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UNITED STATES OF AMERICA  
Before the  
CONSUMER FINANCIAL PROTECTION BUREAU

ADMINISTRATIVE PROCEEDING  
File No. 2012-CFPB-0001

In the Matter of:

Capital One Bank, (USA) N.A.

STIPULATION AND CONSENT ORDER

The Consumer Financial Protection Bureau (“CFPB”), through its examiners and other staff, conducted an examination of the marketing, sales, and operation of Capital One Bank, (USA) N.A., (hereinafter “the Bank” or “Capital One” as defined below) with regard to its Payment Protection Products and Credit Monitoring Products and identified violations of law and deficiencies in the applicable compliance systems and procedures. The CFPB hereby issues, pursuant to 12 U.S.C. §§ 5563 & 5565, this Consent Order (“Consent Order”).

JURISDICTION

The Consumer Financial Protection Bureau (“CFPB”) has jurisdiction to enforce the Consumer Financial Protection Act (“CFPA”), 12 U.S.C. §§ 5481 et seq., and other Federal consumer financial laws as defined in 12 U.S.C. § 5481(14).

Overview

The CFPB finds, and the Bank neither admits nor denies, that the Bank has engaged in a violation of Sections 1031 and 1036 of the CFPA (collectively, “Section 1036”), 12 U.S.C. § 5536, in connection with the marketing, sales, and operation of the Bank’s Payment Protection

Products and Credit Monitoring Products that were offered and sold to individual holders of Capital One consumer credit card accounts, during the period between August 1, 2010 and January 9, 2012 (the "Relevant Time Period").

### **STIPULATION**

The Bank, by and through its President and duly elected and currently acting Board of Directors ("Board"), has executed a Stipulation to the Issuance of a Consent Order ("Stipulation"), on July 16, 2012, that is accepted by the CFPB. With the Stipulation, the Bank has consented, without admitting or denying the findings of fact or conclusions of law herein, to the issuance of this Consent Order, ("Consent Order") by the CFPB pursuant to sections 1053 and 1055 of the CFPA, 12 U.S.C. §§ 5563 & 5565. The Bank admits to the CFPB's jurisdiction over the Bank in this proceeding.

Having determined that the requirements for issuance of an order under Section 1053(b) of the CFPA, 12 U.S.C. § 5563(b), have been satisfied, the CFPB, accepts the Stipulation and issues the following order:

### **CONSENT ORDER**

#### **Definitions**

For purposes of this CONSENT ORDER, the following definitions will apply:

1. "Bank" and "Capital One" are Capital One Bank (USA), N.A., Glen Allen, Virginia.
2. "Cardmember" means any consumer who has applied or applies for, and received or receives a Capital One 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.

3. "Credit Monitoring Products" means any product marketed and sold by the Bank, including but not limited to "Credit Inform", "Credit Inform Premier", and "ID Alert", which provides consumers with reports, updates or monitoring of information reported to a credit reporting agency and/or coverage for Cardmembers' lost wages and certain expenses caused by identity theft. The Credit Monitoring Products provide access to various information and data regarding the Cardmember's credit, including credit scores and changes as reported to one or more major credit reporting agencies. In addition, Cardmembers may seek reimbursement for lost wages, certain expenses and receive other assistance related to "identity theft."
4. "Payment Protection Product" means any product marketed and sold by the Bank that allows a Cardmember who is enrolled in the Payment Protection Product to request cancellation of the entire credit card balance, up to the credit card limit, in the event of death or cancellation of up to twelve months of minimum payments in certain circumstances such as unemployment, disability, or certain life events.
5. "Products" means collectively the Bank's Payment Protection Products and Credit Monitoring Products.

#### **Findings of Fact**

Based on the information collected through CFPB's exam of Capital One's marketing, sales, and operations with regard to the Products, CFPB finds, and the Bank neither admits nor denies, the following facts:

1. During the Relevant Time Period, the Bank required the vast majority of Cardmembers to activate newly issued or re-issued cards by telephone through third-party call-centers.

2. These Cardmembers were routed to a different process depending upon their credit score and credit limits. Cardmembers with certain credit scores were routed to a routine credit activation process usually lasting two minutes or less, and were not solicited for any of the Products. Cardmembers with a credit card in the Bank's subprime portfolio or in its prime portfolio with an initial credit line of \$5,000 or less were routed to a process which involved solicitation of the Products, ostensibly while the Cardmembers were awaiting completion of the activation process. Based on the sample reviewed by examiners, the average call length for these calls was between seven and eight minutes.
3. The Bank developed call-center scripts ("scripts") for each product to be used by the call-center representatives in each solicitation. The scripts led the call-center representative through an introduction of a Product and provided the call-center representatives specific responses to certain questions from a Cardmember.
4. During the Relevant Time Period, call-center representatives frequently engaged in improper sales practices, deviating from the scripts' instructions or misinterpreting the scripts in explaining the products, their terms and eligibility.
5. With respect to the marketing of the Products, the Bank's compliance monitoring, service provider management and quality assurance resulted in ineffective oversight which failed to prevent, identify, or correct the improper sales practices.
6. The improper sales practices included, but were not limited to, the following examples:
  - a. Indicating that having the Products would improve the Cardmember's credit scores and assist them in receiving a credit limit increase on their Capital One card.

- b. Referring to the Payment Protection Product as a “back-up fund,” indicating to some consumers that the feature would automatically kick in, without any action by the Cardmember, when the Cardmember missed a payment.
- c. Misrepresenting the cost of Payment Protection by:
  - i. implying that the Payment Protection Product was a free feature of the card;
  - ii. suggesting that consumers would not be billed for the Payment Protection Product as long as they kept up a good payment history; and
  - iii. confirming to a consumer that the product “only costs 99 cents.”
- d. Responding to requests for additional information by informing Cardmembers that they must first purchase the Products in order to receive full information about them.
- e. Failing to determine whether a Cardmember was employed or characterizing any source of income as sufficient to consider unemployed Cardmembers as “self-employed,” implying that the Cardmember could be eligible for all benefits of the Payment Protection Product.
- f. Stating unsubstantiated statistics, such as “identity theft is the number one crime,” and informing consumers that they would have access to “federally certified agents” while selling the Credit Monitoring Products.
- g. Describing the Products as “a special tool” available on the account indicating to some consumers that the product came with the credit card without additional charge, when in fact the products were not free.
- h. Failing to inform the Cardmember that the Products were optional and describing the Products as if they were features that came with the card.

- i. Failing to obtain sufficient affirmative consent from the Cardmember before enrolling them.
7. In order to access certain benefits of the Payment Protection Product, Cardmembers must meet eligibility requirements. For example, a Cardmember who was unemployed, from temporary disability or otherwise, at the time of enrollment, was not eligible to make claims based upon that unemployment or disability period and was only eligible for claims based upon future unemployment, claims based upon death, or to receive the once-per-year "emergency" or "life events" payments. For a Cardmember who was permanently disabled at the time of enrollment, the Cardmember was not eligible for claims based upon unemployment and could only be eligible for claims based upon death, or the "emergency" or "life events" payments. Cardmembers who were improperly screened for eligibility for the Payment Protection Product, at the time of purchase by call-center representatives, and later applied for claims were then denied benefits because their loss occurred prior to enrollment.
8. When Cardmembers called to cancel a Product, call-center representatives frequently attempted to rebut Cardmembers' requests for cancellation, including by repeating many of the same misleading and incorrect assertions about the benefits and costs of the products as in the activation calls. As a result, many of the Cardmembers who called to cancel a Product were retained.
9. From August 1, 2010 through January 17, 2012, approximately 2 million Cardmembers were enrolled or retained in the Products through call-center representatives. The Bank has estimated these Cardmembers paid at least \$140 million in fees and associated interest charges for these Products since enrollment or retention.

### **Conclusions of Law**

1. The Bank's call-center representatives in numerous instances have represented, directly or indirectly, expressly or by implication, that the Products were not optional products but were a normal benefit associated with the Cardmembers' credit cards.
2. The Bank's call center representatives in numerous instances have represented, directly or indirectly, expressly or by implication, that the Products were free or that Cardmembers could avoid fees by making timely payments.
3. In truth and in fact, the Bank's products were optional and were not free. Cardmembers making timely payments could still be assessed a fee for the Products.
4. The Bank's call center representatives in numerous instances have represented, directly or indirectly, expressly or by implication that there were no eligibility requirements for Payment Protection Products.
5. In truth and in fact, the Payment Protection Product required a Cardmember be employed and able to work at the time of purchase to be eligible for all its benefits.
6. In truth and in fact, if a Cardmember was permanently disabled or otherwise unemployed at the time of enrollment, they would not be eligible for all the benefits of the Payment Protection Product, unless they later became employed.
7. The statements by the Bank's call center representatives, as set forth in the preceding Paragraphs, are material because they are likely to affect a consumer's choice or conduct regarding the Products and are likely to mislead consumers acting reasonably under the circumstances.

8. Therefore the representations of the Bank, through its call center representatives, as set forth in the preceding Paragraphs are false or misleading and constitute deceptive acts or practices in violation of Section 1036.

### **CORRECTIONS OF VIOLATIONS OF LAWS**

**IT IS HEREBY ORDERED** that the Bank, its officers, agents, servants, employees and attorneys cease and desist and the Bank ensure that any “service providers” (defined herein as the term “servicer provider” is defined by section 1002 of the CFPA, §12 USC 5481(26)) or other agents immediately cease and desist from engaging in violations of law or regulations in the marketing of the Products, and it is further ordered that the Bank take affirmative actions as follows:

1. The Bank shall cease and desist from any marketing or solicitation of any of the Products until it has submitted a compliance plan, specifically designed to eliminate all violations of Section 1036 in the marketing of the Products to the CFPB for prior determination of supervisory non-objection (the “Compliance Plan”). This Compliance Plan shall be designed to comply with all provisions of this Consent Order.
2. The Bank or its agents or representatives shall not make, or allow to be made, any material deceptive representation, statement, or omission, expressly or by implication, in the marketing materials, telemarketing scripts and/or sales presentation used to solicit any Cardmember or prospective Cardmember, or in any similar communication in connection with any Product, including but not limited to misrepresentations as to the following:
  - a. any and all fees, costs, expenses and charges associated with the Products;



- b. that a product is optional and not required for the Cardmember to activate or use their credit card;
  - c. that a Product will improve a Cardmember's credit score or assist them in receiving a credit limit increase on their Capital One Card;
  - d. that accessing the Payment Protection Product's benefits requires no action by the consumer;
  - e. the benefits of Credit Monitoring Product;
  - f. any material conditions, benefits and restrictions related to the Products;
  - g. the purpose of sales calls and/or sales portions of servicing or other calls;
  - h. payment terms for a Product, including the actual date a Cardmember will be charged for a Product or incur charges for a Product; or
  - i. the balance upon which any fee or charge for the Payment Protection Product would be based and that the Cardmember will be charged a fee for the Payment Protection Product even if the Cardmember pays the outstanding balance in full on the due date thereof.
3. The Compliance Plan shall address the manner in which marketing and soliciting of the Products may occur, including but not limited to prohibiting the Bank or its representatives from marketing or soliciting the Products during or in connection with activation calls, unless prior to any solicitation the Cardmember is first informed that activation is complete and listening to the solicitation is optional.
4. For purposes of this Consent Order, "clearly and prominently" shall mean:
- a. As to written information, written in a type size and location sufficient for an ordinary consumer to read and comprehend it, and disclosed in a

manner that would be easily recognizable and understandable in language and syntax to an ordinary consumer. If the information is contained in a multi-page print document, the disclosure appears on the first page; and

b. As to information presented orally, spoken and disclosed in a volume, cadence and syntax sufficient for an ordinary consumer to hear and comprehend.

5. Under the Compliance Plan, the Bank shall develop scripts that clearly and prominently explain and accurately assess a Cardmember's eligibility for Products, including but not limited to, obtaining verbal confirmation from a Cardmember that they are not disabled or unemployed before charging a Cardmember any fee for the Product.
6. In addition, under the Compliance Plan, the scripts shall require that directly after a Cardmember indicates that he or she wishes to purchase a Product by telephone, the Call-Center Representative disclose clearly the following information during that same telephone call:
  - a. the Cardmember is purchasing the Product;
  - b. if applicable, the Cardmember's credit card will be charged or the Cardmember's account will start to incur charges for the Product on the same day as the phone call;
  - c. the charge for the Product will appear on the Cardmember's next billing statement;
  - d. the Product's cancellation policy and the phone number that the Cardmember may use to cancel enrollment in the Product program; and

- e. the Product's refund policy, including the time frame within which the Cardmember must cancel before incurring a fee.
7. Under the Compliance Plan, the scripts shall require that a Cardmember must affirmatively request or consent to purchase the Product after the reading of any disclosures required by Federal consumer financial laws.
  8. Under the Compliance Plan, for any Cardmembers who request information about a Product prior to purchasing it, the Bank shall provide the Cardmember with information about the Product, including but not limited to its material conditions, benefits and restrictions, and shall not condition in any way the provision of such materials on the Cardmember agreeing to purchase or enroll in a Product. The materials may be in electronic or hard copy format.
  9. Under the Compliance Plan, within three business days after a Cardmember purchases a Product, the Bank shall mail the Cardmember a disclosure that clearly and prominently presents the following information:
    - a. the fact that the Cardmember has purchased a Product, the date on which the Cardmember purchased the Product and the amount of the fee for the Product;
    - b. the Product's material conditions, benefits and restrictions;
    - c. the fact that the Cardmember's credit card account has incurred fee charges for the Product and the date when those charges were first incurred, if applicable;
    - d. the date on which the Product fee charges will appear on the Cardmember's account statement;

- e. the total cost of the Product, how the fee is calculated, and as to the Payment Protection Product, that the Cardmember will be charged a fee at the end of each billing cycle during which the Cardmember maintains a balance, regardless of whether the Cardmember pays the balance in full during the applicable grace period;
- f. the Product's cancellation policy and the phone number the Cardmember may use to cancel; and
- g. the Product's refund policy, including the date by which the Cardmember must cancel before incurring a fee. The Bank shall clearly and prominently include a message on the first periodic statement on which a Product charge appears that highlights inclusion of the charge, and notifies the consumer of the right to cancel. The statement shall be positioned in a clear and prominent manner and shall be in 12-point font or any larger type.

10. For any Cardmember who requests cancellation of a Product within 30 days of receiving the first periodic statement on which a Product charge appears, the Bank shall issue a full refund of any and all charges related to the Product, including any interest or finance charge that accrued to the account as a result of the Product charges.

11. In any telephone conversation in which a Cardmember indicates, in substance, that he or she did not authorize a Product, the Bank shall either:

- a. immediately agree to cancel the Product without attempting to re-sell the Product, and refund all of the Product fees and charges incurred by the Cardmember since enrollment; or
- b. review whether the Cardmember authorized purchase of the Product. If the Bank determines that the Cardmember did not authorize purchase of the Product, the Bank shall refund all of the Product fees and charges incurred by the Cardmember since enrollment. If the Bank determines that the Cardmember did authorize the purchase of the Product, the Bank shall provide the Cardmember with all information providing the basis for this determination, including but not limited to any audio calls recording. The Bank shall make any such determination by reviewing all relevant information, including any audio recording, and this determination shall only be made by a Bank employee who is specifically trained to determine whether a telemarketing sales call complied with the provisions of this Consent Order and all other disclosures required by law.

12. In any telephone conversation in which a Cardmember indicates, in substance, that he or she does not want, does not need, or wishes to cancel, a Product, the Bank shall immediately agree to cancel the Product without attempting to re-sell the Product.

13. The Bank shall submit any periodic statements, disclosures or notices required to be provided in writing by the preceding paragraphs to the CFPB for a letter of non-objection prior to implementation.

## RESTITUTION AND REMEDIATION

14. Within 30 days from the effective date of this Consent Order, the Bank shall prepare a Remediation Plan. The Bank shall submit the Remediation Plan to the CFPB for prior determination of non-objection.
15. The Remediation Plan shall apply to all “Eligible Cardmembers” defined as Cardmembers who:
  - a. With respect to each Product, separately, either:
    - i. purchased the Product through a call-center representative on or after August 1, 2010, and did not affirmatively request in writing to remain in the Product after initial enrollment, or
    - ii. were enrolled in the Product as of August 1, 2010, and sought to cancel the Product on or after August 1, 2010 but were retained through a call-center representative; and
  - b. If enrolled in a Payment Protection Product, did not activate and receive Payment Protection Product benefits at any time from August 1, 2010 to the effective date of this Consent Order, or, if enrolled in a Credit Monitoring Product, did not activate an online account giving access to the information provided by a Credit Monitoring Products or receive any benefits as a result of a claim made on a Credit Monitoring Product’s coverage for identity theft.
16. The Remediation Plan shall require the Bank to determine the Eligible Cardmember’s appropriate “Restitution Start Date” for each product. The “Restitution Start Date” shall be either the date of purchase of a Product for those

eligible under sub-paragraph 15(a)(i) of the preceding paragraph or the date a Cardmember was retained for those eligible under sub-paragraph 15(a)(ii) above.

17. The Remediation Plan must, at a minimum include the following:

- a. Provide for Remediation to Eligible Cardmembers that shall consist of Restitution or Monetary Relief, whichever component is greater, as described below.
- b. The Restitution component of the Remediation Plan shall consist of the following:
  - i. all fees charged to the Eligible Cardmember under the Product's terms since the Eligible Cardmember's Restitution Start Date;
  - ii. any over-the-limit fees incurred by the Eligible Cardmember since the Cardmember's Restitution Start Date which resulted from the charging of the Product's fees;
  - iii. finance charges which accrued to the Eligible Cardmember's account as a result of the monthly billing of the Product's fees described in sub-paragraph (b)(i) any over-the-limit fees described in sub-paragraphs (b)(ii) ; and
  - iv. estimated interest, as calculated pursuant to the methodology in the Remediation Plan, that an Eligible Cardmember would have earned on the sum of the amounts described in sub-paragraphs (b)(i) through (b)(iii) above.
- c. The Monetary Relief component of the Remediation Plan shall be applicable to Eligible Cardmembers who submitted a claim for Payment

Protection Product coverage, which was denied because their loss was prior to the time of enrollment for the coverage requested. The Monetary Relief component shall equal the average amount of benefits, based upon the type of claim, which the Eligible Cardmember would have received under the Payment Protection Product, had their claim not been denied due to ineligibility.

- d. Allow for a reduction from the amounts of Restitution or Monetary Relief to a Cardmember the amount of any refunds already received by an Eligible Cardmember upon cancellation of the Product prior to the effective date of this Consent Order.
- e. Provide for processes covering all Eligible Cardmembers regardless of their current account status with the Bank, including open accounts, closed accounts with and without a balance and charged off accounts. The process shall include the following requirements:
  - i. for any open credit card account, the Bank shall provide a credit posted to the account, regardless of whether the crediting of a Cardmember results in a credit balance.
  - ii. for any closed credit card account, the Bank shall mail a certified check to any Eligible Cardmember.
  - iii. for any charged-off account, the Bank shall issue a credit decreasing the charged-off balance by the amount of Restitution. Where the refund is greater than the existing charged-off balance, the Bank shall mail to the Cardmember a



certified check in the amount of the excess. Any Remediation Notification Letter, as described in Paragraph 18 below, sent with regard to a charged-off account will notify the consumer of the credit decreasing the charged-off balance as well as any additional money the consumer is receiving.

iv. With respect to any bankruptcy, estate, accounts in litigation and sold charged-off accounts, the Bank shall take any appropriate action required by the reduction.

f. Notwithstanding sub-paragraph (a), no Cardmember shall be precluded from receiving Remediation with respect to more than one Product. For any Eligible Cardmember who is eligible with respect to more one than Product, the Eligible Cardmember's Remediation will be determined for each Product separately pursuant to sub-paragraphs (b) through (d) above.

18. The Remediation Plan shall include the proposed text of the letter ("Remediation Notification Letter") to be sent to Eligible Cardmembers notifying of the Remediation and the envelope containing the letter. The letter will include satisfactory language explaining the reason the Bank is canceling the Product; the manner in which the amount of Restitution or Monetary Relief was calculated; an explanation of the use of a credit and/or check as applicable; and a statement that the provision of refund payment is in accordance with the terms of this Consent Order.

19. The Bank shall not attach any conditions to the provision of any credit or check for Restitution or Monetary Relief to an Eligible Cardmember, including requiring the Eligible Cardmember to waive any right.
20. The Bank shall not include in any envelope containing a "Remediation Notification Letter" any materials other than the approved letters, Restitution or Monetary Relief checks, when appropriate, and any other materials reviewed and not objected to by the Office of Enforcement.
21. The Bank shall make reasonable attempts to locate Eligible Cardmembers, including a standard address search using the National Change of Address System, whose Remediation Notification Letter and/or check is returned for any reason. The Bank shall, within 45 days, re-mail all returned letters and any restitution checks to corrected addresses, if any.
22. With respect to any Eligible Cardmember's account that receives Remediation as a credit that decreases the existing balance or charged-off balance, the Bank shall as permitted by law and in accordance with existing procedures:
  - a. report the updated balance to each credit reporting agency to which the Bank had previously furnished balance information for the account;
  - b. delete the account trade line at each credit reporting agency to which the Bank had previously furnished balance information for the account; or
  - c. in the case of an account sold to an unaffiliated third party, request that such third party owner of the debt report the updated balance to, or delete the account trade line at, each credit reporting agency to which the Bank

or the third party owner of the debt had previously furnished balance information for the account.

23. Upon receipt of the written non-objection letter regarding from the CFPB the Remediation Plan the Bank shall begin implementation of the Remediation Plan.
24. The Bank shall review and verify that it accurately identified and correctly made remediation as appropriate to Eligible Cardmembers. The Board's "Audit and Risk Committee" (ARC) shall oversee the preparation of a detailed written report ("Remediation Report") of the processes and procedures by which the Bank determined the Restitution or Monetary Relief amounts described in paragraph 17 of this Consent Order. This "Remediation Report" shall also include the following: (i) total number of Eligible Cardmembers, (ii) total amounts credited or paid of Restitution, (iii) total amounts credit or paid Monetary Relief and (iv) the amount and status of all unclaimed Remediation payments.
25. The Remediation Report shall be submitted to the CFPB within 105 days after the entry of this Consent Order and within 40 days after the end of each quarter thereafter.
26. Within 45 days from the issuance of this Consent Order, the Bank shall retain, at its expense, an independent certified public accounting firm ("Firm") acceptable to CFPB to determine compliance with the Remediation Plan set forth in paragraphs 14 through 22 of this Consent Order. The Firm shall determine compliance in accordance with the attestation standards established by the American Institute of Certified Public Accountants for agreed-upon procedures for engagements and provide the report required by paragraphs 24 and 25 of this

Consent Order.

27. Prior to the engagement of the Firm, and no later than 30 days from the issuance of this Consent Order, the Bank shall submit the name and qualifications of the Firm, together with the proposed engagement letter with the Firm and the proposed agreed-upon procedures, to the CFPB for prior determination of non-objection.
28. The engagement letter between the Bank and the Firm shall grant the CFPB access to the Firm's staff, work-papers, and materials prepared in the course of the Firm's engagement and preparation of the reports required by this Consent Order.
29. To be acceptable to the CFPB, the Firm must be an objective and unaffiliated third party. The review shall be conducted under the American Institute of Certified Public Accountants ("AICPA") Standards for Consulting Services.

#### **CIVIL MONEY PENALTY**

30. IT IS FURTHER ORDERED that, pursuant to section 1055(c) of the CFPA, 12 U.S.C. § 5565(c), by reason of the alleged violations of law and/or regulations as set forth in the Factual Findings and Conclusions of Law, and after taking into account the Stipulation, the appropriateness of the penalty with respect to the financial resources and good faith of the Bank, the gravity of the conduct by the Bank, the severity of the risks to and losses of consumers, the history of previous conduct by the Bank, and such other matters as justice may require, including the cooperation of the Bank during the CFPB's investigation and the substantial redress provided to Cardmembers, the Bank shall pay a civil money penalty of twenty-five million dollars (\$25,000,000.00), immediately upon issuance of this

Consent Order. The Bank shall pay the civil money penalty to the Consumer Financial Civil Penalty Fund, as directed by the CFPB. The Bank shall pay such civil money penalty itself, and is prohibited from seeking or accepting indemnification from such payment from any third party.

### **COMPLIANCE MANAGEMENT SYSTEM**

31. IT IS FURTHER ORDERED that within 90 days of this Consent Order, the Board oversee revisions to the Bank's Compliance Management System and submit the revisions to CFPB for prior determination of supervisory non-objection. These revisions shall include developing a written enterprise-wide program designed to ensure that all consumer products and services sold by the Bank, or through the Bank's Service Providers comply with Section 1036.

32. The Bank's New Products and Marketing Initiatives Governance ("NPMIG") forum or other appropriate independent qualified group within the Bank shall prepare a written analysis of:

- a. any changes to the governance, control, marketing, sales, delivery, servicing, and fulfillment of services for consumer products considered to be at high risk for unfair deceptive abusive acts and practices ("UDAAP") that are marketed and sold by the Bank or through Bank Service Providers; and
- b. any new consumer products considered to be at high risk for UDAAP that are marketed and sold by the Bank or through Bank Service Providers.

33. The analysis required by Paragraph 32 shall be conducted prior to the implementation of any changes to existing consumer products or prior to the Bank's involvement in any new consumer products. The analysis shall at a

minimum, include the following:

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

34. Within ninety (90) days of this Consent Order, the Board shall oversee the development of a written policy governing the management of Bank Service Providers and submit this Bank Service Provider Management Policy to CFPB for prior determination of supervisory non-objection. At a minimum, the Bank Service Provider Management Policy shall require:

- a. an analysis, to be conducted by Corporate Compliance prior to the Bank entering into a contract with the Bank Service Provider, of the capacity of the Bank Service Provider to perform the marketing, sales, delivery, servicing, and fulfillment of services for the product(s) in compliance with all applicable consumer protection laws and Bank policies and procedures;
- b. a written contract between the Bank and the Bank Service Provider which sets forth the responsibilities of each party, especially:
  - i. the Bank Service Provider's specific performance responsibilities and duty to maintain adequate internal controls over the marketing, sales, delivery, servicing, and fulfillment of services for the products;

- ii. the Bank Service Provider's responsibilities and duty to provide adequate training on applicable consumer protection laws and Bank policies and procedures to all Bank Service Provider employees or agents engaged in the marketing, sales, delivery, servicing, and fulfillment of services for the product(s);
  - iii. granting the Bank the authority to conduct periodic onsite reviews of the Bank Service Provider's controls, performance, and information systems as they relate to the marketing, sales, delivery, servicing, and fulfillment of services for the product(s); and
  - iv. the Bank's right to terminate the contract if the Bank Service Provider materially fails to comply with the terms specified in the contract, including the terms required by this Paragraph; and
- c. periodic onsite audit review by the Bank of the Bank Service Provider's controls, performance, and information systems.

35. Upon receipt of a determination of supervisory non-objection from the Consumer Financial Protection Bureau to the Bank Service Provider Management Policy submitted pursuant to Paragraph 34, the Board shall adopt, implement, and thereafter ensure Bank adherence to the Bank Service Provider Management Policy. Any proposed changes or deviations from the approved Bank Service Provider Management Policy shall be submitted in writing to the CFPB for prior supervisory review and non-objection.

## RECORDKEEPING

36. For a period of at least two years from the date an Eligible Cardmember is no longer enrolled in a Product program, the bank must retain the following records, to the extent they exist:

- a. For each individual Eligible Cardmember and his or her enrollment in that Product program:
  - i. Records containing, with respect to each Eligible Cardmember, his or her name, addresses, phone numbers, dollar amounts paid, quantity of Products purchased, description of the Product purchased, the date on which the Product was purchased, and a copy of the welcome kit mailed for each Cardmember (if a Cardmember left the program, include the date the Cardmember left a Product program and the reason the Cardmember left the Product program);
  - ii. Records for each Eligible Cardmember reflecting that an Eligible Cardmember expressly agreed to purchase the Product, including audio recordings of telephone calls during which a Cardmember purchased the Product;
- b. For each Product in general:
  - i. Records reflecting the expenses and revenues related to the Product;
  - ii. Records reflecting, on an annual basis, the number of Cardmembers who canceled a Product, the number of Cardmembers who closed their Cardmember accounts, and the number of Cardmembers whose Cardmember accounts were charged off by the Bank;



- iii. All Cardmember complaints and refund requests (whether received directly or indirectly, such as through a third party), and any responses to those complaints or requests; and
- iv. Copies of all sales scripts; training materials; advertisements; or other marketing materials, including terms and conditions, fulfillment packages, and welcome kits; and including any such materials used by a third party on the Bank's behalf.

37. For a period of six years from the effective date of this Consent Order, the Bank must retain the following records:

- a. All documents and records necessary to demonstrate full compliance with each provision of this CONSENT ORDER; and
- b. All records pertaining to the Remediation, described above in Paragraphs 14 through 27, including, but not limited to documentation of the processes and procedures used to determine the Eligible Consumers, as that term is defined in Paragraph 15 above, the names, contact and account information of the Eligible Consumers, any mailing records, and documentation that the appropriate restitution was made.

#### **DISTRIBUTION OF ORDER**

38. IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Consent Order, the Bank, and its successors and assigns, shall deliver a copy of this Consent Order to each of their board members and executive officers, as well as any service providers or other agents providing services related

to the marketing of the Products. For current personnel, delivery shall be within thirty (30) days of the entry of this Consent Order. For new personnel, delivery shall occur prior to them assuming their responsibilities. Defendants shall secure a signed and dated statement acknowledging receipt of a copy of this Consent Order, within thirty (30) days of delivery, from all persons receiving a copy of this Consent Order pursuant to this paragraph.

#### **SAVINGS CLAUSE AND EFFECTIVE DATE OF ORDER**

39. The provisions of this Consent Order shall not bar, estop or otherwise prevent the CFPB, or any other federal or state agency or department from taking any other action against the Bank.
40. This Consent Order is intended to be, and shall be construed to be, a final order issued pursuant to 12 U.S.C. § 5563 (b), and expressly does not form, and may not be construed to form, a contract binding the CFPB or the United States.
41. This Consent Order shall be effective on the date of issuance.
42. Calculation of time limitations for compliance with the terms of this Consent Order shall be based on calendar days, unless otherwise noted.
43. Compliance with this Consent Order will not constitute or be construed as an admission or denial by the Bank as to any fact, finding, conclusion, issue of law, or violation of law. The agreement by the Bank to institute a practice pursuant to this Consent Order does not constitute an admission or denial that the Bank's practice was otherwise prior to the date of the Consent Order. Cardmember payments under this Consent Order are made to compensate Cardmembers and do not constitute, and shall not be construed as forfeitures, fines or penalties, or

payments in lieu thereof.

44. The CFPB 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 CFPB based on the practices described in the Findings of Fact and Conclusion of Law of this Consent Order, to the extent such practices occurred prior to the effective date of the Consent Order and are known to the CFPB as of the effective date of the Consent Order. Notwithstanding the foregoing, the practices alleged in this Consent Order may be utilized by the CFPB in future enforcement actions against the Bank and its affiliates, including, without limitation, to establish a pattern or practice of violations or the continuation of a pattern or practice of violations or to calculate the amount of any penalty. This release shall not preclude or affect any right of the CFPB to determine and ensure compliance with the terms and provisions of the Consent Order, or to seek penalties for any violations thereof.
45. The provisions of this Consent Order shall be binding on the Bank, its affiliates, as well as its officers, agents, servants, employees, and/or attorneys and any successors and assigns thereof.
46. The provisions of this Consent Order shall remain effective and enforceable for five years except that any provision herein that applies for a longer period shall be effective and enforceable for such period or to the extent that, and until such time as, any provision has been modified, terminated, suspended, or set aside by the Director.

47. Any violation of this Consent Order shall result in the imposition by the CFPB of an additional civil monetary penalty in the maximum amount allowed under section 1055(c) of the CFPB, 12 U.S.C. §5565(c).

Issued this 17<sup>th</sup> day of July, 2012.



Richard Cordray

Director

Consumer Financial Protection Bureau

## STIPULATION

Capital One Bank, (U.S.A.) N.A., (the "Bank") by and through its President and its Board of Directors, hereby stipulate, without admitting or denying any findings of facts or violations of law, to the issuance of this Consent Order by the CFPB.


By submitting this offer of settlement and the Director's acceptance, the Bank hereby, with respect solely to the matters described in the Consent Order, waives its right to:


- (i) All hearings pursuant to the statutory provisions under which the proceeding has been instituted;
- (ii) The filing of proposed findings of fact and conclusions of law;
- (iii) Proceedings before, and a recommended decision by, a hearing officer;
- (iv) All post-hearing procedures;
- (v) Judicial review by any court; and
- (vi) Any objection to the jurisdiction of the CFPB under section 1053 of the Dodd-Frank Act.

The Bank further waives, with respect to this Consent Order, (i) such provisions of the CFPB's rules or other requirements of law as may be construed to prevent any CFPB employee from participating in the preparation of, or advising the Director as to, any order, opinion, finding of fact, or conclusion of law to be entered pursuant to the offer; and (ii) any right to claim bias or




prejudgment by the Director based on the consideration of or discussions concerning settlement of all or any part of the proceeding.

  
Richard D. Fairbank  
Chairman, Capital One Bank, (U.S.A.) N.A., on behalf of  
the Board of Directors of Capital One Bank, (U.S.A.) N.A.

  
Date

  
Ryan M. Schneider  
President, Capital One Bank, (U.S.A.) N.A.

  
Date

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