

FEDERAL DEPOSIT INSURANCE CORPORATION / CONSUMER FINANCIAL PROTECTION BUREAU

WASHINGTON, D.C.

Filed 9/25/12

Received By:

OAA DOCKET CLERK



In the Matter of	)	STIPULATION AND CONSENT TO THE
	)	ISSUANCE OF A JOINT
	)	CONSENT ORDER,
DISCOVER BANK	)	ORDER FOR RESTITUTION,
GREENWOOD, DELAWARE	)	AND ORDER TO PAY
	)	CIVIL
	)	MONEY PENALTY
(INSURED STATE NONMEMBER BANK)	)	
	)	Docket Numbers FDIC-11-548b;
		FDIC-11-551k & 2012-CFPB-0005

Subject to the acceptance of this STIPULATION AND CONSENT TO THE ISSUANCE OF A JOINT CONSENT ORDER, ORDER FOR RESTITUTION, AND ORDER TO PAY CIVIL MONEY PENALTY (“CONSENT AGREEMENT”) by the Federal Deposit Insurance Corporation (“FDIC”) and the Consumer Financial Protection Bureau (“CFPB”), it is hereby stipulated and agreed by and between a representative of the Legal Division of the FDIC, the Office of Enforcement of the CFPB, and Discover Bank, Greenwood, Delaware (“Discover”) as follows. The term “Discover” shall mean Discover Bank, its institution-affiliated parties, as defined in section 3(u) of the Federal Deposit Insurance Act (“FDI Act”), 12 U.S.C. § 1813(u), and, in connection with the Products as defined in the JOINT CONSENT ORDER, ORDER FOR RESTITUTION, AND ORDER TO PAY CIVIL MONEY PENALTY (collectively, “JOINT CONSENT ORDER”), all affiliates of Discover who are service providers as defined in sections 1002(1) and (26) of the Consumer Financial Protection Act (“CFP Act”), 12 U.S.C. §§ 5481(1) and (26).

1. Discover has been advised by the FDIC of its right to receive a Notice of Charges for an Order to Cease and Desist and for Restitution, Notice of Assessment of Civil Money Penalties, Findings of Fact and Conclusions of Law, and Notice of Hearing (collectively, “Notice”) detailing the violations of law and/or regulations and unsafe or unsound banking practices alleged to have been committed by Discover for which a JOINT CONSENT ORDER may issue against Discover pursuant to sections 8(b) and 8(i)(2) of the FDI Act, 12 U.S.C. §§ 1818(b) and 1818(i)(2).

2. Discover has been further advised by the FDIC of its right to a hearing on the charges under section 8(b) and 8(i)(2) of the FDI Act, 12 U.S.C. §§ 1818(b) and 1818(i)(2), and the FDIC’S Rules of Practice and Procedure, 12 C.F.R. Part 308.

3. Discover Bank admits that it is an “insured depository institution” and an insured “State nonmember bank” as those terms are defined in sections 3(c)(2) and 3(e)(2) of the FDI Act, 12 U.S.C. §§ 1813(c)(2) and 1813(e)(2).

4. Discover admits that it is a “covered person” and an insured depository institution with total assets of more than \$10,000,000,000 as those terms are used and defined in sections 1002(6) and 1025 of the CFP Act, 12 U.S.C. §§ 5481(6) and 5515.

5. Discover admits that the FDIC has jurisdiction over Discover pursuant to section 3(q)(3) of the FDI Act, 12 U.S.C. § 1813(q)(3), and that the CFPB has jurisdiction over Discover pursuant to sections 1002(6), 1025, and 1053 of the CFP Act, 12 U.S.C §§ 5481(6), 5515, and 5563.

6. The FDIC and the CFPB have determined, as to matters within their respective jurisdiction, that Discover has engaged in deceptive acts and practices in or affecting commerce, in violation of section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1), and in

deceptive acts and practices in violation of sections 1031 and 1036 of the CFP Act, 12 U.S.C. §§ 5531 and 5536.

7. Discover, solely for the purpose of this proceeding and without admitting or denying any of the charges of unsafe or unsound banking practices, any of the findings of fact, or any violations of law, hereby consents and agrees to the issuance of the JOINT CONSENT ORDER by the FDIC and the CFPB.

8. Discover further consents and agrees to pay a civil money penalty in the amount of \$7,000,000 to the Treasury of the United States pursuant to section 8(i)(2) of the FDI Act, 12 U.S.C. § 1818(i)(2), as directed by the FDIC, and a civil money penalty in the amount of \$7,000,000 to the Consumer Financial Civil Penalty Fund, administered by the CFPB pursuant to section 1017(d) of the CFP Act, 12 U.S.C. § 5497(d), pursuant to section 1055(c) of the CFP Act, 12 U.S.C. § 5565(c), as directed by the CFPB.

9. Discover further stipulates and agrees that such JOINT CONSENT ORDER will be deemed to be an order which has become final under the FDI Act and the CFP Act, and that said JOINT CONSENT ORDER shall become effective upon its issuance by the FDIC and the CFPB, and fully enforceable by the FDIC pursuant to the provisions of the FDI Act, and by the CFPB pursuant to the provisions of the CFP Act.

10. In the event the FDIC and the CFPB accept the CONSENT AGREEMENT and jointly issue the JOINT CONSENT ORDER, it is agreed that no action to enforce said JOINT CONSENT ORDER in the United States District Court will be taken by the FDIC or the CFPB unless Discover has violated, or is about to violate, any provision of the JOINT CONSENT ORDER.

11. (a) In the event the FDIC and the CFPB accept this CONSENT AGREEMENT and issue the JOINT CONSENT ORDER, it is agreed that the FDIC shall not initiate any further legal action under section 8 of the FDI Act, 12 U.S.C. § 1818, for violations of section 5 of the Federal Trade Commission Act (“Section 5”), 15 U.S.C. § 45(a)(1), and the CFPB shall not initiate any further legal action under sections 1053 or 1054 of the CFP Act, 12 U.S.C §§ 5563 and 5564, for violations of sections 1031 and 1036 of the CFP Act (together “Section 1036”), 12 U.S.C. §§ 5531 and 5536, arising from the specific marketing and sales practices identified in the Findings of Fact in the JOINT CONSENT ORDER, for the time period December 1, 2007 through August 31, 2011, and that are specifically the subject of the JOINT CONSENT ORDER, except that nothing herein precludes the FDIC or the CFPB from taking action to enforce or address violations of the JOINT CONSENT ORDER against Discover, its institution-affiliated parties, its affiliates who are service providers in connection with the Products as defined in the JOINT CONSENT ORDER, and their successors or assigns.

(b) Discover agrees and acknowledges that, except as specifically provided herein, the terms and conditions of this CONSENT AGREEMENT, the acceptance of this CONSENT AGREEMENT by the FDIC and the CFPB, and the issuance of the JOINT CONSENT ORDER shall not in any way bar, estop, or otherwise prevent the FDIC and the CFPB from taking any other action against Discover, its institution-affiliated parties, its affiliates who are service providers in connection with the Products as defined in the JOINT CONSENT ORDER, and their successors or assigns.

(c) It is further agreed that, by entering into this CONSENT AGREEMENT, Discover is not making an evidentiary admission of liability for the specific practices that are the subject of the JOINT CONSENT ORDER.

12. Solely with respect to the matters described in the JOINT CONSENT ORDER, Discover hereby waives its right under the FDI Act to:

- (a) The receipt of a Notice;
- (b) All defenses and counterclaims in this proceeding;
- (c) A public hearing for the purpose of taking evidence on such alleged charges;
- (d) The filing of Proposed Findings of Fact and Conclusions of Law;
- (e) A recommended decision of an Administrative Law Judge;
- (f) Exceptions and briefs with respect to such recommended decision; and
- (g) Judicial review of the JOINT CONSENT ORDER as provided by section 8(h) of the FDI Act, 12 U.S.C. § 1818(h), or any other challenge to the validity of the JOINT CONSENT ORDER.

13. Solely with respect to the matters described in the JOINT CONSENT ORDER, Discover hereby waives its right under the CFP Act to:

- (a) All hearings pursuant to the statutory provisions under which the proceeding has been instituted;
- (b) The filing of Proposed Findings of Fact and Conclusions of Law;
- (c) Proceedings before, and a recommended decision by, a hearing officer;
- (d) All post-hearing procedures;
- (e) Judicial review by any court;
- (f) Any objection to the jurisdiction of the CFPB under section 1053 of the Dodd-Frank Act, 12 U.S.C. § 5563;

- (g) 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 CFPB Director as to, any order, opinion, finding of fact, or conclusion of law to be entered; and
- (h) Any right to claim bias or prejudice by the CFPB Director based on the consideration of or discussions concerning settlement of all or any part of the proceeding.

Dated this 21st day of September, 2012.

FEDERAL DEPOSIT INSURANCE  
CORPORATION, LEGAL DIVISION

BY:



Ashby G. Hilsman  
Senior Regional Attorney

CONSUMER FINANCIAL PROTECTION  
BUREAU

BY:



Ori Lev  
Deputy Enforcement Director for Litigation

DISCOVER BANK  
GREENWOOD, DELAWARE



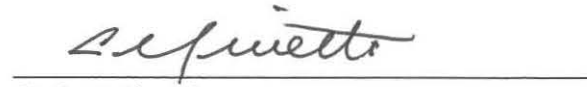
David Nelms



Roger Hochschild



Frank Grossman



Carlos Minetti



Will O'Hara



Frank Reilly



Joe Yob

Comprising the Board of Directors of Discover Bank,  
Greenwood, Delaware