

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

IN THE MATTER OF:)
)
DIRECT MERCHANTS CREDIT CARD BANK, N.A.)
SCOTTSDALE, ARIZONA)

CONSENT ORDER

The Comptroller of the Currency of the United States of America (Comptroller), through his National Bank Examiner, has examined Direct Merchants Credit Card Bank, N.A., Scottsdale, Arizona (Bank).

The Comptroller, by and through his authorized representative, and the Bank, by and through its duly elected and acting Board of Directors (Board), have executed a “Stipulation and Consent to the Issuance of a Consent Order,” dated May 3, 2001 (“Stipulation and Consent”). By this Stipulation and Consent, that is incorporated by reference, the Bank has agreed and consented to the issuance of this Consent Order (Order) by the Comptroller.

Pursuant to the authority vested in him by the laws and regulations of the United States, including 12 U.S.C. § 484, the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818, and 12 C.F.R. § 7.4000, the Comptroller hereby orders that:

ARTICLE I

FINANCE CHARGE REIMBURSEMENT

(1) The Bank shall reimburse, as required by this Article, any consumer whose credit card account, during the period from April 3, 1998, to the Order Date, was billed an application or processing fee in connection with the opening of the account but which application or processing fee was not disclosed as a “finance charge” both in the initial disclosure statement as required by 12 C.F.R. § 226.6, and on the periodic statement that disclosed the fee, as required by 12 C.F.R. § 226.7.

(2) The amount of reimbursement to each consumer required by paragraph (1) of this Article shall be the amount of the application or processing fee charged to the consumer’s account and not refunded prior to the Order Date.

ARTICLE II

FINANCE CHARGE DISCLOSURE PROSPECTIVE RELIEF

(1) The Bank shall ensure that all charges or fees that are “finance charges” under Regulation Z, 12 C.F.R. Part 226, are disclosed by the Bank as “finance charges” in the manner required by Regulation Z, 12 C.F.R. Part 226.

(2) The Bank shall ensure that all application or processing fees are disclosed as “finance charges” in the manner required by Regulation Z, 12 C.F.R. Part 226, unless such fees are charged to all applicants, not just to applicants who are approved or who actually receive

credit.

ARTICLE III

DOWNSELL RESTITUTION

(1) The Bank shall make restitution, as required by this Article, to any consumer described in paragraphs (2), (3), and/or (4) of this Article who, during the period from May 1, 1996, to the Order Date, applied for a credit card in response to a communication that solicited applications for a credit card with particular credit terms, but who was downsold to a credit card with one or more terms less favorable than the most favorable terms disclosed in the communication.

(2) Processing Fee Downsell. For any consumer who, during the period from May 1, 1996, to the Order Date, applied in response to a communication that solicited applications for a credit card without an application or processing fee, but who was downsold to a credit card with an application or processing fee charged against the credit card, the amount of restitution shall be the sum of:

- (a) The amount of the application or processing fee charged to the consumer's account, and not previously refunded prior to the Order Date;
- (b) Any fees or finance charges that resulted from the consumer exceeding the credit limit on the account during the first two billing cycles after the account was opened, so long as the amount by which the consumer exceeded the credit limit was no more than the amount of the application or processing fee charged against the card;

- (c) The difference between the periodic rate finance charges actually charged by the Bank during the first year of use, and the amount of periodic rate finance charges that would have been charged during the first year if the consumer had been approved for the card without an application or processing fee;
- (d) Interest on the amount refunded pursuant to Paragraph 2(a) of this Article, beginning from the date the application or processing fee was charged to the consumer's account and continuing through the Order Date, at a rate of ten percent (10%) per annum;
- (e) Interest on the fees or finance charges refunded pursuant to paragraph 2(b) of this Article, beginning on the date of the mailing of each periodic statement reflecting the application of the fees or finance charges, and continuing through the Order Date, at a rate of ten percent (10%) per annum; and
- (f) Interest on the difference in periodic rate finance charges refunded pursuant to paragraph (2)(c) of this Article, beginning on the date of the mailing of each periodic statement reflecting the application of the periodic interest rate, and continuing through the Order Date, at a rate of ten percent (10%) per annum.

(3) Unsecured to Partially Secured Downsell. For any consumer who, during the period from May 1, 1996, to the Order Date, applied in response to a communication that solicited applications for an unsecured card, but who was downsold to a secured credit card,

where the amount of the security deposit was charged against the credit card, the amount of restitution shall be the sum of:

- (a) The amount of the annual fee for the partially secured card that was charged to the consumer's account for the first year of use and not previously refunded prior to the Order Date;
- (b) The amount of any application fee or processing fee paid by the consumer with the application or charged to the consumer's account for the partially secured card, and not previously refunded prior to the Order Date;
- (c) The difference between the periodic rate finance charges actually charged by the Bank during the first year of use, and the amount of periodic rate finance charges that would have been charged during the first year if the consumer had been approved for the unsecured card;
- (d) Any fees or finance charges that resulted from the consumer exceeding the credit limit on the account during the first two billing cycles after the account was opened, so long as the amount by which the consumer exceeded the credit limit was no more than the aggregate amount of the security deposit charged against the card and, unless the fees were disclosed for the unsecured card, any annual, application, and processing fees charged against the card;
- (e) Interest on the amount of the annual fee refunded pursuant to (3)(a), beginning from the date the annual fee was charged to the consumer's account and continuing through the Order Date, at a rate of ten percent (10%) per annum;

- (f) Interest on the amount of the application or processing fee refunded pursuant to 3(b), beginning from the date the application or processing fee was charged to the account, or if the application of processing fee was submitted with the application, from the date the application was received by the Bank, and continuing through the Order Date, at a rate of ten percent (10%) per annum;
- (g) Interest on the difference in periodic rate finance charges refunded pursuant to paragraph (3)(c) of this Article, beginning on the date of the mailing of each periodic statement reflecting the application of the periodic interest rate, and continuing through the Order Date, at a rate of ten percent (10%) per annum; and
- (h) Interest on the fees or finance charges refunded pursuant to paragraph (d) of this Article, beginning on the date of the mailing of each periodic statement reflecting the application of the fees or finance charges, and continuing through the Order Date, at a rate of ten percent (10%) per annum.

(4) Partially Secured to Fully Secured Downsell. For any consumer who, during the period from May 1, 1996, to the Order Date, applied in response to a communication that solicited applications for a partially secured credit card account but who was downsold to a fully secured credit card account, the amount of restitution shall be the sum of:

- (a) Annual Fee Restitution.
 - (i) If the partially secured card had no annual fee, the entire amount of the annual fee for the fully secured card charged to the consumer's

account for the first year of use and not previously refunded prior to the Order Date, otherwise

- (ii) If the partially secured card had an annual fee, the portion of the annual fee for the fully secured card charged to the consumer's account for the first year of use and not previously refunded prior to the Order Date that *exceeds* the amount of the annual fee disclosed for the partially secured card after the fee amount for the partially secured card has been reduced in proportion to the percentage (rounded up to the nearest tenth percentile) that the size of the credit line actually received by the consumer is less than the largest credit line disclosed for the partially secured card for the amount of the security deposit provided. For example, if the annual fee disclosed for the partially secured card was \$40, and the communication disclosed the possibility of receiving a \$500 credit line on the partially secured card for a security deposit of \$99, and that deposit amount was either provided with the application or charged against the card, if the consumer was approved only for a credit line of \$99, the Bank shall refund pursuant to this subparagraph that portion of any annual fee for the fully secured card, for the first year of use, that exceeds \$8, unless that fee has previously been refunded prior to the Order Date;

(b) Application and Processing Fee Restitution.

- (i) If the partially secured card had no application or processing fee, the entire amount of any application or processing fee for the fully secured card charged to the consumer's account and not previously refunded prior to the Order Date, otherwise
- (ii) If the partially secured card had an application or processing fee, that portion of the application fee or processing fee paid by the consumer with the application or charged to the consumer's account for the fully secured card and not previously refunded prior to the Order Date that *exceeds* the amount of the application fee or processing fee disclosed for the partially secured card, after the fee amount for the partially secured card has been reduced in proportion to the percentage (rounded up to the nearest tenth percentile) that the size of the credit line actually received by the consumer is less than the largest credit line disclosed for the partially secured card for the amount of the security deposit provided. For example, if the application or processing fee disclosed for the partially secured card was \$40, and the communication disclosed the possibility of receiving a \$500 credit line on the partially secured card for a security deposit of \$99, and a deposit amount of \$99 was either provided with the application or charged against the card, if the consumer was approved only for a credit line of \$99, the Bank shall refund pursuant to this

subparagraph that portion of any processing fee for the fully secured card, for the first year of use, that exceeds \$8, unless that fee has previously been refunded prior to the Order Date;

- (c) Any fees or finance charges that resulted from the consumer exceeding the credit limit on the account during the first two billing cycles after the account was opened, so long as the amount by which the consumer exceeded the credit limit was no more than the dollar amount of the consumer's credit limit;
- (d) The difference between the periodic rate finance charges actually charged by the Bank during the first year of use, and the amount of periodic rate finance charges that would have been charged during the first year if the consumer had been approved for the partially secured card;
- (e) Interest on the amount of the annual fee refunded pursuant to paragraph (4)(a) of this Article, beginning from the date the annual fee was charged to the consumer's account and continuing through the Order Date, at a rate of ten percent (10%) per annum;
- (f) Interest on the amount of the application or processing fee refunded pursuant to paragraph 4(b) of this Article, beginning from the date the application or processing fee was charged to the account, or if the application or processing fee was submitted with the application, from the date the application was received by the Bank, and continuing through the Order Date, at a rate of ten percent (10%) per annum;

- (g) Interest on the fees and finance charges refunded pursuant to paragraph 4(c) of this Article, beginning on the date of the mailing of each periodic statement reflecting the application of the fees or finance charges, and continuing through the Order Date, at a rate of ten percent (10%) per annum; and
- (h) Interest on the periodic rate finance charges refunded pursuant to paragraph 4(d) of this Article, beginning on the date of the mailing of each periodic statement reflecting the application of the finance charges and continuing through the Order Date, at a rate of ten percent (10%) per annum.

ARTICLE IV

DISCLOSURE OF POSSIBILITY OF DOWNSELL PROSPECTIVE RELIEF

(1) The Bank shall not make any misleading or deceptive representation, statement, or omission, expressly or by implication, to any consumer concerning what credit card terms the consumer will receive if the consumer submits an application.

(2) After the consumer has submitted an application, the Bank shall not make any misleading or deceptive representation, statement, or omission, expressly or by implication, to any consumer concerning the credit card terms for which the consumer has been approved.

(3) The Bank shall not use “guaranteed,” “pre-approved,” or similar terms in a misleading or deceptive manner on or with a communication that solicits an application for credit.

- (4) The Bank shall not represent, directly or by implication, that a consumer is “guaranteed” approval or “pre-approved” for particular credit terms unless the Bank
- (a) Has a reasonable, documented, basis to believe that a consumer who applies will be approved for those credit terms;
 - (b) Withdraws the offer of those credit terms only as a result of fraud, verification of identity, significant change in creditworthiness and/or similar conditions;
 - (c) Clearly and conspicuously discloses, in connection with each use of “pre-approved” or “guaranteed,” the specific limitations on the consumer receiving those credit terms; and
 - (d) Clearly and conspicuously discloses that the consumer will be notified if and when the Bank offers them different terms.

(5) The Bank shall not represent, directly or indirectly, that a consumer is “guaranteed” approval or “pre-approved” for particular credit terms unless such a representation is consistent with safe and sound bank operations.

(6) In any communication that solicits a credit card application, if the Bank refers to a credit card term, but the consumer may be approved for a less favorable credit card term, the Bank shall clearly and conspicuously disclose:

- (a) That the consumer may be approved for a less favorable credit card term; and
- (b) The specific details of the less favorable credit card term.

(7) If a consumer is downsold, then, in addition to any disclosures required by Regulation Z or other applicable law, the Bank shall clearly and conspicuously disclose, in the communication that informs the consumer that the application has been approved:

- (a) The fact that the consumer has been approved for one or more credit terms less favorable than the most favorable terms disclosed in the original communication; and
- (b) The specific details of the less favorable credit term or terms for which the consumer has been approved.

(8) If a consumer is downsold, the Bank shall not represent, directly or indirectly, that the consumer has been “upgraded.”

(9) If a consumer is downsold, and as a consequence of being downsold, an annual fee, processing fee, security deposit, or other amount is charged against the consumer’s account, the Bank shall clearly and conspicuously disclose, in addition to any disclosures required by Regulation Z or other applicable law, in the communication that informs the consumer that the application has been approved:

- (a) That an annual fee, processing fee, security deposit, or other amount will be charged against the account;
- (b) The specific details, including amount and type, of the charges that will be made against the account; and
- (c) That the outstanding balance caused by these charges reduces the amount of available credit on the account.

(10) If a consumer is downsold, and as a consequence of being downsold, there will be no available credit on the consumer’s credit card account when the account is first opened, the

Bank shall clearly and conspicuously disclose, in addition to any disclosures required by Regulation Z or other applicable law, in the communication that informs the consumer that the application has been approved:

- (a) That, due to amounts charged against the account, when issued the consumer's credit card account will have no available credit for the consumer's use; and
- (b) That before making purchases, cash advances, or other debits to the account, the consumer must make payments to the Bank to free up available credit for the consumer's use.

(11) The Bank shall implement the provisions of paragraphs (6) through (10) within 90 days of the Order Date.

ARTICLE V

DISCLOSURE OF DOWNSSELL TERMS PROSPECTIVE RELIEF

(1) In any application or solicitation to open a credit card account, the Bank shall comply with 12 C.F.R. § 226.5a.

(2) In any application or solicitation to open a credit card account, which application or solicitation offers multiple accounts or varying terms, the Bank shall in accordance with 12 C.F.R. § 226.5a either disclose the multiple accounts or varying terms in a single table (hereinafter "Schumer box"), or provide a separate Schumer box for each account.

(3) If the Bank discloses multiple accounts or varying terms in a single Schumer box, the Bank shall clearly and conspicuously disclose in the Schumer box which term(s) are applicable to which account(s).

(4) If the Bank discloses multiple accounts or varying terms in multiple Schumer boxes on or with an application or solicitation, the Bank shall disclose all Schumer boxes on or with that application or solicitation in identical format, with headings and content in identical type size and type face.

(5) The Bank shall ensure that each Schumer box is in a prominent location on or with the application or solicitation. A Schumer box shall be considered to be in a prominent location if it is on the same page as an application or solicitation reply form. A Schumer box shall also be considered to be in a prominent location if, although the Schumer box is not on the application or reply form, the application or solicitation reply form contains a clear and conspicuous reference to the location of the Schumer box and indicates that the Schumer box contains rate, fee, and other cost information, as applicable. If the application or solicitation contains multiple Schumer boxes, the reference shall so indicate.

(6) If an application or solicitation contains multiple Schumer boxes, the Bank shall ensure that all Schumer boxes are in an equally prominent location. For purposes of this Article, equal prominence requires that:

- (a) Application or Solicitation Reply Form Requirements. If any Schumer box is on the same page as an application or solicitation reply form, all Schumer boxes must be on the same page as the application or solicitation reply form and must be presented vertically directly adjacent to one another, with no material (other than that required by Regulation Z to be next to a Schumer box) between the Schumer boxes. In addition, if any Schumer box is on the reverse page of an application or solicitation reply form, all Schumer boxes must be on the same reverse page of the

application or solicitation reply form and must be presented vertically directly adjacent to one another, with no material (other than that required by Regulation Z to be next to a Schumer box) between the Schumer boxes.

- (b) Same Page Requirements. Multiple Schumer boxes on the same page are equally prominently located only if the Schumer boxes are presented vertically directly adjacent to one another, with no material (other than that required by Regulation Z to be next to a Schumer box) between the Schumer boxes.
- (c) Different Page Requirements. Multiple Schumer boxes not on the same page are equally prominently located only if:
 - (i) Any Schumer box not on the same page as another Schumer box is on the reverse side of that page,
 - (ii) Any Schumer boxes on the same page are presented vertically directly adjacent to one another, with no material (other than that required by Regulation Z to be next to a Schumer box) between the Schumer boxes,
 - (iii) Directly beneath the last Schumer box disclosed on a page there is a clear and conspicuous reference, in the same type size and type face as the most prominent type size and type face in the Schumer box, calling attention to the fact that there is additional rate, fee, and cost information on the reverse side of the page, and the consumer should review that information before applying, and

(iv) No Schumer box is on the same page as an application or reply form, or on a page that is a reverse of a page containing an application or reply form.

(d) Different page prohibition. Except as provided in subparagraph (c), multiple Schumer boxes on different pages are not equally prominently located.

(7) The Bank shall implement the provisions of paragraphs (4) through (6) of this Article within ninety (90) days of the Order Date.

ARTICLE VI

FAIR CREDIT REPORTING ACT PROSPECTIVE RELIEF

(1) The Bank shall comply with the provisions of the Fair Credit Reporting Act, 15 U.S.C. §§ 1681 *et seq.*

(2) If the Bank uses a consumer report in connection with a credit transaction that is not initiated by the consumer, which report has been provided to the Bank pursuant to 15 U.S.C. § 1681b, the Bank shall provide with each written solicitation made to the consumer regarding the transaction a clear and conspicuous statement that:

- (a) Information contained in the consumer's credit report was used in connection with the transaction;
- (b) The consumer received the offer of credit because the consumer satisfied the criteria for credit worthiness under which the consumer was selected for the offer;

- (c) If applicable, the credit may not be extended if, after the consumer responds to the offer, the consumer does not meet the criteria used to select the consumer for the offer or any applicable criteria bearing on credit worthiness or does not furnish any required collateral;
- (d) The consumer has a right to prohibit information contained in the consumer's file with any consumer reporting agency from being used in connection with any credit transaction that is not initiated by the consumer; and
- (e) The consumer may exercise this right by notifying a consumer reporting agency's notification system established under 15 U.S.C. § 1681b.

ARTICLE VII

COMPLIANCE OFFICER AND COMPLIANCE STAFFING PLAN

- (1) Within thirty (30) days, the Board shall hire a qualified Compliance Officer.
- (2) Within sixty (60) days, the Board shall develop a compliance staffing plan that is consistent with the goals and objectives established in the Bank's consumer compliance program described in Article VIII. At a minimum, the plan will consist of the following:
 - (a) Identification of the skills and expertise needed to implement the consumer compliance program;
 - (b) Identification of the skills and expertise of the Bank's current staff; and

(c) Comparison of the current staff's skills and expertise identified in (2) (b) of this Article to the skills and expertise identified in (2)(a) of this Article as necessary to implement the consumer compliance program

(3) Within fifteen (15) days of the development of the staffing plan, the Board will implement the plan and direct any changes, along with reasonable timeframes to carry out those changes, necessary to provide the Bank with a staff that possesses the skills and expertise identified in paragraph (2)(a) of this Article. Thereafter the Board will ensure that the Bank effects any necessary changes and then adheres to the consumer compliance staffing plan.

(4) Upon completion of the actions required by paragraphs (2) and (3), the Board will provide a copy of its staffing plan, along with the schedule for effecting any changes necessary to implement the staffing plan, to the Assistant Deputy Comptroller for Credit Card Banks for review.

ARTICLE VIII

CONSUMER COMPLIANCE PROGRAM

(1) Within ninety (90) days, the Bank shall adopt, implement, and thereafter ensure adherence to a written consumer compliance program designed to ensure that the Bank is operating in compliance with all applicable consumer protection laws, rules, and regulations. This program shall include, but not be limited to:

(a) A written description of the duties and responsibilities of the compliance officer;

- (b) Adequate internal controls to ensure compliance with consumer protection laws, rules, and regulations, which controls shall include ongoing compliance monitoring;
- (c) The preparation of written policies and procedures covering all consumer protection laws, rules, and regulations for use by appropriate Bank personnel in the performance of their duties and responsibilities;
- (d) Ongoing updates of those written policies and procedures to ensure those policies and procedures remain current;
- (e) An independent audit program to test for compliance with consumer protection laws, rules, and regulations;
- (f) Procedures to ensure that exceptions noted in the audit reports are corrected and responded to by the appropriate Bank personnel;
- (g) The education and training of all Bank personnel in the requirements of all federal and state consumer protection laws applicable to the duties of those personnel, and internal bank policies implementing those requirements, rules, and regulations;
- (h) Documentation of that education and training; and
- (i) Periodic reporting of the results of the consumer compliance audit, implementation of the compliance program, and assessment of potential compliance risk areas, to the Board or a committee thereof.

(2) Upon adoption, a copy of the program shall be forwarded to the Assistant Deputy Comptroller for Credit Card Banks for review.

(3) The Board shall ensure that the Bank has processes, personnel, and control systems to ensure implementation of and adherence to the program developed pursuant to this Article.

ARTICLE IX

COMPLAINT MONITORING PROGRAM

(1) Within ninety (90) days, the Bank shall implement a formalized complaint monitoring program to ensure that the Bank reviews, analyzes, and takes appropriate action in response to oral and written consumer complaints.

(2) The complaint monitoring program shall include, but not be limited to, the following features:

- (a) An overall structure to monitor complaints from all sources;
- (b) A centralized process to compile and analyze complaints from outside the Bank (e.g. complaints from the Better Business Bureau);
- (c) Preparation of a regular complaint analysis report, not less frequently than monthly, that assesses the complaints received for compliance, legal, and reputation risk, and is provided to the relevant part of the Bank for appropriate action;
- (d) Preparation of a complaint follow-up report, that monitors implementation of the action necessary to respond to the issues raised by the complaints;
and
- (e) Presentation of the complaint analysis and follow-up reports to the Board not less frequently than at each regularly scheduled Board meeting.

ARTICLE X

PROGRESS REPORTING - QUARTERLY

(1) The Board shall submit progress reports to Assistant Deputy Comptroller for Credit Card Banks John Curtis, with a copy to National Bank Examiner Robert Hedgecoke, Phoenix Field Office, 9633 South 48th Street, Suite 265, Phoenix, Arizona 85044, according to the schedule in paragraph (3) of this Article. These reports shall set forth in detail:

- (a) Actions taken to comply with each Article of the Order;
- (b) Results of those actions; and
- (c) A description of the actions needed to achieve full compliance with each Article of this Order.

(2) The progress reports should also include any actions initiated by the Board and the Bank pursuant to the criticisms and comments in the April 3, 2000, Report of Examination or in any future Report of Examination.

(3) The first progress report shall be submitted for the period ending June 15, 2001, and will be due within fifteen (15) days of that date. Thereafter, progress reports will be due within fifteen (15) days after the calendar quarter end, with the next report, covering the period ending September 30, 2001, due within fifteen (15) days after the quarter end.

ARTICLE XI

METHOD OF PAYMENT

(1) The Bank shall make the restitution and reimbursement payments required by this Order in conformity with this Article.

- (2) Within sixty (60) days from the Order Date, the Bank shall:
- (a) Compile a list of the consumers to whom a payment is required to be made pursuant to this Order (hereinafter “Payment List”), which Payment List shall identify, for each consumer: (i) the consumer’s name and address; (ii) the consumer’s account number; (iii) the paragraph or paragraphs of this Order pursuant to which a payment is required to be made to the consumer, and the dollar amount of the payment attributable to each paragraph; and, (iv) the Adjusted Total Payment required to be made to the consumer pursuant to this Order, calculated pursuant to paragraph (12) of this Article;
 - (b) Before compiling the Payment List, update the addresses for all consumers to whom the Bank is required to make a payment who are no longer accountholders by conducting a standard address search using the National Change of Address System;
 - (c) Prepare a detailed written description of the processes by which the Bank identified the consumers and determined the payments in compiling the Payment List;
 - (d) Conduct an independent audit of the accuracy and completeness of the Payment List; and
 - (e) Submit to the OCC the Payment List, the detailed description prepared pursuant to paragraph 2(c) of this Article, and the results of the independent audit conducted pursuant to paragraph 2(d) of this Article.

(3) After receiving approval from the OCC, the Bank shall within thirty (30) days pay to each consumer the amount of the Adjusted Total Payment provided for that consumer in the Payment List as follows, in descending order of priority:

- (a) If the consumer's account is open, the amount shall be paid by a credit to the consumer's account; otherwise
- (b) Subject to paragraph (4), if the consumer's account is closed, and no amounts have been charged off, by a check sent to the consumer; otherwise
- (c) In accordance with paragraph (8).

(4) If the amount of a check to be sent to the consumer pursuant to paragraph 3(b) of this Article is less than or equal to one dollar (\$1), the amount shall instead be considered "Excess Funds" and handled pursuant to paragraph 11 of this Article.

(5) If the payment pursuant to paragraph 3(a) of this Article creates a credit balance on the consumer's account, the Bank shall refund the balance to the consumer within 7 business days of receiving an oral or written request from the consumer.

(6) Consumers to be paid by check shall be sent, by United States Postal Service first-class mail, address correction service requested, a check payable to the consumer. The face of the checks shall clearly and conspicuously state "VOID IF NOT NEGOTIATED WITHIN 180 DAYS." The checks shall be mailed in an envelope approved by the Assistant Deputy Comptroller for Credit Card Banks.

(7) Enclosed with each check, and with each periodic statement disclosing a credit to the account, shall be a letter provided by the Assistant Deputy Comptroller for Credit Card Banks, which shall be provided to the Bank within ten (10) days of the Order Date and shall be

in a form substantially similar to Appendix A, attached hereto. The envelope containing a check shall contain no other materials than those specified by this Article.

(8) The Bank shall offset a restitution or reimbursement payment to a consumer required by this Order against amounts that have been charged off on the consumer's account, subject to the limitations of this paragraph. Such offset shall be limited to charge-offs for the principal amount of charges for purchases, cash advances, and balance transfers, incurred by the consumer, exclusive of finance, other Account-Related Charges and any fees for the purchase of, or enrollment in, Bank fee-based products that were charged-off by the Bank. To the extent that the restitution or reimbursement amount required to be paid by the Bank to the consumer pursuant to this Consent Order exceeds such principal amount, the Bank shall send such consumer a check pursuant to paragraph (6) of this Article, except that if such amount is less than or equal to one dollar (\$1), that amount shall be considered Excess Funds and handled pursuant to paragraph (11) of this Article. For any offset conducted pursuant to this paragraph, the Bank shall notify the consumer of such offset and shall make the appropriate report to the appropriate credit reporting agencies.

(9) For a period of one hundred twenty (120) days from the date the payment checks are mailed, the Bank shall make reasonable attempts to locate any consumers whose payment checks were returned for any reason. If the Bank has information that the consumer is deceased, the Bank shall make reasonable efforts to pay the restitution to the consumer's estate or the consumer's heirs, as appropriate.

(10) One hundred eighty-seven (187) days after the payment checks are mailed, the Bank shall void all checks that the Bank has been unable to deliver to the consumer, the consumer's estate, or the consumer's heirs, or that have not been negotiated.

(11) Excess Funds.

- (a) Within twenty (20) days after voiding the payment checks pursuant to paragraph (10) of this Article, the Bank shall calculate the amount of “Excess Funds.” The amount of Excess Funds shall be the sum of:
 - (i) The aggregate dollar amount of checks voided pursuant to paragraph ten (10) of this Article; and
 - (ii) The aggregate amount of payments of one dollar (\$1) or less that were subject to paragraphs (4) and (8) of this Article.
- (b) The Bank shall comply with the directions of the Assistant Deputy Comptroller for Credit Card Banks concerning the disposal of the Excess Funds. In no event will the Excess Funds be paid to the Bank.

(12) Avoidance of Double Payment for Certain Processing or Application Fees, or Portions Thereof. Certain processing or application fees, subject to reimbursement pursuant to paragraph (1) of Article I, may also be subject, at least in part, to restitution pursuant to paragraphs 2(a), 3(b), and/or 4(b) of Article III. To avoid double payment of these fees, the Bank shall determine the Adjusted Total Payment required to be made to a consumer as follows:

- (i) the Bank shall calculate the total payment required to be made to a consumer pursuant to Articles I and III, without regard to the possibility of double payment of application or processing fees; (ii) the Bank shall then calculate the dollar amount of the portion of any application or processing fee that is subject to reimbursement under both paragraph (1) of Article I, and paragraphs 2(a), 3(b), and/or 4(b), as applicable, of Article III, and that has as a result been included twice in the calculation of the total payment pursuant to subparagraph (i); and (iii) the Bank shall then subtract the dollar amount of this portion of the application or processing fee

from the total payment, yielding the Adjusted Total Payment, in which this portion of the application or processing fee will thereby only be included once.

ARTICLE XII

DEFINITIONS

(1) “Account Related Charges” means all charges to an account other than purchases, charges for fee-based products and cash advances initiated by the consumer. “Account Related Charges” includes all other charges, for example, finance charges, application fees, annual membership fees, credit line increase fees, late fees, and overlimit fees.

(2) “Assistant Deputy Comptroller” and “Assistant Deputy Comptroller for Credit Card Banks” means the Assistant Deputy Comptroller for Credit Card Banks for the Western District, 50 Fremont Street, Suite 3900, San Francisco, CA 94105-2292.

(3) “Available credit” shall mean the difference, in dollar terms, between the credit line and the outstanding balance on the account.

(4) “Billing Cycle” has the same meaning as in Regulation Z, 12 C.F.R. Part 226.

(5) “Clear and conspicuous” shall mean that the disclosure is readable and reasonably understandable (or in the case of oral disclosures audible and reasonably understandable) and designed to call attention to the nature and significance of the information in the disclosure. For example, if a claim as to the cost or availability of a feature, benefit, or credit term is made in a written advertisement or solicitation, and there is any material limitation or condition to obtaining the feature, benefit, or credit term that is not disclosed in close proximity to the claim, this clear and conspicuous standard requires that:

- (a) The advertisement or solicitation shall contain a reference to the limitation, condition or cost disclosure in type of at least 10 point type size (other than on the outside of a direct mail envelope, where the text shall be in at least 8 point type size) either in close proximity to the claim or, if indicated by an asterisk affixed to the claim, on the page where the claim is stated;
- (b) The reference shall call attention to the fact that the disclosure contains limitation, condition or cost information, by using the terms “limitation” or “condition” or “cost” or their substantial equivalents;
- (c) The reference shall direct the consumer to the location of the disclosure, which shall be in or with the advertisement or solicitation; and
- (d) The actual disclosure of limitation, condition or cost information shall itself be readable and reasonably understandable and designed to call attention to the nature and significance of the information in the disclosure. For example, if the specific disclosure of limitation, condition, or cost information is located within a written document that contains numerous provisions, the specific disclosure shall be presented in a manner that, through heading, format, and/or type size, is designed to call attention to the nature and significance of the specific disclosure.

These requirements would apply to situations where, for example, a claim is made regarding the cost or availability of a feature, benefit, or credit term, but such claim is subject to material conditions or limitations. And where, as another example, a claim, explicitly or by implication,

indicates that the consumer will receive the feature, benefit, or credit term, but there is a material limitation or condition on the consumer receiving the feature, benefit, or credit term.

(6) “Communication” shall include, unless the context indicates otherwise, communications in oral, written, or electronic form, including over the Internet.

(7) “Credit card account” and “credit card” and “account” shall mean a credit card account issued by the Bank.

(8) “Credit line” shall mean the credit limit on a credit card account disclosed to the consumer, and shall not include any tolerance applied by the Bank, whether or not such tolerance is disclosed to the consumer, before a fee may be imposed for exceeding the credit limit.

(9) “Days” shall mean calendar days unless otherwise specified.

(10) “Downsell” shall mean the approval of a consumer for one or more credit terms less favorable than the most favorable credit terms disclosed in the communication in response to which the consumer submitted an application. A consumer is “downsold” if the consumer is subjected to a “downsell.”

(11) “Finance charge” shall have the same meaning as that term has in Regulation Z, 12 C.F.R. Part 226.

(12) “Fully secured account” and “fully secured credit card” shall mean a credit card account where the sum of (i) the deposit that secures the credit line, whether charged against the account or submitted separately, and (ii) any annual fee, processing fee, or other fees charged against the account, is equal to the credit line on the account when the account is opened, or if less than the credit line when the account is opened, is less than the credit line by an amount no more than ten percent (10%) of the credit line.

(13) “Misleading” and “deceptive” shall mean any act or omission that is misleading or deceptive within the meaning of the Federal Trade Commission Act.

(14) “Partially secured account” and “partially secured credit card” shall mean a credit card account where a deposit secures the credit line, but the credit card account is not a “fully secured credit card.”

(15) “Periodic Rate” and “periodic statement” shall have the same meaning as those terms have in Regulation Z, 12 C.F.R. Part 226.

(16) “Order Date” shall mean the date the Stipulation and Consent to the Issuance of a Consent Order and this Consent Order are signed by an authorized representative of the Comptroller.

(17) “Written” shall include communications over the Internet.

ARTICLE XIII

SCOPE OF SETTLEMENT

(1) Although the Board is by this Order required to submit certain proposed actions and programs for the review or approval of the Assistant Deputy Comptroller, the Board has the ultimate responsibility for proper and sound management of the Bank.

(2) It is expressly and clearly understood that if, at any time, the Comptroller deems it appropriate in fulfilling the responsibilities placed upon him/her by the several laws of the United States of America 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) Any time limitations imposed by this Order shall begin to run from the effective date of this Order. Such time limitations may be extended in writing by the Assistant Deputy Comptroller for Credit Card Banks for good cause upon written application by the Board.

(4) The provisions of this Order are effective upon issuance of this Order by the Comptroller, through his authorized representative whose hand appears below, and shall remain effective and enforceable, except to the extent that, and until such time as, any provisions of this Order shall have been amended, suspended, waived, or terminated in writing by the Comptroller, through his authorized representative.

IT IS SO ORDERED, this 3rd day of May, 2001.

/s/

05-03-2001

John Curtis
Assistant Deputy Comptroller for Credit Card Banks
for the Western District

Date

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

IN THE MATTER OF:)
)
DIRECT MERCHANTS CREDIT CARD BANK, N.A.)
SCOTTSDALE, ARIZONA)

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

WHEREAS, the Comptroller of the Currency of the United States of America (“Comptroller”) is the primary federal regulator of Direct Merchants Credit Card Bank, N.A., Scottsdale, Arizona (“Bank”);

WHEREAS, pursuant to Federal law and regulation, including 12 U.S.C. § 484 and 12 C.F.R. § 7.4000, no national bank, including the Bank, shall be subject to any visitorial powers except as authorized by Federal law, vested in the courts of justice or such as shall be, or have been exercised or directed by Congress by either House thereof or by any committee of Congress or of either House duly authorized, except with respect to State enforcement of unclaimed property or escheat laws;

WHEREAS, the Comptroller, through his National Bank Examiner, has conducted an examination and other investigation of the Bank in order to determine whether the Bank has complied with certain laws, rules, and regulations, including the Truth in Lending Act, Regulation Z, and the Federal Trade Commission Act;

WHEREAS, the Comptroller intends to charge the Bank with violations of the Truth in Lending Act, Regulation Z, and the Federal Trade Commission Act;

WHEREAS, the Bank, in the interest of cooperation, compromise, and settlement, consents to the issuance of a Consent Order, dated May 3, 2001 (“Order”); and

WHEREAS, the Comptroller has determined that the reimbursement and restitution required by the Order provide a suitable and equitable remedy for the individual consumers affected by the conduct which is the subject of the Order.

NOW THEREFORE, in consideration of the above premises, the Comptroller, by and through his authorized representative, and the Bank, by and through its duly elected and acting Board of Directors, hereby 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).

ARTICLE II

STIPULATION AND CONSENT

(1) The Bank hereby consents and agrees to the issuance of the Order by the Comptroller. The Bank further agrees that said Order shall be deemed an “order issued with the consent of the depository institution” as defined in 12 U.S.C. § 1818(h)(2), and consents and agrees that the Order shall become effective upon its issuance and shall be fully enforceable by the Comptroller under the provisions of 12 U.S.C. § 1818(i).

(2) The agreement and consent of the Bank shall not be deemed or represent a determination on the merits of any violation of law or regulation.

ARTICLE III

WAIVERS

- (1) The Bank, by entering into this Stipulation and Consent, hereby 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 Order, including any requirement that findings be made as a condition of the Order under 12 U.S.C. § 1818, and nothing in this Stipulation and Consent or the Order shall constitute such a finding;
 - (c) any and all rights to seek any type of administrative or judicial review of the Order; and
 - (d) any and all rights to challenge or contest the validity of the Order.

ARTICLE IV

OTHER ACTIONS

(1) The Bank agrees that the provisions of this Stipulation and Consent 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. This includes any action by the Comptroller to assess civil money penalties for the conduct which is the subject of the Order.

ARTICLE V

MISCELLANEOUS PROVISIONS

(1) Nothing in this Stipulation and Consent shall be construed to be and is not intended to imply any admission or denial by the Bank as to any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with the Order constitute or be construed as an admission or denial by the Bank of any fact, finding, conclusion, issue of law, or violation of law. The Bank's agreement to institute a practice pursuant to this Stipulation and Consent does not constitute an admission or denial that the Bank's practice was otherwise prior to the date of the Order. Payments under the Order are made to compensate consumers and do not constitute, and shall not be construed as forfeitures, fines or penalties, or payments in lieu thereof.

(2) This Stipulation and Consent may be executed in one or more counterparts which, taken together, shall constitute one and the same document. In the event that any of the provisions of this Stipulation and Consent are held by a court to be unenforceable, the validity of the other provisions shall not be adversely affected.

(3) The undersigned are authorized to execute this Stipulation and Consent on behalf of their respective parties and have read, understood, and agree to all of the terms and conditions of this Stipulation and Consent and the Order.

(4) The titles of paragraphs are inserted solely for convenience and do not affect the construction of any provision of this Stipulation and Consent or the Order.

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

/s/

05-03-2001

John Curtis
Assistant Deputy Comptroller for Credit Card Banks
for the Western District

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/

05-03-2001

Randie A. Stein

Date

/s/

05-03-2001

Ronald N. Zebeck

Date

/s/

05-03-2001

Patrick J. Fox

Date

/s/

05-03-2001

David D. Wesselink

Date

/s/

05-03-2001

Donald M. Combs

Date

/s/

05-03-2001

Joseph A. Hoffman

Date

/s/

05-03-2001

David R. Reak

Date

APPENDIX A

Dear Consumer:

Intro Paragraph for Consumers paid by check:

“The enclosed check is a restitution/reimbursement payment from Direct Merchants Credit Card Bank (“Direct Merchants Bank”). Please cash this check as soon as possible. It will be void after 180 days from the date of the check.”

Intro Paragraph for Consumers paid by credit to their credit card account:

“The credit referenced [label] on the enclosed periodic statement is a restitution/reimbursement payment to you from Direct Merchants Credit Card Bank (“Direct Merchants Bank”).”

Body of Letter for all Consumers:

“The Office of the Comptroller of the Currency of the United States of America (“OCC”) supervises and regulates Direct Merchants Bank. We determined that certain consumers may have been harmed by the practices of Direct Merchants Bank in marketing its credit cards.

Direct Merchants Bank has entered into a Consent Order as part of a settlement with the OCC . As a result of that settlement, Direct Merchants Bank agreed to make payments to certain consumers who may have been harmed by its practices. Under the terms of the Consent Order, you were identified as one of the consumers to whom Direct Merchants Bank is required to make a payment.

If you would like to review the Consent Order, you will find it at www.occ.treas.gov. If you have any questions about this payment, please call Direct Merchants at [number].

Sincerely,

Comptroller of the Currency