

#2010-012

AGREEMENT BY AND BETWEEN
Capital One Bank (USA), N.A.
Glen Allen, VA
and
The Comptroller of the Currency

Whereas, Capital One Bank (USA), N.A., Glen Allen, Virginia (“Bank”) and the Comptroller of the Currency of the United States of America (“Comptroller”) wish to protect the interests of the Bank, depositors of the Bank, and consumers, and, toward that end, wish the Bank to operate in a safe and sound manner and in accordance with all applicable laws, rules and regulations, and

Whereas, from on or about January 1, 2004, until on or about October 31, 2006, the Bank, while a state-chartered member bank, engaged in unfair practices in connection with its account closing processes, and the Bank and the Comptroller wish to remediate harm suffered by consumers as a result of these practices, and

Whereas, in consideration of the above premises, it is agreed, between the Bank, by and through its duly elected and acting Board of Directors (“Board”), and the Comptroller, through his authorized representative, that the Bank shall operate at all times in compliance with the articles of this Agreement.

Article I

JURISDICTION

(1) This Agreement shall be construed to be a “written agreement entered into with the agency” within the meaning of 12 U.S.C. § 1818(b)(1).

(2) This Agreement shall be construed to be a “written agreement between such depository institution and such agency” within the meaning of 12 U.S.C. § 1818(e)(1) and 12 U.S.C. § 1818(i)(2).

(3) This Agreement shall be construed to be a “written agreement” within the meaning of 12 U.S.C. § 1818(u)(1)(A).

(4) Unless notified otherwise by the Deputy Comptroller, the restitution plan that the Bank has agreed to submit pursuant to Article III of this Agreement shall be forwarded to:

Deputy Comptroller, Large Bank Supervision
Office of the Comptroller of the Currency
Washington, DC 20219

(5) Unless notified otherwise by the Deputy Comptroller, a copy of the restitution plan forwarded to the Deputy Comptroller pursuant to Paragraph (4) of this Article, and all other reports and plans that the Bank has agreed to submit pursuant to this Agreement, shall be forwarded to:

Examiner-in-Charge, Large Bank Supervision
Office of the Comptroller of the Currency
1680 Capital One Drive
McLean, VA 22102

Article II

COMPLIANCE COMMITTEE

(1) Within ten (10) days, the Board shall appoint a Compliance Committee to be responsible for monitoring and coordinating the Bank’s adherence to the provisions of the Agreement. The Compliance Committee shall consist of at least five (5) individuals, of which two (2) shall be selected from the Board and of which three (3) shall be members of the Bank’s holding company board of directors and not be employees of the Bank.

(2) The Compliance Committee shall meet at least monthly.

(3) Within thirty (30) days of the appointment of the Compliance Committee and quarterly thereafter, the Compliance Committee 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 Agreement;
- (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 Agreement.

(4) Within ten (10) days of the receipt of the Compliance Committee's initial report and within ten (10) days of the end of each calendar quarter thereafter, the Board shall submit progress reports to the Deputy Comptroller. These reports shall include the Compliance Committee's report to the Board for the applicable quarter with any additional comments by the Board.

Article III

CONSUMER RESTITUTION

(1) Within fifteen (15) days, the Bank shall deposit into a segregated deposit account at the Bank an amount not less than seven hundred seventy-five thousand dollars (\$775,000), which represents an estimate of the maximum potential restitution that may be required by this Article; actual claims filed may result in restitution in a lesser amount. Additional amounts shall be deposited into a segregated deposit account at the Bank as necessary to fully comply with this Article.

(2) Funds deposited into the segregated deposit account pursuant to Paragraph (1) of this Article shall be used to make full restitution to each “eligible consumer.” “Eligible consumer,” for purposes of this Agreement, is defined as any individual or entity:

- (a) that had a Bank credit card account;
- (b) that requested to close the account anytime between January 1, 2004 and October 31, 2006;
- (c) that was charged an annual membership fee (“AMF”) anytime within ninety (90) days of requesting that the account be closed; and
- (d) whose balance was paid to zero dollars (\$0) within the ninety (90) days of requesting the account be closed.

(3) Restitution shall be in an amount that will fully reimburse the eligible consumer the amount of the AMF, as well as any other fees paid by the consumer that directly resulted from the imposition of the AMF, including, but not limited to, interest charges, late fees, and over-limit fees. If the Bank has already refunded the AMF to an eligible consumer then the Bank shall still reimburse any fees paid by that consumer that were a direct result of the imposition of the AMF.

(4) Within thirty (30) days, the Board shall develop a restitution plan 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 eligible consumers, reasonably verify each consumer’s address and issue checks to these consumers;

- (b) a description of the procedures for issuance and tracking of restitution payments to eligible consumers, including procedures for handling undeliverable and non-negotiated reimbursement checks; and
- (c) a description of the procedures for monitoring compliance with the restitution plan.

(5) Upon receipt of a determination of supervisory non-objection to the restitution plan submitted pursuant to Paragraph (4) of this Article, the Bank shall adopt, implement and adhere 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 IV

ADMINISTRATIVE APPEALS AND EXTENSIONS OF TIME

(1) If the Bank determines that an exception to any provision of this Agreement is in the best interests of the Bank or consumers, or requires an extension of any timeframe within this Agreement, the Board shall submit a written request to the Deputy Comptroller asking for relief.

(2) Any written requests submitted pursuant to this Article shall include a statement setting forth in detail the special circumstances that prevent the Bank from complying with any provision, that require the Deputy Comptroller to exempt the Bank from any provision, or that require an extension of any timeframe within this Agreement. All such requests shall be accompanied by relevant supporting documentation.

(3) The Deputy Comptroller's decision to grant or deny the request is final and not subject to further review or appeal.

Article V

CLOSING

(1) Although the Bank, through its Board, is required to submit a restitution plan and reports to the Deputy Comptroller for review or prior written determination of no supervisory objection, the Board has the ultimate responsibility for proper and sound management of the Bank, as well as compliance with all of the provisions contained in this Agreement.

(2) It is expressly and clearly understood that if, at any time, the Comptroller deems it appropriate in fulfilling the responsibilities placed upon him by the several laws of the United States of America to undertake any action affecting the Bank, nothing in this Agreement shall in any way inhibit, estop, bar, or otherwise prevent the Comptroller from so doing.

(3) Any time limitations imposed by this Agreement shall begin to run from the effective date of this Agreement, unless otherwise specified. For the purposes of this Agreement, "days" shall mean calendar days.

(4) The provisions of this Agreement shall be effective upon execution by the parties hereto and its provisions shall continue in full force and effect unless or until such provisions are amended in writing by mutual consent of the parties to the Agreement or excepted, waived, or terminated in writing by the Comptroller.

(5) In each instance in this Agreement in which the Board is required to ensure adherence to, and 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 Agreement;

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

(6) This Agreement is intended to be, and shall be construed to be, a supervisory “written agreement entered into with the agency” as contemplated by 12 U.S.C. § 1818(b)(1), and expressly does not form, and may not be construed to form, a contract binding on the Comptroller or the United States. 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)(1), 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. The Bank also expressly acknowledges that no officer or employee of the Office of the Comptroller of the Currency has statutory or other authority to bind the United States, the U.S. 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. The terms of this Agreement, 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.

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

/s/
Grace E. Dailey
Deputy Comptroller
Large Bank Supervision

February 18, 2010
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/
Richard D. Fairbank

1/29/2010
Date

/s/
W. Ronald Dietz

1/29/2010
Date

/s/
Ann Fritz Hackett

1/29/2010
Date

/s/
Lewis Hay, III

1/29/2010
Date

/s/
Gary L. Perlin

1/29/2010
Date

/s/
Ryan M. Schneider

1/29/2010
Date

/s/
Stanley I. Westreich

1/29/2010
Date