

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

---

**In the Matter of:** )  
 )  
Capital One Bank (USA), N.A. ) AA-EC-2012-63  
Glen Allen, Virginia )

---

**CONSENT ORDER FOR A CIVIL MONEY PENALTY**

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.

## ARTICLE II

### ORDER FOR A CIVIL MONEY PENALTY

Pursuant to the authority vested in him by the Federal Deposit Insurance Act, 12 U.S.C. § 1818(i), the Comptroller orders, and the Bank consents to the following:

(1) The Bank shall make payment of a civil money penalty in the amount of thirty-five million dollars (\$35,000,000), which shall be paid upon the execution of this Order.

- (a) If a check is the selected method of payment, the check shall be made payable to the Treasurer of the United States and shall be delivered to: Comptroller of the Currency, P.O. Box 979012, St. Louis, Missouri 63197-9000.
- (b) If a wire transfer is the selected method of payment, it shall be sent to the Comptroller's account XXXXXX, ABA Routing #XXXXXXXXXX.
- (c) The docket number of this case (AA-EC-2012-63) shall be entered on the payment document or wire confirmation and a photocopy of the payment document or confirmation of the wire transfer shall be sent immediately, by overnight delivery, to the Director of Enforcement and Compliance, Office of the Comptroller of the Currency, 250 E Street, S.W., Washington, D.C. 20219.

(2) This Order shall be enforceable to the same extent and in the same manner as an effective and outstanding order that has been issued and has become final pursuant to 12 U.S.C. § 1818(h) and (i).

### ARTICLE III

#### OTHER PROVISIONS

(1) The provisions of this Order are effective upon issuance of this Order by the Comptroller, through his duly authorized representative whose hand appears below, and shall remain effective and enforceable against the Bank and its successors in interest, except to the

extent that, and until such time as, any provisions of this Order shall have been amended, suspended, waived, or terminated by the Comptroller.

(2) This Order is intended to be, and shall be construed to be, a final order issued pursuant to 12 U.S.C. § 1818(i)(2), and expressly does not form, and may not be construed to form, a contract binding on the Comptroller or the United States.

(3) 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 for Large Bank Supervision



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

---

<b>In the Matter of:</b>	)	
	)	AA-EC-2012-63
Capital One Bank (USA), N.A.	)	
Glen Allen, Virginia	)	

---

**STIPULATION AND CONSENT TO THE ISSUANCE  
OF AN ORDER FOR A CIVIL MONEY PENALTY**

The Comptroller of the Currency of the United States of America (“Comptroller”), intends to initiate a civil money penalty proceeding against Capital One Bank (USA), N.A., Glen Allen, Virginia (“Bank”), pursuant to 12 U.S.C. § 1818(i), 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, consents to the issuance of a Consent Order for a Civil Money Penalty, dated July 17, 2012 (“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(i), 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 civil money penalty 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 Order, to the extent known to the OCC as of the effective date of the Order. However, the banking practices alleged in Article I of the 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 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