

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
CIVIL ACTION NO.

IN THE MATTER OF CITIBANK, N.A..

ASSURANCE OF DISCONTINUANCE PURSUANT TO G.L. c. 93A, § 5

The Commonwealth of Massachusetts, by and through its Attorney General, Maura Healey, hereby files the Assurance of Discontinuance attached and incorporated herein as Exhibit A pursuant to Massachusetts General Laws chapter 93A, § 5.

COMMONWEALTH OF MASSACHUSETTS
ATTORNEY GENERAL MAURA HEALEY

By:



Peter Downing, BBO #675969
Assistant Attorney General
Office of the Attorney General
One Ashburton Place
Boston, MA 02108

Dated: _____ February 8, 2021 _____

Exhibit A

AGREEMENT

This Agreement¹ is made and entered into as of the 8th day of February 2021 (hereinafter, “Effective Date”) between Citibank, N.A. (“Citi”), and the Investigating States, acting through and by their Attorneys General: Tom Miller (Iowa), Maura Healey (Massachusetts), Gurbir S. Grewal (New Jersey), Josh Stein (North Carolina), and Josh Shapiro (Pennsylvania). This Agreement is entered into pursuant to the Investigating States’ powers under their respective consumer protection laws² and provides as follows:

WHEREAS, the Investigating States conducted a joint investigation of whether Citi failed from February 2011 through August 2017 to reevaluate and reduce the annual percentage rates (“APRs”) for certain consumer credit card accounts consistent with the requirements of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act), Pub. L. No. 111-24, 123 Stat. 1734, and state law;

WHEREAS, Citi self-identified several issues in its APR reevaluation methodologies through an internal compliance review program indicating that Citi had not reduced the APRs of certain consumer credit card accounts in accordance with the CARD Act; Citi self-reported these issues to its regulators and self-initiated remediation, providing over \$335 million in restitution between 2017 and 2020 to approximately 1.75 million affected consumer accounts nationwide;

¹ This Agreement is an Assurance of Voluntary Compliance for the purposes of: the Iowa Consumer Fraud Act, Iowa Code § 714.16; the Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-5; and the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 to -226. This Agreement is a Settlement Agreement for the purposes of the North Carolina Unfair and Deceptive Practices Act, N.C. Gen. Stat. § 75-1.1 *et seq.* This agreement is an Assurance of Discontinuance for the purposes of the Massachusetts Consumer Protection Act, G.L. c. 93A, § 5.

² The Iowa Consumer Fraud Act, Iowa Code § 714.16; Massachusetts Consumer Protection Act, G.L. c. 93A; New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 to -211; North Carolina Unfair and Deceptive Practices Act, N.C. Gen. Stat. § 75-1.1 *et seq.*; Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.*

WHEREAS, the Investigating States have alleged that Citi's conduct in connection with the APR reevaluation issues has violated the consumer protection laws of the Investigating States by overcharging consumers interest that consumers could have used for other purposes;

WHEREAS, Citi denies violating the Investigating States' consumer protection laws or having any liability relating to such consumer protection laws;

In lieu of litigation and pursuant to state law, the Investigating States accept this Agreement on the terms and conditions contained herein. The Investigating States and Citi both voluntarily enter into this Agreement.

DEFINITIONS

As used in this Agreement, the following terms shall be defined as follows:

“APR Lookback Obligation” shall mean any requirement under the Credit Card Accountability Responsibility and Disclosure Act of 2009 (CARD Act), Pub. L. No. 111-24, 123 Stat. 1734, or the Truth in Lending Act (“TILA”), as implemented by Regulation Z (12 C.F.R. 1026 *et seq.*), to reevaluate APR increases on consumer credit card accounts and make necessary reductions during the time period from February 2011 through August 2017.

“Citi Released Persons” shall mean Citibank, N.A. and any of its predecessors, successors, assigns, subsidiaries, parent companies, holding companies, affiliates, divisions, unincorporated business units, insurers, officers, directors, shareholders, managers, employees, agents, servants, representatives, officials, attorneys, associates, and trustees.

“Claims” shall mean claims, counterclaims, causes of action, remedies, damages (whether actual, compensatory, punitive, or otherwise), fines, penalties, liabilities, debts, suits, enforcement actions, demands, actions, costs, expenses, fees, controversies, requests for remediation, requests for injunctive or equitable relief, and set-offs, whether at law, equity,

administrative or otherwise, whether known or unknown, and whether discovered or undiscovered.

“Investigating States” shall mean the State Attorneys General of the States and/or Commonwealths of Iowa, Massachusetts, New Jersey, North Carolina, and Pennsylvania.

“State Claims” shall mean all of the Claims that the Attorneys General of the Investigating States have the authority to bring against Citi Released Persons relating to the APR Lookback Obligation and/or related remediation from February 2011 to August 2019. “State Claims” includes, but is not limited to, any Claims that any of the Attorneys General of the Investigating States may now have or has ever had or could have brought against Citi in any way related to the APR Lookback Obligation and/or related remediation from February 2011 to August 2019, including but not limited to any such Claims that could have been asserted under any federal, state, or local statute, regulation, rule, other law, or principle of common law or equity.

FINANCIAL TERMS

1. Pursuant to this Agreement, in light of the allegations and in order to ensure compliance as required under state law, Citi shall pay a total of \$4,207,500 (four million two hundred seven thousand five hundred dollars) in consideration to fully and completely resolve all State Claims, to be paid as follows:

- a. Within ten (10) business days after Citi’s receipt of written payment processing instructions from the Investigating States, Citi shall transfer \$4,207,500 (four million two hundred seven thousand five hundred dollars) to Epiq Class Action & Claims Solutions, Inc. (“the Administrator”), the settlement administrator selected by the Investigating States. After transferring these funds, Citi shall no longer

have any property right, title, interest, or other legal claim in them. As directed by the Investigating States, the Administrator shall use these funds to: (1) distribute payments to certain consumers as determined by the sole and complete discretion of the Investigating States, and (2) pay for the reasonable costs and expenses of settlement administration. In determining the amount of payments to consumers, the Investigating States shall consider that Citi's payments hereunder are being made in settlement of the Investigating States' claim that Citi overcharged consumers interest that consumers could have used for other purposes.

- b. The Investigating States represent and warrant that Citi's wiring of the \$4,207,500 (four million two hundred seven thousand five hundred dollars) payment described in Section 1(a) fully and completely satisfies Citi's payment obligations under this Agreement.
- c. Citi shall provide to the Administrator all information already in its possession or control and readily available that is reasonably necessary for the administration of this Agreement based on the parameters agreed to with the Investigating States, with respect to each consumer account that received a payment of \$500 or more in restitution from Citi between 2017 and 2020. Citi shall provide such information within a reasonable time after receipt of the request for information. The Investigating States require Citi to provide such information under 15 U.S.C. § 6802(e)(1)(A), (5) and (8) of the Gramm-Leach-Bliley Act.
- d. Citi shall warrant to the Investigating States at the time of supplying information to the Administrator that, based on the parameters agreed to with the Investigating

States, the information is complete and accurate to the best of its knowledge and capability. Citi's duty to provide complete and accurate information, based on the parameters agreed to with the Investigating States, regarding affected consumers shall continue throughout the administration process. Citi shall pay any additional amounts necessary to pay claims, if any, of affected consumers whose data is provided to the Administrator by Citi after Citi warrants that the data is complete and accurate based on the parameters agreed to with the Investigating States.

- e. After the Administrator has completed the settlement administration, including making reasonable attempts to contact payees of uncashed checks and waiting a reasonable period of time not less than 90 days, all uncashed checks may be voided. Once such uncashed checks have been voided, these funds shall be distributed to the Investigating States based on the state the payee was a resident of according to the data Citi provided to the Administrator pursuant to paragraph 1(c). Such funds shall be distributed as follows:
 - i. Uncashed funds from residents of Iowa will be distributed to the Attorney General of Iowa and shall be used at the sole and complete discretion of the Attorney General of Iowa for any purpose allowed by law, including but not limited to: reimbursement of attorneys' fees and other costs of investigation, future consumer protection enforcement including enforcement of Iowa Code section 714.16, public education and litigation relating to consumer fraud, or for any other lawful purpose;
 - ii. Uncashed funds from residents of Massachusetts shall be paid to the Attorney General of Massachusetts and shall be distributed in her sole

discretion, in accordance with the law, to the General Fund of the Commonwealth of Massachusetts and/or the Commonwealth's local consumer aid fund established by G. L. c. 12, § 11G;

- iii. Uncashed funds from residents of New Jersey will be distributed to the State of New Jersey, Office of the Attorney General, Division of Consumer Affairs;
- iv. Uncashed funds from residents of North Carolina will be distributed to the North Carolina Unclaimed Funds Division;³ and
- v. Uncashed funds from residents of Pennsylvania will be distributed to the Commonwealth of Pennsylvania, Office of Attorney General, to be deposited in an interest-bearing account from which both principal and interest shall be expended for public protection and education purposes.

RELEASE

2. The Investigating States release and discharge the Citi Released Persons from all State Claims prior to the Effective Date. The Investigating States release only those claims that the Investigating States have the authority to bring and release. This release does not preclude the Investigating States from bringing an action to enforce the terms of this Agreement.

3. This Agreement is not intended to impair any right of action that any person or entity other than the Investigating States might have against Citi.

³ For residents of North Carolina, as defined by this Agreement, for whom the Administrator obtained an updated mailing address in another state, uncashed funds will be distributed to the North Carolina Attorney General to be used for attorney's fees, investigative costs, consumer protection enforcement, other consumer protection or restitution purposes, and other purposes allowed by law, at the discretion of the Attorney General.

ENFORCEMENT

4. The provisions of this Agreement are enforceable by the Investigating States. The Investigating States may make such application as appropriate to enforce the provisions of this Agreement. Citi consents to the jurisdiction of the state courts of Iowa, Massachusetts, New Jersey, North Carolina, and Pennsylvania only for the purpose of an action brought by the relevant Investigating State to enforce the terms of this Agreement. In any action to enforce this Agreement, the Investigating States may seek any appropriate relief authorized by law.

NOTICE

5. Any and all notices, requests, consents, directives, or communications sent to Citi or the Investigating States pursuant to this Agreement shall be sent both by: (1) first class mail or other nationally recognized courier service, and (2) email to the named person (or such other person who may later be designated by the relevant party) at the following address:

For Citi

Richard Carroll
General Counsel, Consumer Litigation
1000 North West St.
Wilmington, Delaware 19801
Carrollr@citi.com

For the Investigating States

Patrick Madigan, Assistant Attorney General
Iowa Attorney General's Office
1305 E. Walnut Street
Des Moines, IA 50319
Patrick.Madigan@ag.iowa.gov

Peter Downing, Assistant Attorney General
Consumer Protection Division
Office of the Massachusetts Attorney General
1 Ashburton Place
Boston, MA 02108
Peter.Downing@mass.gov

Patricia A. Schiripo, Deputy Attorney General
Chief, Consumer Fraud Prosecution Section
New Jersey Office of the Attorney General
124 Halsey Street 5th floor
Newark, NJ 07101
Patrica.schiripo@law.njoag.gov

Daniel Mosteller, Special Deputy Attorney General
Consumer Protection Division
North Carolina Department of Justice
114 W. Edenton Street
P.O. Box 629
Raleigh, NC 27602
dmosteller@ncdoj.gov

Nicholas F. B. Smyth, Senior Deputy Attorney General
Office of Attorney General
1251 Waterfront Place, Level M
Pittsburgh, PA 15222
nsmyth@attorneygeneral.gov

GENERAL PROVISIONS

6. This Agreement represents the full and complete terms of the settlement entered into by the parties hereto. In any action undertaken by the parties, the parties agree that neither prior versions of this Agreement nor prior versions of any of its terms may be introduced in any court proceeding for any purpose whatsoever.

7. No modification of the terms of this Agreement shall be valid or binding unless made in writing and signed and agreed to by all of the parties.

8. This Agreement may be executed in counterparts, and a facsimile or electronic (including /s/) signature shall be deemed to be, and shall have the same force and effect, as an original signature.

9. If any clause, provision or section of this Agreement shall, for any reason, be held illegal, invalid or unenforceable, such illegality, invalidity or unenforceability shall not affect

any other clause, provision or section of this Agreement, and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable clause, provision, or section had not *been* contained herein.

10. Nothing in this Agreement shall be construed as relieving Citi of the obligation to comply with all applicable state and federal laws, regulations or rules, nor shall any of the provisions of this Agreement be deemed to be permission to engage in any acts or practices prohibited by such laws, regulations, or rules.

11. The parties understand and agree that this Agreement shall not be construed as an approval of or sanction by the Investigating States of Citi's business practices, and Citi shall not represent otherwise.

12. Citi and the Investigating States mutually drafted this Agreement and therefore this Agreement shall not be construed more strictly against any party.

13. The Investigating States and Citi expressly agree that this Agreement, its terms and/or the parties' negotiation of it shall not constitute or be construed as an admission of the truth of any of the allegations made or of any liability, fault, or wrongdoing of any kind whatsoever. This Agreement or any of its terms shall not be offered as or received into evidence in any pending or future civil, criminal or administrative proceeding or action against any Citi Released Person in any court, administrative agency or other tribunal, for any purpose whatsoever, except as may be necessary to enforce or to effectuate the terms of this Agreement.

14. Nothing in this Agreement shall be construed to waive any claims of Sovereign Immunity the Investigating States may have in any action or proceeding.

FOR CITIBANK, N.A.

By: Pamela A. Codispoti Habner

Date: February 2, 2021

pam.habner@citi.com

Phone: 917-620-8996

Head of U.S. Branded Cards & Lending