

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

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<b>In the Matter of:</b>	)	
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U.S. Bank National Association	)	AA-EC-2014-37
Cincinnati, OH	)	
	)	

**CONSENT ORDER FOR A CIVIL MONEY PENALTY**

The Comptroller of the Currency of the United States of America (“Comptroller”), through his national bank examiners and other staff of the Office of the Comptroller of the Currency (“OCC”), has conducted an examination of U.S. Bank National Association, Cincinnati, OH (“Bank”) and U.S. Bank National Association ND, Fargo, North Dakota, which was merged into U.S. Bank on May 13, 2013 (collectively, “Banks”). The OCC has identified deficiencies in the Banks’ practices that resulted in a violation of Section 5 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45(a)(1), related to billing practices with regard to identity theft protection products, and has informed the Bank of the findings resulting from the examination.

The Bank, by and through its duly elected and acting Board of Directors (“Board”), has executed a Stipulation and Consent to the Issuance of an Order for a Civil Money Penalty, dated Sept 24, 2014, that is accepted by the Comptroller (“Stipulation”). By this Stipulation, which is incorporated herein by reference, the Bank has consented to the issuance of this Consent Order for a Civil Money Penalty (“Order”) by the Comptroller.

## ARTICLE I

### COMPTROLLER'S FINDINGS

The Comptroller finds, and the Bank neither admits nor denies, the following:

(1) From February 2003 to February 2012, one or both Banks, pursuant to a contract, marketed identity protection products to the customers of the Banks on behalf of a third party, Affinion Group, and its subsidiary, Trilegiant Corporation. The identity protection products included credit monitoring and credit report retrieval services.

(2) The Banks' customers who enrolled in the identity protection products were required to provide sufficient personal verification information or authorization before their credit bureau reports could be accessed. Customers of the identity protection products were provided the materials necessary to submit this information or authorization. Customers could not receive the credit monitoring and/or credit report retrieval services of the identity protection product in which he or she was enrolled until the information or authorization was submitted. For some customers, additional identifying information was needed in order for the third party to access the correct credit bureau reports at one or more credit bureaus related to the identity protection product customers.

(3) From February 2003 to August 2012, the third party billed identity protection product customers who were not receiving credit monitoring and/or credit report retrieval services for the full fee of the product, even though those customers were not receiving all of the credit monitoring and/or credit report retrieval services of the product.

(4) From February 2003 to August 2012, one or both Banks received a substantial portion of the fees paid by the customers of the Banks for the identity protection products sold by

the third party, including fees paid by customers of the Banks who were not receiving the credit monitoring and/or credit report retrieval services.

(5) By reason of the foregoing billing practices for the identity protection products as described in Paragraphs (1) to (3) of this Article, the Banks engaged in unfair practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a)(1).

(6) The Banks' violation of Section 5 of the FTC Act caused substantial consumer injury or was likely to cause substantial consumer injury.

(7) The Banks' violation of Section 5 of the FTC Act is part of a pattern of misconduct that resulted in financial gain to the Banks.

## ARTICLE II

### ORDER FOR A CIVIL MONEY PENALTY

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

(1) The Bank shall make payment of a civil money penalty in the total amount of four million dollars (\$4,000,000), which shall be paid upon the execution of this Order:

(a) If a check is the selected method of payment, the check shall be made payable to the Treasurer of the United States and shall be delivered to: Comptroller of the Currency, P.O. Box 979012, St. Louis, Missouri 63197-9000.

(b) If a wire transfer is the selected method of payment, it shall be sent in accordance with instructions provided by the Comptroller.

(c) The docket number of this case (AA-EC-2014-37) shall be entered on the payment document or wire confirmation and a photocopy of the payment

document or confirmation of the wire transfer shall be sent immediately, by overnight delivery, to the Director of Enforcement and Compliance, Office of the Comptroller of the Currency, 400 7th Street, S.W., Washington, D.C. 20219.

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

### ARTICLE III

#### OTHER PROVISIONS

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

(2) This Order constitutes a settlement of the civil money penalty proceeding against the Bank contemplated by the Comptroller, based on the practices and violation of law described in the Comptroller's Findings set forth in Article I of this Order. The Comptroller releases and discharges the Bank from all potential liability for a civil money penalty that has been or might have been asserted by the Comptroller based on the practices and violation described in the Comptroller's Findings set forth in Article I of this Order, to the extent known to the Comptroller as of the effective date of this Order. Provided, however, that nothing in the Stipulation or this Order shall prevent the Comptroller from instituting other enforcement actions against the Bank or any of its institution-affiliated parties based on the findings set forth in this Order, or any other findings, and nothing in the Stipulation or this Order shall preclude or affect any right of the

Comptroller to determine and ensure compliance with the terms and provisions of the Stipulation or this Order.

(3) The terms of this Order, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements, or prior arrangements between the parties, whether oral or written.

IT IS SO ORDERED, this 24 day of September 2014.

/s/ Morris R. Morgan  
Morris R. Morgan  
Deputy Comptroller  
Large Bank Supervision

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

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**In the Matter of:**

U.S. Bank National Association  
Cincinnati, OH

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) AA-EC-2014-37  
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**STIPULATION AND CONSENT TO THE ISSUANCE  
OF AN ORDER FOR A CIVIL MONEY PENALTY**

**WHEREAS**, the Comptroller of the Currency of the United States of America (“Comptroller”), based upon information derived from the exercise of his regulatory and supervisory responsibilities, intends to initiate a civil money penalty proceeding against U.S. Bank National Association, Cincinnati, OH (“Bank”), pursuant to 12 U.S.C. § 1818(i), for the violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1), by the Bank and by U.S. Bank National Association ND, Fargo, North Dakota, which was merged into U.S. Bank on May 13, 2013 (collectively, “Banks”), related to billing practices with regard to identity theft protection products;

**WHEREAS**, in the interest of cooperation and to avoid additional costs associated with administrative and judicial proceedings with respect to the above matter, the Bank, through its duly elected and acting Board of Directors (“Board”), has agreed to execute this Stipulation and Consent to the Issuance of a Civil Money Penalty (“Stipulation”), that is accepted by the Comptroller, through his duly authorized representative;

**NOW, THEREFORE**, in consideration of the above premises, it is stipulated by the Bank that:

## 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(i).
- (3) The Bank is an “insured depository institution” within the meaning of 12 U.S.C. § 1818(i).

## ARTICLE II

### CONSENT

- (1) The Bank, without admitting or denying any wrongdoing, consents and agrees to issuance of the accompanying Consent Order for a Civil Money Penalty (“Consent Order”) by the Comptroller.
- (2) The terms and provisions of the Consent Order apply to U.S. Bank National Association and all of its subsidiaries, even though those subsidiaries are not named as parties to the Consent Order.
- (3) The Bank consents and agrees that the Consent Order shall be deemed an “order issued with the consent of the depository institution” pursuant to 12 U.S.C. § 1818(h)(2), and consents and agrees that the Consent Order shall become effective upon its execution by the Comptroller through his authorized representative, and shall be fully enforceable by the Comptroller pursuant to 12 U.S.C. § 1818(i).
- (4) Notwithstanding the absence of mutuality of obligation, or of consideration, or of a contract, the Comptroller may enforce any of the commitments or obligations herein

undertaken by the Bank under his supervisory powers, including 12 U.S.C. § 1818(i), and not as a matter of contract law. The Bank expressly acknowledges that neither the Bank nor the Comptroller has any intention to enter into a contract.

(5) The Bank declares that no separate promise or inducement of any kind has been made by the Comptroller, or by his agents or employees, to cause or induce the Bank to consent to the issuance of the Consent Order and/or execute this Stipulation.

(6) The Bank expressly acknowledges that no officer or employee of the Comptroller has statutory or other authority to bind the United States, the United States Treasury Department, the Comptroller, or any other federal bank regulatory agency or entity, or any officer or employee of any of those entities to a contract affecting the Comptroller's exercise of his supervisory responsibilities.

(7) The Consent Order constitutes a settlement of the civil money penalty proceeding against the Bank contemplated by the Comptroller, based on the practices and violation of law described in the Comptroller's Findings set forth in Article I of the Consent Order. The Comptroller releases and discharges the Bank from all potential liability for a civil money penalty that has been or might have been asserted by the Comptroller based on the practices and violation described in the Comptroller's Findings set forth in Article I of the Consent Order, to the extent known to the Comptroller as of the effective date of the Consent Order. Provided, however, that nothing in this Stipulation or the Consent Order shall prevent the Comptroller from instituting other enforcement actions against the Bank or any of its institution-affiliated parties based on the findings set forth in the Consent Order, or any other findings. The practices and violation described in Article I of the Consent Order may be utilized by the Comptroller in other future enforcement actions against the Bank or its institution-affiliated parties, including, without

limitation, to establish a pattern or practice of violations or unsafe or unsound practices or the continuation of a pattern or practice of violations or unsafe or unsound practices. This release shall not preclude or affect any right of the Comptroller to determine and ensure compliance with the terms and provisions of this Stipulation or the Consent Order.

### ARTICLE III

#### WAIVERS

- (1) The Bank, by executing this Stipulation and consenting to the Consent Order, waives:
- (a) Any and all rights to the issuance of a Notice of Charges pursuant to 12 U.S.C. § 1818(i);
  - (b) Any and all procedural rights available in connection with the issuance of the Consent Order;
  - (c) Any and all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(i), 12 C.F.R. Part 19;
  - (d) Any and all rights to seek any type of administrative or judicial review of the Consent Order;
  - (e) Any and all claims for fees, costs or expenses against the Comptroller, or any of his agents or employees, related in any way to this enforcement matter or the Consent Order, whether arising under common law or under the terms of any statute, including, but not limited to, the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412;
  - (f) Any and all rights to assert this proceeding, this Stipulation, consent to the issuance of the Consent Order, and/or the issuance of the Consent Order,

as the basis for a claim of double jeopardy in any pending or future proceeding brought by the United States Department of Justice or any other governmental entity; and

- (g) Any and all rights to challenge or contest the validity of the Consent Order.

#### ARTICLE IV

##### CLOSING

(1) The provisions of this Stipulation and the Consent Order 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.

(2) Nothing in this Stipulation or the Consent Order shall preclude any proceedings brought by the Comptroller to enforce the terms of the Consent Order, and nothing in this Stipulation or the Consent Order constitutes, nor shall the Bank contend that it constitutes, a release, discharge, compromise, settlement, dismissal, or resolution of any actions, or in any way affects any actions that may be or have been brought by any other representative of the United States or an agency thereof, including, without limitation, the United States Department of Justice.

(3) The terms of this Stipulation, including this paragraph, and of the Consent Order are not subject to amendment or modification by any extraneous expression, prior agreements or prior arrangements between the parties, whether oral or written.

IN TESTIMONY WHEREOF, the undersigned, as the duly elected and acting Board of Directors of U.S. Bank National Association, Cincinnati, Ohio, have hereunto set their hands on behalf of the Bank.

/s/ Richard K. Davis  
Richard K. Davis

9/12/14  
Date

/s/ Jennie P. Carlson  
Jennie P. Carlson

9-12-14  
Date

/s/ Andrew Cecere  
Andrew Cecere

9/12/14  
Date

/s/ James L. Chosy  
James L. Chosy

9-12-14  
Date

/s/ A. D. Collins, Jr.  
Arthur D. Collins, Jr.

9/12/14  
Date

/s/ Terrance R. Dolan  
Terrance R. Dolan

9/12/14  
Date

/s/ J. R. Elmore  
John R. Elmore

9-12-14  
Date

/s/ J. Hoesley  
Joseph C. Hoesley

9-12-14  
Date

/s/ Pamela A. Joseph

Pamela A. Joseph

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September 12, 2014

Date

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/s/ P. W. Parker

P.W. Parker

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9-12-14

Date

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/s/ R. B. Payne, Jr.

Richard B. Payne, Jr.

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9/12/14

Date

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/s/ Mark G. Runkel

Mark G. Runkel

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9/12/14

Date

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/s/ Craig D. Schnuck

Craig D. Schnuck

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9/12/14

Date

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/s/ Kent V. Stone

Kent V. Stone

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9/12/2014

Date

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/s/ J. H. von Gillern

Jeffry H. von Gillern

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9/12/2014

Date

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