Bank shall submit to the

Examiner-in- Charge, for review and written determination of no supervisory objection by the Deputy Comptroller for Large Bank Supervision (“Deputy Comptroller”), an acceptable plan containing a complete description of the actions that are necessary and appropriate to achieve compliance with Articles IV through IX of this Order (“Action Plan”). In the event the Deputy Comptroller asks the Bank to revise the Action Plan, the Bank shall promptly make necessary and appropriate revisions and resubmit the Action Plan to the Examiner-in-Charge for review and determination of no supervisory objection by the Deputy Comptroller.

(2) The Action Plan shall specify qualified Bank personnel responsible for overseeing the execution of each element of the Action Plan and timelines for completion of each of the requirements of Articles IV through IX of this Order. The timelines in the Action Plan shall be consistent with any deadlines set forth in this Order, unless modified by written agreement with the Deputy Comptroller.

(3) Upon receiving written notice of no supervisory objection from the Deputy Comptroller, the Board shall ensure that the Bank implements and thereafter adheres to the Action Plan. Following implementation of the Action Plan, the Bank shall not take any action that will cause a significant deviation from, or material change to the Action Plan, unless and until the Bank has received a prior written determination of no supervisory objection from the Deputy Comptroller.

(4) 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 a program to comply with Section 5 of the FTC Act, and its implementing regulations, as they relate to the Bank’s identity protection products and debt cancellation products. 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) require timely reporting by Bank management 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.

ARTICLE IV

COMPLIANCE WITH LAW

(1) The Board shall ensure that the Bank, its officers, agents and service providers immediately cease and desist from engaging in violations of Section 5 of the FTC Act based on unfair and deceptive practices related to the Bank’s identity protection products and debt cancellation products, and the Board shall specifically ensure that the Bank take all steps necessary to eliminate any and all violations of Section 5 of the FTC Act for such products and to maintain future compliance with the requirements of the FTC Act.

ARTICLE V

CONSUMER REIMBURSEMENT FOR UNFAIR BILLING PRACTICES

(1) The Bank shall complete full reimbursement, as defined in Paragraphs (3) and (4) of this Article, in accordance with the Reimbursement Plan required by Article VII of this Order, to all Eligible NRB Customers as defined by Paragraph (2)(i) of this Article, and Eligible Late Fee Customers as defined in Paragraph (2)(h) of this Article.

(2) For the purposes of this Order, the following definitions shall apply:

- (a) “DCP Late Fees” are the recurring late fees charged by the Bank to the Debt Cancellation Customers while those customers were Late Fee Recipients.
- (b) “DCP Product Fees” are the monthly fees charged by the Bank or the Debt Cancellation Product Vendor for enrollment in the Debt Cancellation Product.
- (c) “DCP Reimbursement End Date” is the date on which the Eligible Late Fee Customer’s Late Fee Recipient status ended.
- (d) “DCP Reimbursement Start Date” is the date on which the Eligible Late Fee Customer first entered Late Fee Recipient status.
- (e) “Debt Cancellation Customer” is a Bank credit card customer who enrolled in a Debt Cancellation Product.
- (f) “Debt Cancellation Product” refers to a product called Credit Defense Platinum, which benefits included cancellation of a defined portion of a Debt Cancellation Customer’s credit card balance upon the occurrence of certain qualifying events defined in the relevant agreement between the Bank and such customer.
- (g) “Debt Cancellation Product Vendor” refers to third party Aon Integramark (“AIM”), which provided customer care and servicing, cancellations, benefit administration, and product fulfillment services.
- (h) “Eligible Late Fee Customer” is any Debt Cancellation Customer who, between August 2005 and November 2013, was enrolled in a Debt Cancellation Product and who was a Late Fee Recipient during any portion of his or her enrollment.
- (i) “Eligible NRB Customer” is any ID Theft Add-On Product Customer

who, between January 2004 and December 2014, was enrolled in an ID Theft Add-On Product and who was Unprocessable during any portion of his or her enrollment. “NRB” is an abbreviation of “not receiving benefits.”

- (j) “ID Theft Add-On Product Customer” is a Bank customer or legacy Wachovia customer who enrolled in an ID Theft Add-On Product.
- (k) “ID Theft Add-On Product” refers to any products related to identity protection that included credit monitoring and/or credit report retrieval services and were marketed to Bank customers and Wachovia customers by Wells Fargo, Wachovia, and its vendors, including, but not limited to, the Identity Protection Products listed in Article I, Paragraph 8 of this Order.
- (l) “ID Theft Add-On Product Vendor” refers to any third party, including, but not limited to, Trilegiant Corporation (“Trilegiant”), Intersections, Inc., Coverdell, Inc. (“Coverdell”), and Thomas L. Cardella & Associates (“TLC”), that provided marketing, sales, delivery, servicing, and/or fulfillment of the ID Theft Add-On Products to Bank customers and Wachovia customers, as well as Trilegiant’s parent company, Affinion Group.
- (m) “IP Product Fees” are the non-trial period fees charged by the Bank, Wachovia, or the ID Theft Add-On Product Vendors for the ID Theft Add-On Product.
- (n) “IP Reimbursement End Date” is the date on which the Eligible NRB Customer’s Unprocessable status ended.
- (o) “IP Reimbursement Start Date” is the date, on or after January 1, 2004, on

which the Eligible NRB Customer first entered Unprocessable status.

- (p) “Late Fee Recipient” refers to the status of a Debt Cancellation Customer who, at a given time, was assessed a recurring fee by the Bank for missing the monthly minimum payment due date, due to the posting of a Debt Cancellation Product benefit payment by the Debt Cancellation Product Vendor after the monthly minimum payment due date.
- (q) “Unprocessable” refers to the status of an ID Theft Add-On Product Customer who, at a given time, was being billed for an ID Theft Add-On Product but was not receiving the proper credit monitoring benefits of the product.

(3) The reimbursement amount paid to each Eligible NRB Customer shall include, as applicable to each Eligible NRB Customer:

- (a) the sum of:
  - (i) the full amount of IP Product Fees paid by an Eligible NRB Customer from his or her IP Reimbursement Start Date through his or her IP Reimbursement End Date;
  - (ii) the full amount of the over-limit fees, as calculated pursuant to the methodology in the Reimbursement Plan, paid by an Eligible NRB Customer from his or her IP Reimbursement Start Date through his or her IP Reimbursement End Date because the amount of the IP Product Fees assessed resulted in the Eligible NRB Customer exceeding his or her credit limit;
  - (iii) the amount of the overdraft fees, as calculated pursuant to the methodology in the Reimbursement Plan, paid by an Eligible NRB

Customer from his or her IP Reimbursement Start Date through his or her IP Reimbursement End Date because the amount of the IP Product Fees resulted in the Eligible NRB Customer overdrawing his or her deposit account; and

(iv) the amount of the finance charges, as calculated pursuant to the methodology in the Reimbursement Plan, paid by an Eligible NRB Customer on IP Product Fees from his or her IP Reimbursement Start Date through his or her IP Reimbursement End Date;

(b) less any amount of the fees and/or charges described in section (a) of this Paragraph that was previously refunded by the Bank, Wachovia, or the ID Theft Add-On Product Vendors.

(4) The reimbursement amount paid to each Eligible Late Fee Customer shall include, as applicable to each Eligible Late Fee Customer:

(a) the sum of:

(i) the full amount of DCP Late Fees paid by an Eligible Late Fee Customer from his or her DCP Reimbursement Start Date through his or her DCP Reimbursement End Date;

(ii) the full amount of the over-limit fees, as calculated pursuant to the methodology in the Reimbursement Plan, paid by an Eligible Late Fee Customer from his or her DCP Reimbursement Start Date through his or her DCP Reimbursement End Date because the amount of the DCP Late Fees assessed resulted in the Eligible Late Fee Customer exceeding his or her credit limit; and

- (iii) the amount of the finance charges, as calculated pursuant to the methodology in the Reimbursement Plan, paid by an Eligible Late Fee Customer on DCP Late Fees from his or her DCP Reimbursement Start Date through his or her DCP Reimbursement End Date;
- (b) less any amount of the fees and/or charges described in section (a) of this Paragraph that was previously refunded by the Bank or the Debt Cancellation Product Vendor.

## ARTICLE VI

### CONSUMER REIMBURSEMENT FOR DECEPTIVE SALES AND MARKETING PRACTICES

(1) The Bank shall complete full reimbursement, as defined in Paragraphs (3) and (4) of this Article, in accordance with the Reimbursement Plan required by Article VII of this Order, to all Eligible Online Access Customers and Eligible Cancellation Customers as defined in Paragraph (2) of this Article. Those terms not explicitly defined in Paragraph 2 of this Article VI shall have the meaning ascribed to those terms in Paragraph 2 of Article V.

(2) For the purposes of this Order, the following definitions shall apply:

- (a) “Cancelled” refers to the status of any Debt Cancellation Customer who cancelled his or her enrollment in a Debt Cancellation Product within the first thirty (30) days after enrollment in the product.
- (b) “Eligible Online Access Customer” is any ID Theft Add-On Product Customer who enrolled in Wells Fargo’s Enhanced Identity Theft Protection product between March 2012 and October 2013 and who was Upgraded during any portion of his or her enrollment.
- (c) “Eligible Cancellation Customer” is any Debt Cancellation Customer who,

between August 2005 and November 2012, was assessed and did not receive a refund of DCP Product Fees after becoming Cancelled.

- (d) “IP Upgrade End Date” is the date on which the Eligible Online Access Customer’s Upgraded status ended.
- (e) “IP Upgrade Fees” are the difference between the monthly IP Product Fees charged to an ID Theft Add-On Product Customer for Wells Fargo’s Enhanced Identity Theft Protection product and Wells Fargo’s Identity Theft Protection product by the Bank or by an ID Theft Add-On Product Vendor.
- (f) “IP Upgrade Start Date” is the date on which the Eligible Online Access Customer first entered Upgraded status.
- (g) “Upgraded” refers to the status of an ID Theft Add-On Product Customer who was enrolled in the Bank’s Enhanced Identity Theft Protection product as a result of misleading or inaccurate product information provided by the Bank or an ID Theft Add-On Product Vendor during the initial telemarketing call related to the ID Theft Add-On Product until such ID Theft Add-On Product Customer was informed that both Identity Theft Protection and Enhanced Identity Theft Protection benefits are available electronically.

(3) The reimbursement amount paid to each Eligible Online Access Customer shall include, as applicable to each Eligible Online Access Customer:

- (a) the full amount of IP Upgrade Fees paid by an Eligible Online Access Customer from his or her IP Upgrade Start Date through his or her IP Upgrade End Date;

(b) less any amount of the fees described in section (a) of this Paragraph that was previously refunded by the Bank or an ID Theft Add-On Product Vendor.

(4) The reimbursement amount paid to each Eligible Cancellation Customer shall include, as applicable to each Eligible Cancellation Customer:

(a) the sum of:

(i) the full amount of DCP Product Fees paid by an Eligible Cancellation Customer that were not refunded after he or she became Cancelled.

(ii) the full amount of the over-limit fees, as calculated pursuant to the methodology in the Reimbursement Plan, paid by an Eligible Cancellation Customer after becoming Cancelled because the amount of the DCP Product Fees assessed resulted in the Eligible Cancellation Customer exceeding his or her credit limit; and

(iii) the amount of the finance charges, as calculated pursuant to the methodology in the Reimbursement Plan, paid by an Eligible Cancellation Customer on DCP Product Fees after he or she became Cancelled;

(b) less any amount of the fees and/or charges described in section (a) of this Paragraph that was previously refunded by the Bank or the Debt Cancellation Product Vendor.

## ARTICLE VII

### REIMBURSEMENT PLAN

(1) Within ninety (90) days of this Order, the Bank shall develop a Board-approved



reimbursement plan (“Reimbursement Plan”) and submit it to the Examiner-in-Charge for prior determination of no supervisory objection by the Deputy Comptroller. The Reimbursement Plan shall include the following:

- (a) a description of the methods used and the time necessary to compile a list of potential Eligible NRB Customers, Eligible Late Fee Customers, Eligible Online Access Customers, and Eligible Cancellation Customers (collectively, “Eligible Customers”);
- (b) a description of the methods used to calculate the amount of reimbursement to be paid to each Eligible Customer as required by Articles V and VI of this Order;
- (c) a description of the procedures for the issuance and tracking of reimbursement payments to Eligible Customers;
- (d) with regard to Eligible Customers who receive the reimbursement required by Articles V and VI of this Order in the form of a check, a description of procedures:
  - (i) for reporting updated balances, as applicable, to each credit reporting agency to which the Bank or Wachovia 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, Wachovia, or the third party had previously furnished balance information for the account; and
- (e) a description of the procedures for monitoring compliance with the

## Reimbursement Plan.

(2) The Bank represents that it has completed a plan to reimburse Eligible Customers for certain product fees, associated fees, and charges that they paid, and has reimbursed Eligible Customers pursuant to that plan. This plan shall be documented as part of the Reimbursement Plan required by this Article and be subject to the requirements of this Article, and shall include an accounting of amounts the Bank has already reimbursed to Eligible Customers.

(3) Upon receipt of a determination of no supervisory objection to the Reimbursement Plan, the Board shall ensure that the Bank implements and adheres to the Reimbursement Plan. Any proposed changes to or deviations from the approved Reimbursement Plan shall be submitted in writing to the Examiner-in-Charge for prior supervisory review and non-objection by the Deputy Comptroller.

## ARTICLE VIII

### ASSESSMENT OF REIMBURSEMENT

(1) Within ninety (90) days from the completion of reimbursement under the Reimbursement Plan, as detailed in Article VII, or receipt of a determination of no supervisory objection to the Reimbursement Plan, whichever is later, the Bank shall review and assess compliance with the terms of the Reimbursement Plan (“Reimbursement Review”).

(2) The Reimbursement Review shall include an assessment of the Reimbursement Plan and the methodology used to determine the population of Eligible Customers, the amount of reimbursement for each Eligible Customer, the procedures used to issue and track reimbursement payments, the procedures used for reporting and requesting the reporting of updated balances to the credit reporting agencies, and the work of any independent consultants that the Bank has used to assist and review its execution of the Reimbursement Plan.

(3) The Reimbursement Review shall be completed and summarized in a written

report (the “Reimbursement Review Report”), which shall be completed within sixty (60) days of completion of the Reimbursement Review. Within ten (10) days of its completion, the Reimbursement Review Report shall be submitted to the Examiner-in-Charge and the Board.

(4) Any (including all draft and finalized) communications, workpapers, or work product related to the Reimbursement Review shall be made available to the OCC immediately upon request of the Examiner-in-Charge.

## ARTICLE IX

### THIRD PARTY MANAGEMENT

(1) For the purposes of this Article and this Order, “Third Party” refers to any third party that provides marketing, sales, delivery, servicing, and/or fulfillment of services for consumer products offered, pursuant to a contractual obligation to the Bank, as optional add-on products to Bank credit cards and/or any other consumer product of the Bank.

(2) Within sixty (60) days of this Order, the Bank shall submit its written policy governing the management of Third Parties (“Third-Party Management Policy”) to the Examiner-in-Charge for prior determination of no supervisory objection. At a minimum, the Third-Party Management Policy shall require:

- (a) an analysis, to be conducted by the Bank prior to the Bank entering into a contract with the Third Party, of the ability of the Third Party to perform the marketing, sales, delivery, servicing, and/or fulfillment of services for the product(s) in compliance with all applicable consumer protection laws and Bank policies and procedures;
- (b) for new and renewed contracts, a written contract between the Bank and the Third Party, which sets forth the responsibilities of each party. At a minimum, the contract will set forth:

- (i) the Third Party'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 Third Party's responsibilities and duty to provide adequate training on applicable consumer protection laws and Bank policies and procedures to all Third Party employees or agents engaged in the marketing, sales, delivery, servicing, and fulfillment of services for the product(s);
  - (iii) a grant to the Bank of the authority to conduct periodic onsite reviews of the Third Party'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 Third Party materially fails to comply with the terms specified in the contract, including the terms required by this paragraph; and
- (c) periodic onsite review by the Bank of the Third Party's controls, performance, and information systems.

(3) Upon receipt of a determination of no supervisory objection to the Third-Party Management Policy submitted pursuant to Paragraph (2) of this Article, the Board shall ensure that the Bank implements and adheres to the Third-Party Management Policy. Any proposed changes or deviations from the approved Third-Party Management Policy shall be submitted in writing to the Examiner-in-Charge for prior supervisory review and non-objection.

(4) The Bank's Internal Audit department shall periodically conduct an assessment of the Bank's adherence to the Third-Party Management Policy. The initial assessment shall occur

within one hundred twenty (120) days after the Bank's receipt of a determination of no supervisory objection to the Third-Party Management Policy, and the findings shall be memorialized in writing. Within thirty (30) days of completing each assessment, Internal Audit shall provide its written findings to the Committee and the Examiner-in-Charge. Subsequent assessments shall occur periodically according to the Bank's Internal Audit schedule for auditing the Bank's enterprise and line-of-business Third-Party Management programs.

(5) The Board shall ensure that there is oversight of the Third-Party Management Policy by the Bank's senior risk managers and senior management.

## ARTICLE X

### APPROVAL, IMPLEMENTATION, AND REPORTS

(1) The Bank shall submit the written plans, programs, policies, and procedures required by this Order for review and determination of no supervisory objection to the Examiner-in-Charge within the applicable time periods set forth in Articles IV through IX. The Board shall ensure that the Bank submits the plans, programs, policies, and procedures to the Examiner-in-Charge for prior written determination of no supervisory objection. In the event the Deputy Comptroller or Examiner-in-Charge asks the Bank to revise the plans, programs, policies, or procedures, the Bank shall promptly make necessary and appropriate revisions and resubmit the materials to the Examiner-in-Charge for review and determination of no supervisory objection. Upon receiving written notice of no supervisory objection from the Deputy Comptroller or Examiner-in-Charge, the Board shall ensure that the Bank implements and thereafter adheres to the plans, programs, policies, and procedures.

(2) During the term of this Order, the required plans, programs, policies, and procedures shall not be amended or rescinded in any material respect without a prior written determination of no supervisory objection from the Deputy Comptroller or Examiner-in-Charge.

(3) During the term of this Order, the Bank shall revise the required plans, programs, policies, and procedures as necessary to incorporate new, or changes to, applicable legal requirements and supervisory guidelines.

(4) The Board shall ensure that the Bank has processes, personnel, and control systems to ensure implementation of and adherence to the plans, programs, policies, and procedures required by this Order.

(5) Communication shall be sent, as outlined in this Order, to:

Bradley Linskens  
Examiner-in-Charge  
National Bank Examiners  
343 Sansome Street, Suite 1150  
San Francisco, CA 94163

and/or such other individuals or addresses as directed by the OCC.

## ARTICLE XI

### OTHER PROVISIONS

(1) Although this Order requires the Bank to submit certain actions, plans, programs, and policies for the review of, or prior written determination of no supervisory 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) 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.

(3) This Order constitutes a settlement of the cease and desist proceeding against the Bank contemplated by the Comptroller, based on the practices and violations described in the Comptroller's Findings set forth in Article I of this Order. The Comptroller 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 Comptroller based on the practices and violations described in Article I of this Order, to the extent known to the Comptroller as of the effective date of this Order.

Nothing in the Stipulation or this Order, however, shall prevent the Comptroller from:

- (a) instituting enforcement actions, other than a cease and desist order, against the Bank based on the findings set forth in Article I of this Order;
- (b) instituting enforcement actions against the Bank based on any other findings;
- (c) instituting enforcement actions against the Bank's institution-affiliated parties based on the findings set forth in Article I of this Order, or any other findings; or
- (d) utilizing the findings set forth in Article I of this Order in future enforcement actions against the Bank or its institution-affiliated parties to establish a pattern or the continuation of a pattern.

Further, nothing in the Stipulation or this Order shall affect any right of the Comptroller to determine and ensure compliance with the terms and provisions of the Stipulation or this Order.

(4) This Order is 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 or his authorized representative.

(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. The time limitations

may be extended in writing by the Deputy Comptroller for good cause upon written application by the Board. Any request to extend any time limitation shall include a statement setting forth in detail the special circumstances that prevent the Bank from complying with the time limitation, and shall be accompanied by relevant supporting documentation. The Deputy Comptroller's decision regarding the request is final and not subject to further review.

(6) The terms and provisions of this Order apply to the Bank and its subsidiaries, even though those subsidiaries are not named as parties to this Order. The Bank shall integrate any activities done by a subsidiary into its plans, policies, programs, and processes required by this Order. The Bank shall ensure that its subsidiaries comply with all terms and provisions of this Order.

(7) 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. Without limiting the foregoing, 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.

(8) 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 3 day of June, 2015.

S/Ron A. Pasch  
Ron A. Pasch  
Deputy Comptroller  
Large Bank Supervision



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

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**In the Matter of:**

Wells Fargo Bank, National Association  
Sioux Falls, South Dakota

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AA-EC-2015-06

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

**WHEREAS**, the Comptroller of the Currency of the United States of America (“Comptroller”), based upon information derived from the exercise of his regulatory and supervisory responsibilities, intends to issue a cease and desist order to Wells Fargo Bank, National Association, Sioux Falls, South Dakota (“Wells Fargo” or “Bank”), pursuant to 12 U.S.C. § 1818(b), for the Bank’s violations of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1), related to billing and marketing practices with regard to its identity protection and debt cancellation products;

**WHEREAS**, in the interest of cooperation and to avoid additional costs associated with administrative and judicial proceedings with respect to the above matter, the Bank, through its duly elected and acting Board of Directors (the “Board”), has agreed to execute this Stipulation and Consent to the Issuance of a Consent Order (“Stipulation”), that is accepted by the Comptroller, through his duly authorized representative;

**NOW, THEREFORE**, in consideration of the above premises, it is stipulated by the Bank that:

## 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. §§ 1813(c)(2) and 1818(b)(1).

## ARTICLE II

### CONSENT

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

(2) The terms and provisions of the Consent Order apply to Wells Fargo and all of its subsidiaries, even though those subsidiaries are not named as parties to the Consent Order.

(3) 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 the Consent Order shall become effective upon its execution by the Comptroller through his authorized representative, and shall be fully enforceable by the Comptroller pursuant to 12 U.S.C. § 1818(i).

(4) 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(b), 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.

(5) The Bank declares that no separate promise or inducement of any kind has been made by the Comptroller, or by his agents or employees, to cause or induce the Bank to consent to the issuance of the Consent Order and/or execute this Stipulation.

(6) 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.

(7) The Consent Order constitutes a settlement of the cease and desist proceeding against the Bank contemplated by the Comptroller, based on the practices and violations described in the Comptroller's Findings set forth in Article I of the Consent Order. The Comptroller 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 Comptroller based on the practices and violations described in Article I of the Consent Order, to the extent known to the Comptroller as of the effective date of the Consent Order. Nothing in this Stipulation or the Consent Order, however, shall prevent the Comptroller from:

- (a) instituting enforcement actions, other than a cease and desist order, against the Bank based on the findings set forth in Article I of the Consent Order;
- (b) instituting enforcement actions against the Bank based on any other findings;

- (c) instituting enforcement actions against the Bank's institution-affiliated parties based on the findings set forth in Article I of the Consent Order, or any other findings; or
- (d) utilizing the findings set forth in Article I of the Consent Order in future enforcement actions against the Bank or its institution-affiliated parties to establish a pattern or the continuation of a pattern.

Further, nothing in this Stipulation or the Consent Order shall affect any right of the Comptroller to determine and ensure compliance with the terms and provisions of this Stipulation or the Consent Order.

### ARTICLE III

#### WAIVERS

- (1) The Bank, by executing this Stipulation and consenting to the Consent Order, waives:
  - (a) any and all rights to 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) any and all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(b) and (h), and 12 C.F.R. Part 19;
  - (d) any and 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 the 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;

- (f) any and all rights to assert this proceeding, this Stipulation, consent to the issuance of the Consent Order, and/or the issuance of the Consent Order, as the basis for a claim of double jeopardy in any pending or future proceeding brought by the United States Department of Justice or any other governmental entity; and
- (g) any and all rights to challenge or contest the validity of the Consent Order.

#### ARTICLE IV

##### ELIGIBLE BANK – OTHER PROVISIONS

- (1) As a result of the Consent Order:
  - (a) the Bank is an “eligible bank” pursuant to 12 C.F.R. § 5.3(g)(4) for the purposes of 12 C.F.R. Part 5 regarding rules, policies, and procedures for corporate activities, unless otherwise informed in writing by the Office of the Comptroller of the Currency (“OCC”);
  - (b) the Bank is not subject to the limitation of 12 C.F.R. § 5.51(c)(6)(ii) for the purposes of 12 C.F.R. § 5.51 requiring OCC approval of a change in directors and senior executive officers, unless otherwise informed in writing by the OCC;
  - (c) the Bank is not subject to the limitation on golden parachute and indemnification payments provided by 12 C.F.R. § 359.1(f)(1)(ii)(C) and

12 C.F.R. § 5.51(c)(6)(ii), unless otherwise informed in writing by the OCC;

- (d) the Bank’s status as an “eligible bank” remains unchanged pursuant to 12 C.F.R. § 24.2(e)(4) for the purposes of 12 C.F.R. Part 24 regarding community and economic development, unless otherwise informed in writing by the OCC; and
- (e) the Consent Order shall not be construed to be a “written agreement, order, or capital directive” within the meaning of 12 C.F.R. § 6.4, unless the OCC informs the Bank otherwise in writing.

## ARTICLE V

### CLOSING

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

(2) Nothing in this Stipulation or the Consent Order shall preclude any proceedings brought by the Comptroller to enforce the terms of the Consent Order, and nothing in this Stipulation or the Consent Order constitutes, nor shall the Bank contend that it constitutes, a release, discharge, compromise, settlement, dismissal, or resolution of any actions, or in any way affects any actions that may be or have been brought by any other representative of the United States or an agency thereof, including, without limitation, the United States Department of Justice.

(3) The terms of this Stipulation, including this paragraph, and of 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.

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IN TESTIMONY WHEREOF, the undersigned, as the duly elected and acting Board of Directors of Wells Fargo Bank, National Association, Sioux Falls, South Dakota, have hereunto set their hands on behalf of the Bank.

s/ Lloyd H. Dean

May 15, 2015

\_\_\_\_\_  
Lloyd H. Dean

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Date

s/ Enrique Hernandez, Jr.

May 14, 2015

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Enrique Hernandez, Jr.

\_\_\_\_\_  
Date

s/ Cynthia H. Milligan

May 13, 2015

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Cynthia H. Milligan

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Date

s/ James H. Quigley

5/12/15

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James H. Quigley

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Date

s/ Judith M. Runstad

5/13/15

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Judith M. Runstad

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Date

s/ Stephen W. Sanger

5-8-15

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Stephen W. Sanger

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Date

s/ John G. Stumpf

May 11, 2015

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John G. Stumpf

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Date

Accepted by:

THE COMPTROLLER OF THE CURRENCY

s/ Ron A. Pasch

June 3, 2015

By: \_\_\_\_\_

Ron A. Pasch

\_\_\_\_\_  
Date

Deputy Comptroller

Large Bank Supervision