

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

In the Matter of:

Bank of America, N.A.
Charlotte, North Carolina

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AA-ENF-2023-19

CONSENT ORDER

WHEREAS, the Office of the Comptroller of the Currency (“OCC”) has supervisory authority over Bank of America, N.A, Charlotte, North Carolina (“Bank”);

WHEREAS, the OCC intends to initiate civil money penalty proceedings against the Bank pursuant to 12 U.S.C. § 1818(i), through the issuance of a Notice of Assessment of a Civil Money Penalty, related to the Bank assessing multiple overdraft and insufficient funds fees against customers for a single transaction in violation of Section 5 of the Federal Trade Commission Act’s (“FTC Act”), 15 U.S.C. § 45(a)(1) prohibition against unfair and deceptive practices;

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, by and through its duly elected and acting Board of Directors (“Board”), consents to the issuance of this Consent Order (“Order”), by the OCC through the duly authorized representative of the Comptroller of the Currency (“Comptroller”); and

NOW, THEREFORE, pursuant to the authority vested in the OCC by Section 8(i) of the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818(i), the OCC hereby orders that:

ARTICLE I
JURISDICTION

(1) The Bank is an “insured depository institution” as that term is defined in 12 U.S.C. § 1813(c)(2).

(2) The Bank is a national banking association within the meaning of 12 U.S.C. § 1813(q)(1)(A), and is chartered and examined by the OCC. *See* 12 U.S.C. § 1 *et seq.*

(3) The OCC is the “appropriate Federal banking agency” as that term is defined in 12 U.S.C. § 1813(q) and is therefore authorized to initiate and maintain this civil money penalty action against the Bank pursuant to 12 U.S.C. § 1818(i).

ARTICLE II
COMPTROLLER’S FINDINGS

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

(1) In November 2021, the OCC commenced an examination with an initial focus on the Bank’s customer overdraft program between March 2020 to August 2021.

(2) OCC examiners found that, from March 1, 2020, to November 11, 2021, after the Bank declined a check or Automated Clearing House transaction due to insufficient funds, a merchant could resubmit the transaction for payment. If a customer’s account had insufficient funds to cover the resubmitted transaction, the Bank would either pay the transaction and charge a \$35 overdraft fee or decline the transaction and charge an additional \$35 insufficient funds fee (collectively, “Representment fees”).

(3) These Representment fees were in addition to the initial \$35 insufficient funds fee the Bank charged when it first declined the transaction, resulting in the Bank charging customers multiple fees for the same declined transaction.

(4) From March 1, 2020, to November 11, 2021, the Bank charged customers tens of millions of dollars in Representment fees on resubmitted transactions, resulting in substantial injury to customers that was not outweighed by any benefits to customers or competition.

(5) Customers had no ability to know when or even if a merchant would resubmit a transaction to the Bank for payment and therefore could not reasonably avoid the assessment of multiple fees for the same transaction.

(6) From March 1, 2020, to November 11, 2021, the Bank's Deposit Agreement and Disclosures, and its Personal Schedule of Fees (collectively, "Disclosures"), contained materially misleading representations and omissions regarding Representment fees.

(7) The Disclosures did not inform customers that they may be charged additional fees when a merchant resubmitted a transaction for payment. Rather, the Bank's Disclosures explained consumers could be assessed an overdraft or insufficient funds fee of "\$35 [for] each item." The Disclosures defined an "item" in a way that could have led a reasonable customer to think an "item" and a "transaction" were the same thing. And, the Disclosures did not clearly state that a merchant could resubmit a declined transaction for payment. As such, a reasonable customer was likely to be misled that a transaction would only be subject to a single overdraft or insufficient funds fee.

(8) By reason of the deficiencies and conduct described in Paragraphs (1) through (7) of this Article, the Bank engaged in unfair and deceptive practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a). These violations and practices support actions against the Bank under 12 U.S.C. § 1818(i)(2)(B).

(9) In November 2021, the Bank stopped assessing Representment fees on ACH transactions. In February 2022, the Bank ceased charging Representment fees on checks, along

with all other insufficient funds fees, effectively ending its practice of assessing multiple fees on a single transaction in violation of Section 5 of the FTC Act.

(10) The Bank's efforts to reduce fees, including insufficient funds fees, has led to the Bank charging customers millions of dollars less in fees.

(11) In response to supervisory concerns, the Bank has waived, refunded, or agreed to refund tens of millions of dollars to customers harmed by its practice of charging Representment fees, between March 2020 and February 2022.

ARTICLE III

ORDER FOR A CIVIL MONEY PENALTY

(1) The Bank shall make payment of a civil money penalty in the total amount of sixty million dollars (\$60,000,000), which shall be paid upon the execution of this Order.

(2) Such payment shall be made by a wire transfer sent in accordance with instructions provided by the OCC and the docket number of this case (AA-ENF-2023-19) shall be entered on the wire confirmation. A copy of the wire confirmation shall be sent immediately, by overnight delivery, to the Director of Enforcement, Office of the Comptroller of the Currency, 400 7th Street, S.W., Washington, D.C. 20219 or by email to the address provided by the OCC.

ARTICLE IV

WAIVERS

- (1) The Bank, by executing and consenting to this Order, waives:
- (a) any and all rights to the issuance of a Notice of Charges pursuant to 12 U.S.C. § 1818;
 - (b) any and all procedural rights available in connection with the issuance of this Order;

- (c) any and all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818 and 12 C.F.R. Part 19;
- (d) any and all rights to seek any type of administrative or judicial review of this Order;
- (e) any and all claims for fees, costs, or expenses against the OCC, or any of its officers, employees, or agents related in any way to this enforcement matter or this 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 these proceedings, the consent to and/or the issuance of this Order, as the basis for a claim of double jeopardy in any pending or future proceedings 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 this Order.

ARTICLE V

CLOSING

(1) This Order is a settlement of the civil money penalty proceedings against the Bank contemplated by the OCC, based on the violations of law described in the Comptroller's Findings set forth in Article II of this Order. The OCC releases and discharges the Bank from all potential liability for a civil money penalty order that has been or might have been asserted by the OCC based on the violations described in Article II of this Order, to the extent known to the OCC as of the effective date of this Order. Nothing in this Order, however, shall prevent the OCC from:

- (a) instituting enforcement actions other than a civil money penalty order against the Bank based on the Comptroller's Findings set forth in Article II of this Order;
- (b) instituting enforcement actions against the Bank based on any other findings;
- (c) instituting enforcement actions against institution-affiliated parties (as defined by 12 U.S.C. § 1813(u)) based on the Comptroller's Findings set forth in Article II of this Order, or any other findings; or
- (d) utilizing the Comptroller's Findings set forth in Article II 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.

(2) Nothing in this Order is 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) This Order is:

- (a) an "order issued with the consent of the depository institution" within the meaning of 12 U.S.C. § 1818(h)(2);
- (b) an "effective and outstanding . . . order" within the meaning of 12 U.S.C. § 1818(i)(1); and
- (c) a "final order" within the meaning of 12 U.S.C. § 1818(i)(2) and (u).

(4) This Order is effective upon its issuance by the OCC, through the Comptroller's duly authorized representative.

(5) This Order is not a contract binding on the United States, the United States Treasury Department, the OCC, or any officer, employee, or agent of the OCC and neither the Bank nor the OCC intends this Order to be a contract.

(6) No separate promise or inducement of any kind has been made by the OCC, or by its officers, employees, or agents, to cause or induce the Bank to consent to the issuance of this Order.

(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.

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

//s// Digitally Signed, Dated: 2023.07.05

Tanya Smith
Deputy Comptroller
Large Bank Supervision

IN TESTIMONY WHEREOF, the undersigned, as the duly elected and acting Board of Directors of the Bank of America, N.A., Charlotte, North Carolina have hereunto set their signatures on behalf of the Bank.

/s/	6.28.2023
_____ Brian T. Moynihan	_____ Date
/s/	6-28-23
_____ Sharon L. Allen	_____ Date
/s/	6-28-2023
_____ José E. Almeida	_____ Date
/s/	6/28/23
_____ Frank P. Bramble, Sr.	_____ Date
/s/	28 June 2023
_____ Pierre J.P. de Weck	_____ Date
/s/	6-28-2023
_____ Arnold W. Donald	_____ Date
/s/	6/28/2023
_____ Linda P. Hudson	_____ Date
/s/	6/28/2023
_____ Monica C. Lozano	_____ Date
/s/	6-28-2023
_____ Lionel L. Nowell, III	_____ Date

/s/

Denise L. Ramos

6-28-2023

Date

/s/

Clayton S. Rose

6-28-2023

Date

/s/

Michael D. White

6/28/23

Date

/s/

Thomas D. Woods

June 28, 2023

Date

/s/

Maria T. Zuber

06.28.23

Date