

FEDERAL DEPOSIT INSURANCE CORPORATION

WASHINGTON, D.C.

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In the Matter of	)	
	)	
COMPUCREDIT CORPORATION	)	
ATLANTA, GEORGIA	)	ORDER TO CEASE AND DESIST,
	)	ORDER FOR RESTITUTION AND
As an Institution-Affiliated Party	)	ORDER TO PAY
of	)	
	)	
COLUMBUS BANK AND TRUST COMPANY	)	FDIC-08-139b
COLUMBUS, GEORGIA	)	FDIC-08-140k
	)	
FIRST BANK OF DELAWARE	)	FDIC-07-256b
WILMINGTON, DELAWARE	)	FDIC-07-257k
	)	
FIRST BANK & TRUST	)	FDIC-07-228b
BROOKINGS, SOUTH DAKOTA	)	FDIC-07-260k
	)	
(Insured State Nonmember Banks)	)	

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COMPUCREDIT CORPORATION, Atlanta, Georgia ("CompuCredit"),  
having received a NOTICE OF CHARGES FOR AN ORDER TO CEASE AN  
DESIST AND FOR RESTITUTION; NOTICE OF ASSESSMENT OF CIVIL MONEY  
PENALTIES; FINDINGS OF FACT AND CONCLUSIONS OF LAW; ORDER TO  
PAY; AND NOTICE OF HEARING issued by the Federal Deposit  
Insurance Corporation (FDIC) on June 10, 2008 detailing the  
violations of law and/or regulations and unsafe or unsound  
banking practices alleged to have been committed by CompuCredit  
and the Banks, and having been advised of its right to a hearing

with respect to the foregoing under sections 8 (b) and 8 (i) (2) of the Federal Deposit Insurance Act(FDI Act), 12 U.S.C. §§ 1818 (b) and (i) (2), and the FDIC Rules of Practice and Procedure, 12 C. F. R. Part 308, and having waived those rights, entered into a STIPULATION AND CONSENT TO THE ISSUANCE OF AN ORDER TO CEASE AND DESIST, ORDER FOR RESTITUTION AND ORDER TO PAY (CONSENT AGREEMENT) with a representative of the Legal Division of the FDIC dated December 15, 2008, whereby, solely for the purpose of this proceeding and without admitting or denying the allegations in the Notice, CompuCredit consented to the issuance of an ORDER TO CEASE AND DESIST, ORDER FOR RESTITUTION, AND ORDER TO PAY ("ORDER") by the FDIC.

The FDIC considered the matter and determined that it has reason to believe that CompuCredit committed violations of law and/or regulations and engaged in unsafe or unsound banking practices, including, but not limited to, violations of section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1) (Section 5) The FDIC, therefore, accepts the CONSENT AGREEMENT and issues the following:

#### **DEFINITIONS**

For purposes of this ORDER, the following definitions shall

apply:

1. "Credit Card Programs" shall mean the programs identified in the CONSENT AGREEMENT;
2. "Banks" shall mean Columbus Bank and Trust Company, Columbus, Georgia; First Bank of Delaware, Wilmington, Delaware; and First Bank & Trust, Brookings, South Dakota.
3. "Initial Fee" shall mean any annual, activation, account opening, membership, periodic, or other fee imposed for the issuance or availability of a credit card, at the time the account is opened; *provided* that "Initial Fee" shall not include: (i) any fee imposed for an extension of credit in the form of cash; (ii) any fee imposed for a late payment; or (iii) any fee imposed in connection with an extension of credit in excess of the amount of credit authorized to be extended with respect to such account.

#### **CONDUCT RELIEF**

##### **I.**

IT IS ORDERED that CompuCredit, directly or indirectly:

A. shall disclose as clearly and prominently as, and on the same page as, any representation about credit limits or available credit in any credit card solicitation:

(1) a description of:

(a) all Initial Fees;

(b) all other fees imposed for the issuance or availability of a credit card, or imposed based on account activity or inactivity, other than: (i) any fee imposed for an extension of credit in the form of cash; (ii) any fee imposed for a late payment; (iii) any fee imposed in connection with an extension of credit in excess of the amount of credit authorized to be extended with respect to such account; or (iv) any fee imposed in connection with foreign country transactions or foreign currency exchange;

(c) the amount and timing of all such fees; and

(d) all other restrictions imposed for the issuance or availability of credit;

(2) if the aggregate amount of the Initial Fees or other restrictions that affect initial available credit is material, the amount of credit available upon activation after application of the Initial Fees and other restrictions, *provided* that if the solicitation offers a credit limit of "up to" a certain amount, the amount of available credit after application of Initial Fees and restrictions shall be expressed as an

example of a typical offer of credit; and

(3) if the effect of the fees described in SubPart I.A(1)(b) or the restrictions described in SubPart I.A(1)(d) on available credit is material, a description of the effect of such fees or restrictions on available credit;

B. shall not make any misrepresentation, expressly or by implication, about any material term of an offer or extension of credit, including but not limited to the amount of available credit or the relationship between an offer or extension of credit and a debt repayment plan or the repayment of existing debt, in connection with the advertising, marketing, soliciting, billing or servicing of open-end credit; and

C. shall not engage in any violations of Section 5 of the FTC Act, 15 U.S.C. § 45, with respect to products marketed to consumers pursuant to agreements with the Banks or any insured depository institutions for which the FDIC is the appropriate Federal banking agency, as that term is defined in Section 3(q)(3) of the FDI Act, 12 U.S.C. § 1813(q)(3) ("FDIC-regulated Bank").

## II.

IT IS FURTHER ORDERED that CompuCredit shall:

A. maintain a compliance plan to ensure that the Credit Card Programs and any other credit card programs marketed to consumers and/or serviced by CompuCredit pursuant to agreements with insured depository institutions for which the FDIC is the appropriate Federal banking agency, as that term is defined in Section 3(q)(3) of the FDI Act, 12 U.S.C. § 1813(q)(3), comply with all applicable federal consumer protection laws, including Section 5, and all implementing rules and regulations, regulatory guidance, and statements of policy; CompuCredit shall submit such plan to the Regional Director of the FDIC's Atlanta Regional Office (Regional Director), for supervisory approval or non-objection after consultation with the appropriate Regional Directors for such insured depository institutions, and shall fully comply with the Regional Director's requirements concerning the plan including, but not limited to, cooperating with such insured depository institutions and their respective Regional Directors; and

B. within sixty (60) days of the effective date of this ORDER, in conjunction with the Banks, implement policies, practices and systems, to the extent not previously implemented, to comply with the Account Management and Loss Allowance Guidance for Credit Card Lending, FIL-2-2003 (January 8, 2003).

Such policies, practices and systems shall include: (i) requiring minimum payments that will preclude negative amortization and will amortize the current balance over a reasonable period of time consistent with the unsecured nature of the underlying debt and the consumer's documented creditworthiness; and (ii) providing for reasonable control over and timely repayment of amounts that exceed established credit limits.

C. CompuCredit shall ensure that any products or services offered pursuant to any arrangement with any FDIC-regulated Bank to market credit cards or other credit products are consistent with the FDIC-regulated Bank's compliance management plan and compliance management systems. Any such arrangement shall require that the FDIC-regulated Bank has ultimate authority to determine the terms, manner and conditions under which any product will be offered to consumers, and that CompuCredit will make any necessary changes, on a prospective basis, in such terms, manners and conditions as the FDIC-regulated Bank deems necessary as a result of regulatory guidance, criticism, or formal or informal enforcement action; and

D. CompuCredit shall make no representations to any insured depository institution, any consumer, or any other

person or entity that the FDIC or any employee, agent or representative of the FDIC has endorsed or approved any aspect of any product or service offered by CompuCredit.

**RESTITUTION AND OTHER RELIEF**

**III.**

IT IS FURTHER ORDERED that within sixty (60) days of the effective date of this ORDER, CompuCredit shall commence the actions described below, and within two hundred seventy (270) days of the effective date of this ORDER shall substantially complete the actions described with respect to those consumers identified herein (Eligible Consumers). This paragraph shall apply even if an Eligible Consumer's account was closed, charged off or sold to a third party (whether or not the third party is affiliated with CompuCredit). CompuCredit shall credit to Eligible Consumers the sum of not less than \$100 million, exclusive of credits made as of the date the CONSENT AGREEMENT is signed, to be distributed as set forth in this Part III. As further set forth below, to the extent the crediting of an account of an Eligible Consumer results in a credit balance, CompuCredit shall refund to such Eligible Consumer such balance in cash. The restitution set forth herein is equitable relief



pursuant to Section 8(b)(6) of the FDI Act, 12 U.S.C. § 1818(b)(6); it is solely remedial in nature, and is not a fine, penalty, punitive assessment, or forfeiture.

**A. Little Rock Accounts - Charged Off Within Nine (9) Months of Activation**

For consumers whose Little Rock accounts were activated on or before December 31, 2005 and were charged off within nine (9) months of activation, credit all billed and not previously credited late fees, and overlimit fees that were charged to the account, and refund in cash any resulting credit balance.

**B. Little Rock Accounts - Activated But Never Used**

For all consumers whose Little Rock accounts were activated on or before December 31, 2005, but never used to make a purchase or obtain a cash advance, credit all billed and not previously credited fees and charges (other than fees for payments not made with good funds) that were charged to the account during the first twelve (12) billing cycles, and refund in cash any resulting credit balance; *provided*, however, that this SubPart III.B shall not apply to consumers whose accounts are open as of the effective date of this ORDER.

**C. Guaranty of Amount of Credits**

To the extent that the credits made pursuant to this Part III total less than \$100 million, the shortfall shall be paid in cash to the United States Treasury within sixty (60) days of the final report set forth in SubPart V.B(5).

**D. Effect of Prior Credits and Other Monetary Relief**

If CompuCredit and/or the applicable Bank has already provided a credit or cash payment to an account for any of the fees set forth in SubParts III.A and III.B for any reason (including but not limited to credits or cash payments made pursuant to the order issued in the federal court case, *Federal Trade Commission v. CompuCredit Corp.*, No. 1:08-CV-1976 (N.D. Ga.)), then this ORDER shall not be construed as requiring CompuCredit and/or the applicable Bank to provide a duplicate credit or cash payment to that account for those fees.

**E. Collection Activity Prohibited**

CompuCredit, directly or indirectly, shall not undertake collection efforts in the same mailing as that containing any of the checks or letters described in Part IV of this ORDER. Further, CompuCredit, directly or indirectly, shall not condition, expressly or by implication, the provision of a credit or cash payment pursuant to this ORDER on the payment of

any outstanding debt. Except as set forth above, this SubPart III.E shall not be construed to prevent or restrict CompuCredit or any owner of a credit card receivable or account from engaging in lawful collection activity on such receivable or account.

**F. Credit Reporting**

Within sixty (60) days of posting the credits required by this ORDER, for all closed accounts included in Part III that have been charged off and have a zero balance or a net credit balance as a result of the credits issued pursuant to this ORDER, CompuCredit shall request that each consumer reporting agency to which it has reported information remove the affected trade line or trade lines. For all other accounts that receive a credit under this ORDER, CompuCredit shall request that each such consumer reporting agency remove the affected trade line or trade lines, or shall furnish such agency accurate information regarding the modifications to each account resulting from this ORDER.

**G. Limitations on Credits and Cash Payments**

No cash payments shall be required for accounts with respect to which the aggregate amounts of payments made by the consumer prior to charge-off plus any amounts paid by the consumer after charge-off and received directly or indirectly by

CompuCredit (as a result of the repurchase of an account or otherwise) were less than or equal to the sum of the aggregate amount of purchases made and cash advances obtained, and credits to such accounts shall not exceed the balances on such accounts as of the dates the credits required by this ORDER are applied.

**H. Unclaimed Cash Payments**

Any cash payments required by Part III of this ORDER and not claimed after the expiration of the period set forth in SubPart IV.H of this ORDER shall be distributed as set forth in SubPart IV.I of this ORDER.

**LETTERS TO CONSUMERS AND RESTITUTION CHECKS**

**IV.**

IT IS FURTHER ORDERED that CompuCredit shall undertake the following actions:

A. Within thirty (30) days of the effective date of this ORDER, CompuCredit shall submit to the Regional Director, for review and approval, the final text of the letters that will be sent by CompuCredit to consumers under the terms of this ORDER. Such letters shall be substantially in the same form as the sample letters attached to the CONSENT AGREEMENT as Appendix B.

The Regional Director, after consultation with the other appropriate Regional Directors for each of the Banks, and with the FTC, shall notify CompuCredit in writing of his/her decision regarding approval or disapproval within fifteen (15) days of his receipt of the proposed letter(s). CompuCredit shall address the concerns of the appropriate Regional Director within fifteen (15) days of written receipt of his/her disapproval;

B. For purposes of this ORDER, the "appropriate Regional Director" shall mean:

(1) with respect to Columbus Bank and Trust Company

Regional Director—Atlanta Region

(2) with respect to First Bank of Delaware

Regional Director—New York Region

(3) with respect to First Bank & Trust

Regional Director—Kansas City Region

C. The letters described in Part IV and the restitution checks described in Parts III and IV shall be mailed in accordance with the provisions contained in SubParts IV.D and V.B.(3) of this ORDER;

D. All mailings shall be sent by United States Postal Service first-class mail, address correction service requested.

The envelope shall contain no materials other than those reviewed and approved by the Regional Director;

E. CompuCredit shall make reasonable attempts to obtain an updated address for any consumer whose notification letter and/or restitution check is returned for any reason, using standard address search methodologies;

F. CompuCredit shall promptly re-mail all returned letters and/or restitution checks to corrected addresses, if any;

G. The face of each restitution check shall clearly and conspicuously state, "Please cash or deposit this check within 180 days or it will no longer be good." After one hundred eighty-seven (187) days from the date the restitution checks were originally mailed, CompuCredit may void all checks that were returned or have not been negotiated;

H. CompuCredit shall retain all monies resulting from the voiding of such checks for a period of sixty (60) days from submission of the final report set forth in SubPart V.B(5) to allow consumers who did not receive their checks or failed to negotiate them within the original period to receive restitution; and

I. With respect to any cash payments required by Part III of this ORDER and not claimed after expiration of the period set forth in SubPart IV.H of this ORDER:

(1) if such funds are subject to escheat under the applicable state's law -

(a) such funds shall be transferred to a segregated account within thirty (30) days of expiration of the period set forth in SubPart IV.H of this ORDER, and retained by CompuCredit for the benefit of Eligible Consumers until such time as the funds are required to be transferred to the appropriate state treasurer or other official in accordance with applicable state abandoned or unclaimed property laws, at which time CompuCredit shall make such transfer to the appropriate state treasurer or other official;

(b) *provided* that if for any reason the applicable state refuses to accept custody of such funds, or after the state accepts custody, such funds revert to CompuCredit, CompuCredit shall pay an equivalent amount to the United States Treasury within thirty (30) days of such refusal to accept custody or such reversion of funds;

(2) if such funds are not subject to escheat under

the applicable state's law, CompuCredit shall pay an equivalent amount to the United States Treasury within thirty (30) days of expiration of the period set forth in SubPart IV.H of this ORDER; and

(3) CompuCredit shall provide the Regional Director and the FTC a report on the final disposition of all funds subject to this SubPart IV.I.

#### **CPA REPORT PROVISIONS**

##### **V.**

IT IS FURTHER ORDERED that CompuCredit shall undertake the following actions:

##### **A. Retention of CPA Firm and Scope of Work**

Within thirty (30) days of the effective date of this ORDER, CompuCredit shall retain, at its expense, an independent certified public accounting firm (Firm) acceptable to the Regional Director to determine compliance with this ORDER in accordance with the attestation standards established by the American Institute of Certified Public Accountants for agreed-upon procedures engagements. Prior to the engagement of the Firm, and no later than fifteen (15) days after the effective



date of this ORDER, CompuCredit 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 Regional Director for non-objection. To be acceptable to the Regional Director, the Firm must be independent and, at a minimum, comply with the Code of Conduct of the appropriate State Board of Accountancy and meet the auditor independence requirements of the Securities and Exchange Commission. In the event one or more of the Banks is ordered to retain a CPA firm in connection with the Credit Card Programs, nothing in this ORDER shall prohibit CompuCredit and the Banks from retaining the same Firm. The Regional Director, after consulting with the other appropriate Regional Directors for each of the Banks, shall notify CompuCredit in writing of his/her objection or non-objection to the proposed Firm, the proposed engagement letter, and the proposed agreed-upon procedures within fifteen (15) days after receipt of the Firm's nomination, the proposed engagement letter, and the proposed agreed-upon procedures. The Firm shall issue reports of findings based on specific agreed-upon procedures to which the Regional Director has not objected. The Firm's reports shall address compliance with Parts III and IV of this ORDER,

including the following areas:

(1) the completeness and accuracy of the criteria, data sources, formulae, and calculations established, used and generated to determine the amounts of fees and charges reversed to the accounts of Eligible Consumers and any resulting credit balances to be refunded in cash;

(2) efforts to make the requests of the consumer reporting agencies; and

(3) efforts to locate consumers whose letters and/or restitution checks were returned.

**B. Reporting by and to the Firm**

(1) Within sixty (60) days of the effective date of this ORDER, CompuCredit shall identify the accounts that will receive credits pursuant to Part III, commence the process to apply the credits to those accounts, and submit a report thereof (Credit/Refund Report) to the Regional Director, the FTC, the Banks, and the Firm. For each group of Eligible Consumers identified pursuant to Part III of this ORDER, such report shall include: (a) a listing of individual accounts in that group; (b) the amount of fees and charges credited to each consumer's account and the credit balance to be refunded in cash, if any;

and (c) the aggregate amounts of fees and charges credited and the credit balances to be refunded in cash for that group.

CompuCredit shall submit an update of the Credit/Refund Report every thirty (30) days thereafter until the Firm has determined that no further update is necessary. CompuCredit shall promptly provide the Firm with all information requested by the Firm to perform the agreed-upon procedures referenced in SubPart V.A herein and provide the series of reports set forth in this SubPart V.B.

(2) Within one hundred and twenty (120) days of the effective date of this ORDER, the Firm shall simultaneously submit to CompuCredit, the Banks, the Regional Director, and the FTC an initial report evaluating compliance with Parts III and IV of this ORDER pursuant to the agreed-upon procedures.

(3) Within fifteen (15) days after receipt of the Firm's initial report, the Regional Director, after consulting with the other appropriate Regional Directors for each of the Banks, shall provide comments to CompuCredit. Prior to mailing the letters and/or restitution checks, CompuCredit shall review, adopt and implement the recommendations of the Regional Director. The letters shall be mailed within thirty (30) days

of receipt of the Regional Director's comments.

(4) After the Firm's initial report, the Firm shall provide an updated report to CompuCredit, the Banks, the Regional Director, and the FTC every thirty (30) days until the restitution specified in Part III is completed and the final report specified in SubPart V.B(5) herein is submitted. CompuCredit's retention agreement with the Firm shall require that the Firm be available to answer questions from CompuCredit, the Banks, the FDIC, and the FTC for a period of twelve (12) months following the date of the final report.

(5) The Firm shall submit a copy of its final report on applying the agreed-upon procedures to CompuCredit, the Banks, the Regional Director, and the FTC within eighteen (18) months from the effective date of this ORDER. Such report shall include a confirmation that all credits and all cash refunds required to be made pursuant to Part III have been accurately calculated, and that all credits to the accounts of Eligible Consumers and all cash refunds pursuant to Parts III and IV have been made.

**C. Access to Reports and Work Papers**

The engagement letter between CompuCredit and the Firm

shall grant the FDIC staff and the FTC staff access to the Firm's staff, work papers and other materials prepared in the course of the Firm's engagement and preparation of the reports required by this Part V.

**ORDER TO PAY**

**VI.**

IT IS FURTHER ORDERED THAT, by reason of the alleged violations of law and/or regulations, and after taking into account the CONSENT AGREEMENT, the appropriateness of the penalty with respect to the financial resources and good faith of CompuCredit, the gravity of the conduct by CompuCredit, the history of previous conduct by CompuCredit, and such other matters as justice may require, pursuant to section 8(i)(2), a civil money penalty of \$2,400,000 is assessed against the Respondent. CompuCredit shall pay the civil money penalty to the Treasury of the United States. CompuCredit shall pay the civil money penalty itself, and is prohibited from seeking or accepting indemnification from such payment from any third party.

**MISCELLANEOUS**

**VII.**

A. CompuCredit shall furnish a written progress report to the Regional Director, sixty (60) days after the effective date of this ORDER and every ninety (90) days thereafter, detailing the form and manner of all actions taken to secure compliance with this ORDER and the results of such actions. The Regional Director shall release CompuCredit in writing from making further reports when he/she determines, after consulting with the other appropriate Regional Directors for the Banks, that the actions required by this ORDER have been accomplished. Nothing in this Part VI shall relieve CompuCredit from compliance with any other reporting requirement or provision of this ORDER.

B. CompuCredit shall cooperate fully with the Banks to effect the restitution and other relief required by this ORDER.

C. Except for an action to enforce compliance with this ORDER, the FDIC shall not commence any action under section 8 of the FDI Act, 12 U.S.C. § 1818, Section 5, or any other statute or regulation, against CompuCredit, or any of its officers, directors, employees or agents, or any of CompuCredit's direct or indirect subsidiaries, their successors or assigns, or any of their respective officers, directors, employees or agents, arising out of or related to the Credit Card Programs from

January 2, 2000 to the date of this ORDER.

D. Except as limited by the CONSENT AGREEMENT and Section VII.C. above, this ORDER shall not bar, estop or otherwise prevent the FDIC from taking any other action against CompuCredit, its direct or indirect subsidiaries, their successors or assigns, or any of their respective directors, officers, employees, and agents, or the Banks, the Banks' current or former institution-affiliated parties, or any of their respective, directors, officers, employees, and agents.

E. Nothing herein shall prevent the FDIC from conducting future on-site reviews and/or examinations of CompuCredit, its affiliates, agents, and servicers, at any time to monitor compliance with this ORDER.

F. This ORDER shall be effective on the date of issuance.

G. The provisions of this ORDER shall be binding on CompuCredit, its direct or indirect subsidiaries, their successors or assigns, and any of their respective directors, officers, employees, and agents.

H. The provisions of this ORDER shall remain effective and enforceable except to the extent that, and until such time as, any provisions of this ORDER shall have been modified,

suspended or terminated in writing by the FDIC. CompuCredit may apply to the FDIC for such modification, suspension and/or termination after one year of the effective date of the ORDER.

**RESERVATION OF RIGHTS**

**VIII.**

Except as limited by the CONSENT AGREEMENT, this ORDER shall not bar, estop or otherwise prevent any federal or state agency or department from taking any action against CompuCredit, its direct or indirect subsidiaries, their successors or assigns, or their respective directors, officers, employees, and agents, or the Banks, the Banks' current or former institution-affiliated parties, or their respective directors, officers, employees, and agents.

Pursuant to delegated authority.

Dated at Washington, D.C., this 19<sup>th</sup> day of  
December, 2008.

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Sandra L. Thompson  
Director  
Division of Supervision and  
Consumer Protection