

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

_____	)	
<b>In the Matter of:</b>	)	
	)	
Bank of America, N.A.	)	AA-EC-2014-5
Charlotte, North Carolina	)	
	)	
FIA Card Services, N.A.	)	
Wilmington, Delaware	)	
_____	)	

**CONSENT ORDER**

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 Bank of America, N.A., Charlotte, North Carolina, and FIA Card Services, N.A., Wilmington, Delaware (collectively, “Bank”). The OCC has identified deficiencies in the Bank’s 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 protection products, and has informed the Bank of the findings resulting from the examination.

The Bank, by and through its duly elected and acting Boards of Directors (collectively referred to as “Board”), has executed a Stipulation and Consent to the Issuance of a Consent Order, dated April 7, 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 Cease and Desist Order (“Order”) by the Comptroller. The Bank has begun corrective action, and is committed to taking all necessary and appropriate steps to remedy the deficiencies and violation of law identified by the OCC.

## ARTICLE I

### COMPTROLLER'S FINDINGS

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

- (1) From at least October 2000 to approximately December 2011, the Bank and its vendors marketed and sold identity protection products, which included credit monitoring and credit report retrieval, to Bank customers and other consumers.
- (2) Bank customers and other consumers 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, but until the information or authorization was submitted, the customers could not receive the full credit monitoring and/or credit report retrieval services of the identity protection product in which they were enrolled.
- (3) From at least October 2000 to approximately September 2011, the Bank, through its vendors, billed customers of identity protection products 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 benefits of the product.
- (4) By reason of the foregoing billing practices for its identity protection products as described in Paragraphs (1) to (3) of this Article, the Bank engaged in unfair practices in violation of Section 5 of the FTC Act, 15 U.S.C. § 45(a)(1).
- (5) The Bank's violation of Section 5 of the FTC Act caused substantial consumer injury or was likely to cause substantial consumer injury.

(6) The Bank's violation of Section 5 of the FTC Act is part of a pattern of misconduct and resulted in financial gain to the Bank.

(7) Pursuant to the authority vested in him by the Federal Deposit Insurance Act, as amended, 12 U.S.C. § 1818(b), the Comptroller hereby ORDERS that:

## ARTICLE II

### COMPLIANCE COMMITTEE

(1) The Bank's existing Audit Committee, which is composed of independent directors, shall be responsible for monitoring and coordinating the Bank's compliance with the provisions of this Order.

(2) Within one hundred twenty (120) days of the effective date of this Order, and thereafter within thirty (30) days after the end of each calendar quarter, the Audit Committee shall submit a written progress report to the Board setting forth in detail the actions taken to comply with each Article of this Order, and the results and status of those actions.

(3) The Board shall forward a copy of the report, with any additional comments by the Board, to the Deputy Comptroller for Large Bank Supervision ("Deputy Comptroller") and the Examiner-in-Charge within ten (10) days of the first Board meeting following receipt of such report, unless additional time is granted by the Examiner-in-Charge through a written determination of no supervisory objection.

## ARTICLE III

### COMPREHENSIVE ACTION PLAN

(1) Within one hundred twenty (120) days of this Order, the Bank shall submit to the Deputy Comptroller and Examiner-in-Charge, for review and written determination of no supervisory objection by the Deputy Comptroller, an acceptable plan containing a complete

description of the actions that are necessary and appropriate to achieve compliance with Articles IV through IX of this Order (“Action Plan”). In the event the Deputy Comptroller asks the Bank to revise the Action Plan, the Bank shall promptly make necessary and appropriate revisions and resubmit the Action Plan to the Deputy Comptroller and Examiner-in-Charge for review and determination of no supervisory objection by the Deputy Comptroller.

(2) The Action Plan shall specify timelines for completion of each of the requirements of Articles IV through IX of this Order. The timelines in the Action Plan shall be consistent with any deadlines set forth in this Order, unless modified by written agreement with the Deputy Comptroller.

(3) Upon receiving written notice of no supervisory objection from the Deputy Comptroller, the Board shall ensure that the Bank implements and thereafter adheres to the Action Plan. Following implementation of the Action Plan, the Bank shall not take any action that will cause a significant deviation from, or material change to the Action Plan, unless and until the Bank has received a prior written determination of no supervisory objection from the Deputy Comptroller.

(4) The Board shall ensure that the Bank achieves and thereafter maintains compliance with this Order, including, without limitation, successful implementation of the Action Plan. The Board shall further ensure that, upon implementation of the Action Plan, the Bank achieves and maintains a program to comply with Section 5 of the FTC Act, and its implementing regulations. In each instance in this Order in which the Board is required to ensure adherence to or undertake to perform certain obligations of the Bank, it is intended to mean that the Board shall:

- (a) Require the timely reporting by the Bank management of such actions directed by the Board to be taken under this Order;
- (b) Follow-up on any non-compliance with such actions in a timely and appropriate manner; and
- (c) Require corrective action be taken in a timely manner for any non-compliance with such actions.

#### ARTICLE IV

##### CONSUMER REIMBURSEMENT FOR UNFAIR BILLING PRACTICES

(1) The Bank shall make full reimbursement, as defined in Paragraph (3) of this Article, in accordance with the Reimbursement Plan required by Article V of this Order, to all Eligible Customers as defined in Paragraph (2) of this Article.

(2) For the purposes of this Order, the following definitions shall apply:

- (a) “Eligible Customer” is any Identity Protection Customer who, between October 2000 and September 2011, enrolled in an Identity Protection Product and who was Unprocessable during any portion of his or her enrollment.
- (b) “Identity Protection Customer” is a Bank customer or other consumer who enrolled in an Identity Protection Product.
- (c) “Identity Protection Product” refers to the identity theft protection products, “Privacy Guard,” “PrivacySource,” and “Privacy Assist,” which included credit monitoring and credit report retrieval services and were marketed and sold to Bank customers and other consumers by the Bank or

its Identity Protection Vendor pursuant to a contract between the Bank and an Identity Protection Vendor.

- (d) “Identity Protection Vendor” refers to any of the Bank’s vendors, including but not limited to Trilegiant Corporation and Intersections, Inc., that provided marketing, sales, delivery, servicing, and/or fulfillment of Identity Protection Products to Bank customers and other consumers.
- (e) “Product Fees” are the fees charged by the Bank or Identity Protection Vendor for an Identity Protection Product.
- (f) “Reimbursement End Date” is the date on which the Eligible Customer’s Unprocessable status ended.
- (g) “Reimbursement Start Date” is the date on which the Eligible Customer entered Unprocessable status.
- (h) “Unprocessable” refers to the status of an Identity Protection Customer who, at a given time, was being billed for an Identity Protection Product but was not receiving the proper credit monitoring and/or credit report retrieval benefits of the product.

(3) The reimbursement amount paid to each Eligible Customer shall include, as applicable to each Eligible Customer:

- (a) The sum of:
  - (i) The full amount of Product Fees paid by an Eligible Customer from his or her Reimbursement Start Date through his or her Reimbursement End Date;

- (ii) The full amount of any overlimit fees, as calculated pursuant to the methodology in the Reimbursement Plan, paid by an Eligible Customer from his or her Reimbursement Start Date through his or her Reimbursement End Date; and
  - (iii) The amount of the estimated finance charges, as calculated pursuant to the methodology in the Reimbursement Plan, paid by an Eligible Customer on Product Fees from his or her Reimbursement Start Date through his or her Reimbursement End Date.
- (b) Less any amount that was a previous refund of the fees and charges described above in section (a) of this paragraph.

## ARTICLE V

### REIMBURSEMENT PLAN

- (1) Within ninety (90) days of this Order, the Bank shall develop and submit a Board-approved reimbursement plan (“Reimbursement Plan”) to the Deputy Comptroller for prior determination of no supervisory objection. The Reimbursement Plan shall include the following:
- (a) A description of the methods used and the time necessary to compile a list of potential Eligible Customers.
  - (b) A description of the methods used to calculate the amount of reimbursement to be paid to each Eligible Customer as required by Paragraph (1) of Article IV of this Order.
  - (c) A description of the procedures for issuance and tracking of reimbursement payments to Eligible Customers.

- (d) With regard to Eligible Customers who receive the reimbursement required by Paragraph (1) of Article IV of this Order in the form of a credit to their Bank credit card account, a description of procedures:
  - (i) for reporting updated balances, as applicable, to each credit reporting agency to which the Bank had previously furnished balance information for the account; and
  - (ii) with regard to accounts sold to unaffiliated third parties, for requesting such third parties to report updated balances, as applicable, to each credit reporting agency to which the Bank or the third party had previously furnished balance information for the account.
- (e) A description of the procedures for monitoring compliance with the Reimbursement Plan.

(2) The Bank represents that it has completed a plan to reimburse Eligible Customers for certain Product Fees and associated fees and charges that they paid. This plan shall be documented as part of the Reimbursement Plan required by this Article and be subject to the requirements of this Article, and shall include an accounting of amounts the Bank has already reimbursed to Eligible Customers.

(3) Upon receipt of a determination of no supervisory objection to the Reimbursement Plan, the Board shall ensure that the Bank implements and adheres to the Reimbursement Plan. Any proposed changes to or deviations from the approved Reimbursement Plan shall be submitted in writing to the Deputy Comptroller for prior supervisory review and non-objection.

## ARTICLE VI

### ASSESSMENT OF REIMBURSEMENT

(1) Within ninety (90) days from the completion of reimbursement under the Reimbursement Plan, as detailed in Article V, the Bank's Internal Audit shall review and assess compliance with the terms of the Reimbursement Plan ("Reimbursement Review").

(2) The Reimbursement Review shall include an assessment of the Reimbursement Plan and the methodology used to determine the population of Eligible Customers, the amount of reimbursement for each Eligible Customer, the procedures used to issue and track reimbursement payments, the procedures used for reporting and requesting the reporting of updated balances to the credit reporting agencies, and the work of any independent consultants that the Bank has used to assist and review its execution of the Reimbursement Plan.

(3) The Reimbursement Review shall be completed and summarized in a written report (the "Reimbursement Review Report"), which shall be completed within sixty (60) days of completion of the Reimbursement Review. Within ten (10) days of its completion, the Reimbursement Review Report shall be submitted to the Deputy Comptroller, Examiner-in-Charge, and the Board.

(4) Any (including all draft and finalized) communications, workpapers, or work product related to the Reimbursement Review shall be made available to the OCC immediately upon request of the Examiner-in-Charge.

## ARTICLE VII

### BANK VENDOR MANAGEMENT

(1) For the purposes of this Article and this Order, "Bank Vendor" refers to any third-party vendor that provides marketing, sales, delivery, servicing, and/or fulfillment of services for consumer products offered, pursuant to a contractual obligation to the Bank, as optional add-on

products to Bank credit cards and/or as optional add-on products to co-branded consumer products of the Bank.

(2) Within one hundred twenty (120) days of this Order, the Bank shall submit its written policy governing the management of Bank Vendors (“Bank Vendor Management Policy”) to the Examiner-in-Charge for prior determination of no supervisory objection. At a minimum, the Bank Vendor Management Policy shall require:

- (a) An analysis, to be conducted by the Bank prior to the Bank entering into a contract with the Bank Vendor, of the ability of the Bank Vendor to perform the marketing, sales, delivery, servicing, and fulfillment of services for the product(s) in compliance with all applicable consumer protection laws and Bank policies and procedures.
- (b) For new and renewed contracts, a written contract between the Bank and the Bank Vendor, which sets forth the responsibilities of each party, especially:
  - (i) The Bank Vendor’s specific performance responsibilities and duty to maintain adequate internal controls over the marketing, sales, delivery, servicing, and fulfillment of services for the products;
  - (ii) The Bank Vendor’s responsibilities and duty to provide adequate training on applicable consumer protection laws and Bank policies and procedures to all Bank Vendor employees or agents engaged in the marketing, sales, delivery, servicing, and fulfillment of services for the product(s);

- (iii) Granting the Bank the authority to conduct periodic onsite reviews of the Bank Vendor's controls, performance, and information systems as they relate to the marketing, sales, delivery, servicing, and fulfillment of services for the product(s); and
- (iv) The Bank's right to terminate the contract if the Bank Vendor materially fails to comply with the terms specified in the contract, including the terms required by this paragraph.

(c) For new and renewed contracts, periodic onsite review by the Bank of the Bank Vendor's controls, performance, and information systems.

(3) Upon receipt of a determination of no supervisory objection to the Bank Vendor Management Policy submitted pursuant to Paragraph (2) of this Article, the Board shall ensure that the Bank implements and adheres to the Bank Vendor Management Policy. Any proposed changes or deviations from the approved Bank Vendor Management Policy shall be submitted in writing to the Examiner-in-Charge for prior supervisory review and non-objection.

(4) The Bank's Internal Audit department shall periodically conduct an assessment of the Bank's adherence to the Bank Vendor Management Policy. Such assessments shall occur within one hundred twenty (120) days after the Bank's receipt of a determination of no supervisory objection to the Bank Vendor Management Policy, and periodically but at least annually thereafter, and the findings shall be memorialized in writing. Within thirty (30) days of completing each assessment, Internal Audit shall provide its written findings to the Audit Committee, the Deputy Comptroller, and the Examiner-in-Charge.

(5) The Board shall ensure that there is oversight of the Bank Vendor Management Policy required by this Article by the Bank's senior risk managers and senior management.

## ARTICLE VIII

### RISK MANAGEMENT PROGRAM AND OVERSIGHT

(1) Within one hundred twenty (120) days of this Order, the Bank shall submit a written enterprise-wide risk management program (“Risk Management Program”) for any consumer products offered by the Bank or through Bank Vendors as optional add-on products to Bank credit cards and/or as optional add-on products to co-branded consumer products of the Bank, to the Bank’s customers, including, but not limited to, the Bank’s credit cardholders and other customers of the Bank’s co-branded consumer products (collectively “Bank Customers”). The Board shall approve and ensure the Bank submits this Risk Management Program to the Examiner-in-Charge for prior determination of no supervisory objection. At a minimum, the Risk Management Program shall require:

- (a) A written comprehensive assessment, to be conducted on an annual basis, of the unfair and deceptive practices (“UDAP”) risk for these products and for changes to these products, including, but not limited to the UDAP risk of the governance, control, marketing, sales, delivery, servicing, and fulfillment of services for new products and existing products, including the UDAP risk of marketing and sales practices.
- (b) The development and implementation of written policies and procedures to effectively manage, prevent, detect, and mitigate, on an on-going basis, the risks identified in the written assessment required by Paragraph (1)(a) of this Article.
- (c) The recording of all telephone calls in which these products are marketed or sold by the Bank, and Bank-branded or co-branded optional add-on

products are marketed or sold through a Bank Vendor, to Bank Customers, which recordings shall be retained for a period of at least twenty-five (25) months from the date of the call.

- (d) The recording of all telephone calls in which a Bank Customer enrolled in such product marketed or sold by the Bank or enrolled in a Bank-branded or co-branded optional add-on product marketed or sold through a Bank Vendor indicates that he or she did not authorize, does not want, does not need, or wishes to cancel such product, which recordings shall be retained for a period of at least twenty-five (25) months from the date of the call.
- (e) Comprehensive written procedures for providing appropriate training on applicable consumer protection laws and Bank policies and procedures, including but not limited to unfair or deceptive practices, to appropriate Bank employees who market or sell these products and Bank Vendor call agents who market or sell Bank-branded or co-branded optional add-on products during in-bound or out-bound telephone calls or who engage in retention efforts during telephone calls in which a Bank Customer indicates that he or she did not authorize, does not want, does not need, or wishes to cancel such product.
- (f) Comprehensive written procedures for providing appropriate training on applicable consumer protection laws and Bank policies and procedures, including, but not limited to, the FTC Act, to appropriate Bank employees and Bank Vendor employees or agents monitoring telephone calls as required by Paragraph (1)(h) of this Article.

- (g) Comprehensive written policies and procedures for identifying and reporting any violation of applicable consumer protection laws and Bank policies and procedures by Bank employees and Bank Vendor employees or agents, in a timely manner, to a specified executive risk or chief compliance officer at the Bank. The manager to whom such reports are made shall be independent of the unit overseeing the sales and marketing of the products.
- (h) Independent telephone call monitoring by qualified personnel who have training in identifying and reporting violations of applicable consumer protection laws and Bank policies and procedures, including, but not limited to, the FTC Act.
- (i) Reporting, on at least a monthly basis by the independent unit responsible for conducting the monitoring required by Paragraph (1)(h) of this Article, of its findings from the telephone call monitoring to a specified executive risk or chief compliance officer who is independent of the unit overseeing the sales and marketing of these products.
- (j) Written policies and procedures to ensure that risk management, internal audit, vendor administration, and corporate compliance programs have the requisite authority and status within the Bank so that appropriate reviews of these products marketed or sold by the Bank or through Bank Vendors may occur and deficiencies are identified and properly remedied.

(2) Upon receipt of a determination of no supervisory objection to the Risk Management Program submitted pursuant to Paragraph (1) of this Article, the Board shall ensure

that the Bank implements and adheres to the Risk Management Program. Any proposed changes to or deviations from the approved Risk Management Program shall be submitted in writing to the Examiner-in-Charge for prior supervisory review and non-objection.

(3) The Bank's Internal Audit department shall periodically conduct an assessment of the Bank's compliance with the Risk Management Program. Such assessments shall occur within one hundred twenty (120) days after the Bank's receipt of a determination of no supervisory objection to the Risk Management Program, and periodically but at least annually thereafter, and the findings shall be memorialized in writing. Within thirty (30) days of completing each assessment, Internal Audit shall provide its written findings to the Audit Committee, the Deputy Comptroller, and the Examiner-in-Charge.

(4) Within one hundred twenty (120) days of this Order, the Bank shall develop training materials relating to identifying and responding to unfair and deceptive practices as related to these optional add-on products and incorporate the new training materials into the existing annual compliance training for appropriate employees.

(5) The Board shall ensure that there is oversight of the Risk Management Program required by this Article by the Bank's senior risk managers and senior management.

## ARTICLE IX

### CONSUMER COMPLIANCE INTERNAL AUDIT PROGRAM

(1) Within one hundred twenty (120) days of this Order, the Bank shall develop a written Consumer Compliance Internal Audit Program for all consumer products offered to Bank Customers by the Bank or through Bank Vendors, as optional add-on products to Bank credit cards and/or as optional add-on products to co-branded consumer products of the Bank. The Audit Committee shall ensure that the Bank submits this Consumer Compliance Internal Audit

Program to the Examiner-in-Charge for prior no supervisory objection. At a minimum, the Consumer Compliance Internal Audit Program shall include:

- (a) Written policies and procedures for conducting audits of the Bank's compliance with consumer protection laws and regulations, including but not limited to the FTC Act. These policies and procedures shall specify the frequency, scope, and depth of these audits.
- (b) Written policies and procedures for expanding its sampling when exceptions based on potential violations of consumer protection laws and regulations are detected.

(2) Upon receipt of a determination of no supervisory objection to the Consumer Compliance Internal Audit Program submitted pursuant to Paragraph (1) of this Article, the Audit Committee shall ensure that the Bank implements and adheres to the Consumer Compliance Internal Audit Program. Any proposed changes to or deviations from the Consumer Compliance Internal Audit Program shall be submitted in writing to the Examiner-in-Charge for prior supervisory review and non-objection.

## ARTICLE X

### APPROVAL, IMPLEMENTATION, AND REPORTS

(1) The Bank shall submit the written plans, programs, policies, and procedures required by this Order for review and determination of no supervisory objection to the Deputy Comptroller or the Examiner-in-Charge within the applicable time periods set forth in Articles IV through IX. The Board shall ensure that the Bank submits the plans, programs, policies, and procedures to the Deputy Comptroller or Examiner-in-Charge for prior written determination of no supervisory objection. In the event the Deputy Comptroller or Examiner-in-Charge asks the

Bank to revise the plans, programs, policies, or procedures, the Bank shall promptly make necessary and appropriate revisions and resubmit the materials to the Deputy Comptroller or Examiner-in-Charge for review and determination of no supervisory objection. Upon receiving written notice of no supervisory objection from the Deputy Comptroller or Examiner-in-Charge, the Board shall ensure that the Bank implements and thereafter adheres to the plans, programs, policies, and procedures.

(2) During the term of this Order, the required plans, programs, policies, and procedures shall not be amended or rescinded in any material respect without a prior written determination of no supervisory objection from the Deputy Comptroller or Examiner-in-Charge.

(3) During the term of this Order, the Bank shall revise the required plans, programs, policies, and procedures as necessary to incorporate new, or changes to, applicable legal requirements and supervisory guidelines.

(4) The Board shall ensure that the Bank has processes, personnel, and control systems to ensure implementation of and adherence to the plans, programs, policies, and procedures required by this Order.

(5) Within one hundred twenty (120) days after the effective date of this Order and quarterly thereafter within thirty (30) days after the end of each calendar quarter, the Bank, acting through the Audit Committee and the Board as contemplated by Paragraph (3) of Article II, shall submit to the OCC a written progress report detailing the form and manner of all actions taken to secure compliance with the provisions of this Order and the results thereof. The progress report shall include information sufficient to validate compliance with this Order. The OCC may, in writing, discontinue the requirement for progress reports or modify the reporting schedule.

(6) All communication regarding this Order shall be sent to:

(a) Ron A. Pasch  
Deputy Comptroller  
Large Bank Supervision  
Office of the Comptroller of the Currency  
400 7<sup>th</sup> Street S.W.  
Washington, DC 20219

(b) Linda S. Cunningham  
Examiner-in-Charge  
National Bank Examiners  
101 S. Tryon Street, NC1-002-11-34  
Charlotte, NC 28255

or such other individuals or addresses as directed by the OCC.

## ARTICLE XI

### OTHER PROVISIONS

(1) Although this Order requires the Bank to submit certain actions, plans, programs, and policies for the review or prior written determination of no supervisory objection by the Deputy Comptroller or the Examiner-in-Charge, the Board has the ultimate responsibility for proper and sound management of the Bank.

(2) If, at any time, the Comptroller deems it appropriate in fulfilling the responsibilities placed upon him by the several laws of the United States 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) This Order constitutes a settlement of the cease and desist 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 cease and desist order 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 Consent Order, which settles all cease and desist proceedings against the Bank based on the Comptroller's Findings set forth in Article I of 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.

(4) This Order is and shall become effective upon its execution by the Comptroller, through his authorized representative whose hand appears below. The Order shall remain effective and enforceable, except to the extent that, and until such time as, any provision of this Order shall be amended, suspended, waived, or terminated in writing by the Comptroller or his authorized representative.

(5) Any time limitations imposed by this Order shall begin to run from the effective date of this Order, as shown below, unless the Order specifies otherwise. The time limitations may be extended in writing by the Deputy Comptroller for good cause upon written application by the Audit Committee. Any request to extend any time limitation shall include a statement setting forth in detail the special circumstances that prevent the Bank from complying with the time limitation, and shall be accompanied by relevant supporting documentation. The Deputy Comptroller's decision regarding the request is final and not subject to further review.

(6) The terms and provisions of this Order apply to the Bank and its subsidiaries, even though those subsidiaries are not named as parties to this Order. The Bank shall integrate

any activities done by a subsidiary into its plans, policies, programs, and processes required by this Order. The Bank shall ensure that its subsidiaries comply with all terms and provisions of this Order.

(7) This Order is intended to be, and shall be construed to be, a final order issued pursuant to 12 U.S.C. § 1818(b), and expressly does not form, and may not be construed to form, a contract binding the Comptroller or the United States. Without limiting the foregoing, nothing in this Order shall affect any action against the Bank or its institution-affiliated parties by a bank regulatory agency, the United States Department of Justice, or any other law enforcement agency.

(8) 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 7th day of April, 2014.

/s/  
\_\_\_\_\_  
Ron A. Pasch  
Deputy Comptroller  
Large Bank Supervision

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

---

<b>In the Matter of:</b>	)	
	)	
Bank of America, N.A.	)	AA-EC-2014-5
Charlotte, North Carolina	)	
	)	
FIA Card Services, N.A.	)	
Wilmington, Delaware	)	
	)	

---

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

**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 issue a cease and desist order to Bank of America, N.A., Charlotte, North Carolina, and FIA Card Services, N.A., Wilmington, Delaware (collectively referred to as “Bank”), pursuant to 12 U.S.C. § 1818(b), for the Bank’s violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. § 45(a)(1), 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 Boards of Directors (collectively referred to as the “Board”), has agreed to execute this Stipulation and Consent to the Issuance of a Consent Order (“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(b).

(3) The Bank is an “insured depository institution” within the meaning of 12 U.S.C. § 1818(b)(1).

## ARTICLE II

### CONSENT

(1) The Bank, without admitting or denying any wrongdoing, consents and agrees to issuance of the accompanying Consent Order by the Comptroller.

(2) The terms and provisions of the Consent Order apply to Bank of America, N.A., Charlotte, North Carolina, and FIA Card Services, N.A., Wilmington, Delaware and all their 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(b), 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 cease and desist 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 cease and desist order 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, which settles all cease and desist proceedings against the Bank based on the Comptroller's Findings set forth in Article I of 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(b);
  - (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(b) and (h), 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

##### ELIGIBLE BANK – OTHER PROVISIONS

- (1) As a result of the Consent Order:
  - (a) The Bank is an “eligible bank” pursuant to 12 C.F.R. § 5.3(g)(4) for the purposes of 12 C.F.R. Part 5 regarding rules, policies and procedures for corporate activities, unless otherwise informed in writing by the Office of the Comptroller of the Currency (“OCC”);
  - (b) The Bank is not subject to the limitation of 12 C.F.R. § 5.51(c)(6)(ii) for the purposes of 12 C.F.R. § 5.51 requiring OCC approval of a change in directors and senior executive officers, unless otherwise informed in writing by the OCC;
  - (c) The Bank is not subject to the limitation on golden parachute and indemnification payments provided by 12 C.F.R. § 359.1(f)(1)(ii)(C) and 12 C.F.R. § 5.51(c)(6)(ii), unless otherwise informed in writing by the OCC;

- (d) The Bank’s status as an “eligible bank” remains unchanged pursuant to 12 C.F.R. § 24.2(e)(4) for the purposes of 12 C.F.R. Part 24 regarding community and economic development, unless otherwise informed in writing by the OCC; and
- (e) The Consent Order shall not be construed to be a “written agreement, order, or capital directive” within the meaning of 12 C.F.R. § 6.4, unless the OCC informs the Bank otherwise in writing.

## ARTICLE V

### 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 Bank of America, N.A., Charlotte, North Carolina, have hereunto set their hands on behalf of the Bank.

/s/  
\_\_\_\_\_  
Charles O. Holliday, Jr.

4/2/14  
\_\_\_\_\_  
Date

/s/  
\_\_\_\_\_  
Sharon L. Allen

4-3-14  
\_\_\_\_\_  
Date

/s/  
\_\_\_\_\_  
Susan S. Bies

\_\_\_\_\_  
Date

/s/  
\_\_\_\_\_  
Jack O. Bovender, Jr.

\_\_\_\_\_  
Date

/s/  
\_\_\_\_\_  
Frank P. Bramble, Sr.

4/2/14  
\_\_\_\_\_  
Date

/s/  
\_\_\_\_\_  
Pierre J.P. de Weck

4.4.2014  
\_\_\_\_\_  
Date

/s/  
\_\_\_\_\_  
Arnold W. Donald

\_\_\_\_\_  
Date

/s/  
\_\_\_\_\_  
Charles K. Gifford

4/3/14  
\_\_\_\_\_  
Date

/s/  
\_\_\_\_\_  
Linda P. Hudson

4/2/14  
\_\_\_\_\_  
Date

/s/

Monica C. Lozano

Date

/s/

Thomas J. May

April 2, 2014

Date

/s/

Brian T. Moynihan

Date

/s/

Lionel L. Nowell, III

4/3/2014

Date

/s/

Clayton Rose

Date

/s/

R. David Yost

April 2, 2014

Date

IN TESTIMONY WHEREOF, the undersigned, as the duly elected and acting Board of Directors of FIA Card Services, N.A., Wilmington, Delaware, have hereunto set their hands on behalf of the Bank.

/s/  
\_\_\_\_\_  
Brian Moynihan

\_\_\_\_\_  
Date

/s/  
\_\_\_\_\_  
Susan Faulkner

4.3.14  
\_\_\_\_\_  
Date

/s/  
\_\_\_\_\_  
Anne Finucane

April 7, 2014  
\_\_\_\_\_  
Date

/s/  
\_\_\_\_\_  
Terry Laughlin

\_\_\_\_\_  
Date

/s/  
\_\_\_\_\_  
Bruce Thompson

4/7/14  
\_\_\_\_\_  
Date

