

COMMONWEALTH OF MASSACHUSETTS

Suffolk, SS.

COMMISSIONER OF BANKS

MOTOR VEHICLE SALES
FINANCE COMPANY, SMALL
LOAN COMPANY and
DEBT COLLECTOR
LICENSING

Docket No.: 2016-003

In the Matter of
AMERICAN CREDIT ACCEPTANCE, LLC
Spartanburg, South Carolina

Motor Vehicle Sales Finance
Company License No. MV-345863
Small Loan Company License No. SL-345863
Debt Collector License No. DC-345863

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) CONSENT ORDER
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WHEREAS, AMERICAN CREDIT ACCEPTANCE, LLC., Spartanburg, South Carolina (American Credit or the Company), a licensed motor vehicle sales finance company under Massachusetts General Laws chapter 255B, section 2 and 209 CMR 20.00 *et seq.*; a licensed small loan company under General Laws chapter 140, section 96, and 209 CMR 20.00 *et seq.*; and a licensed debt collector under General Laws chapter 93, section 24A and 209 CMR 18.00 *et seq.*, has entered into a STIPULATION AND CONSENT TO THE ISSUANCE OF A CONSENT ORDER (Consent Agreement) with representatives of the Division of Banks (Division) dated November 14, 2017, whereby, solely for the purpose of settling this matter, and without admitting

any allegations or implications of fact or the existence of any violation of state or federal laws and regulations governing the conduct and operation of a motor vehicle sales finance company, small loan company and debt collector. American Credit agrees to the issuance of this CONSENT ORDER (Order) by the Commissioner of Banks (Commissioner);

WHEREAS, an examination of American Credit was conducted pursuant to General Laws chapter 255B, section 3, General Laws chapter 140, section 97 and General Laws chapter 93, section 24D as of December 29, 2015 to assess the Company's level of compliance with applicable Massachusetts and federal statutes, rules and regulations governing the conduct of those engaged in the business of a motor vehicle sales finance company, small loan company and debt collector in the Commonwealth;

WHEREAS, the Report of Examination (the Report) issued pursuant to the Division's examination of American Credit alleged substantial non-compliance with applicable statutes, rules, and regulations governing the conduct of those engaged in the business of a motor vehicle sales finance company, small loan company and debt collector in the Commonwealth;

WHEREAS, American Credit entered into an Assurance of Discontinuance (the AOD) with the Massachusetts Attorney General's Office to resolve allegations that it had purchased motor vehicle sales finance contracts with annual percentage rates in excess of the 21% limit established by General Laws chapter 255B, section 14 because it did consider debt cancellation coverage (GAP) premiums as a finance charge for the purposes of this limit; and

WHEREAS, the parties now seek to resolve by mutual agreement, the matters identified in the Report.

ORDER

NOW COME the parties in the above-captioned matter, the Division and American Credit, and stipulate and agree as follows:

1. American Credit must immediately cease acquiring Massachusetts accounts with annual percentage rates (APR) in excess of the 21% limit established by Massachusetts General Laws chapter 255B, section 14.

- (a) American Credit must establish, implement, and maintain procedures to ensure accounts acquired with debt cancellation coverage (GAP) are tested to verify that treating the GAP premium as a finance charge does not result in an effective annual percentage rate (APR) over 21%.
- (b) American Credit must conduct a portfolio review of all Massachusetts accounts acquired with GAP coverage since January 1, 2008. American Credit will test each account to determine the “GAP Test APR” for each account with GAP coverage. Any accounts determined to have a “GAP Test APR” greater than 21% must be refunded in accordance with the AOD entered into with the Attorney General’s Office.
 - i. American Credit must submit evidence of any reimbursements made and corrective action performed under the terms of the AOD to the Division.
 - ii. American Credit must maintain sufficient information evidencing the refunds in the Company’s books and records for review by the Division at its next examination.

2. American Credit must immediately cease assessing interest after the date of repossession on Massachusetts accounts on which a repossession of the collateral has been executed, pursuant to Massachusetts General Laws chapter 255B, section 20B.

- (a) American Credit must establish, implement and maintain procedures to ensure that it does not assess or collect interest or fees after the date of repossession.
- (b) American Credit must conduct a review of all Massachusetts accounts subject to repossession since June 21, 2013, the date of last examination, to identify all repossession accounts assessed interest or fees after the date of the repossession. The Company must refund each debtor that had interest assessed and collected after the date of repossession.

- i. Evidence of any such reimbursements or credits must include, at minimum: the name of the borrower; the account number; the date of repossession; the total amount of interest assessed after default; the total amount of fees assessed after default; the date each fee was assessed; the date each fee was collected; the date of any refund issued in accordance with this Order; and the check number and the dollar amount of each refund.
- ii. American Credit must maintain sufficient information evidencing the refunds in the Company's books and records for review by the Division at its next examination.

3. American Credit must develop, implement and maintain an effective compliance management system including but not limited to adequate oversight of the Company's compliance program by the owner and senior management with sufficient resources dedicated to the administration of the compliance program. The compliance program must include adequate policies and procedures, effective internal monitoring on an ongoing basis, sufficient training to ensure management and employees are familiar with statutory and regulatory requirements. An effective compliance management system must also include periodic independent testing of American Credit's programs and operations with sufficient scope, frequency and depth to determine whether the Company is operating in compliance with applicable consumer protection requirements. The compliance management system must incorporate compliance with Massachusetts specific consumer protection requirements.

4. American Credit must address all matters requiring attention set forth in the Report within the time frames contained therein, provided, however, that corrective action to address the circumstance outlined in Section 1, above, must be completed within the time frames specified in the AOD or otherwise approved by the Division or the Massachusetts Attorney General. American Credit must also adopt and implement any corrective actions discussed in the Report that are not specifically addressed by the provisions of this Order.

5. By the thirtieth (30th) day after the end of each calendar quarter following the effective date of this Order, American Credit must furnish written progress reports to the Division, which address and include the following:

- (a) A description of the form, content, and manner of any actions taken to address each Section of this Order and the results thereof; and
- (b) Written findings prepared by American Credit detailing a review of management's and staff persons' adherence to the policies, programs, and procedures adopted pursuant to this Order and to applicable statutes, regulations, and rules, as well as a description of any operational changes implemented during such quarter which are intended to improve American Credit's compliance condition in Massachusetts, and the results thereof.

6. The reporting requirement to the Division referenced in Section 5 of this Order will remain in effect and must not be amended or rescinded without the prior written modification, termination, or suspension of the applicable provision of this Order from the Commissioner.

7. The provisions of this Order shall not limit, estop, or otherwise prevent the Division, or any other state agency or department, from taking any other action affecting American Credit, its successors or assigns, if American Credit fails to fully and promptly comply with the above provisions.

8. Nothing in this Order will be construed as permitting American Credit to violate any law, rule, regulation, or regulatory bulletin to which the Company is subject.

9. In consideration of the foregoing Order, the Division agrees not to pursue formal measures, relative to this matter, to suspend or revoke American Credit's motor vehicle sales finance company license under General Laws chapter 255B, section 8; its small loan company license under General Laws chapter 140, section 104; or its debt collector license under General Laws chapter 93, section 24I, while this Order is in effect.

10. Failure to comply with the terms of this Order will constitute grounds for license suspension and/or revocation pursuant to applicable provisions of the General Laws of the Commonwealth of Massachusetts.

11. This Order will become effective immediately upon the date of its issuance.

12. The provisions of this Order are binding upon American Credit, its owner, officers and directors, and their successors and assigns.

13. The provisions of this Order will remain effective and enforceable except to the extent that, and until such time as, any provisions of this Order will have been modified, terminated, suspended, or set aside by the Commissioner or upon an order of a court of competent jurisdiction.

14. This Order and the Consent Agreement are the complete documents representing the resolution of this matter. There are no other agreements between the Division and American Credit.

BY ORDER AND DIRECTION OF THE COMMISSIONER OF BANKS:

Dated at Boston, Massachusetts, this 14th day of November 2017.

By: Terence A. McGinnis
Commissioner of Banks
Commonwealth of Massachusetts