

STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

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In re CAPITAL ONE BANK (USA), N.A.)

CIVIL DIVISION

Docket No. 756-11-12 Doney

ASSURANCE OF DISCONTINUANCE

WHEREAS Capital One Bank (USA), N.A. ("Capital One"), is a national bank with offices at 1680 Capital One Drive, McLean, Virginia 22102;

WHEREAS Capital One is a subsidiary of Capital One Financial Corporation;

WHEREAS Capital One offers credit cards and credit card services to businesses in Vermont;

WHEREAS Capital One markets its credit cards and credit card services to Vermont businesses through direct-mail solicitations, among other methods;

WHEREAS among the solicitations sent to Vermont businesses have been solicitations that allow the business to use an "access check" to borrow up to a certain amount of money—for example, \$5,000—at "0% APR [annual percentage rate] for 12 months" (hereinafter "Vermont Access Check Offers");

WHEREAS businesses that choose to accept a Vermont Access Check Offer can, up to the stated dollar amount of the offer and at 0% APR for 12 months, use the check to pay off balances from other credit card accounts or buy merchandise, among other things;

WHEREAS under the terms and conditions of the Vermont Access Check Offers, businesses that used an access check had a continuing balance on their credit card account until the check amount was paid back, even if other new purchases were paid in full by the monthly due date, as a result of which interest or finance charges accrued on new purchases on the account;

Office of the
ATTORNEY
GENERAL
109 State Street
Montpelier, VT
05609

WHEREAS businesses that would have carried a purchase balance regardless of the access check did not pay more in interest on purchases than they would have had they not accepted the Vermont Access Check Offer, but businesses that would have paid off all of their new purchases each month did pay interest on those purchases;

WHEREAS the Attorney General alleges that Capital One's access check solicitations did not disclose the potential for interest charges on new purchases, in violation of the prohibition on unfair and deceptive trade practices in the Vermont Consumer Protection Act, 9 V.S.A. § 2453(a);

WHEREAS Capital One has been using the form of disclosure that appears in the two sentences following "NOTE ► Please read" in Exhibit 1 hereto in some of its access check solicitations, and the Attorney General agrees that this disclosure is accurate, clear, and conspicuous;

WHEREAS Capital One has not admitted any violation of the Vermont Consumer Protection Act;

AND WHEREAS the Attorney General is willing to accept this Assurance of Discontinuance pursuant to 9 V.S.A. § 2459;

THEREFORE, the parties agree as follows:

1. *Disclosure.*

a. Capital One shall use the form of disclosure in Exhibit 1 on Vermont Access Check Offers from November 16, 2012 until November 15, 2013. During that period, for Vermont Access Check Offers sent in other solicitation formats different from Exhibit 1, Capital One shall use the wording contained in the form of disclosure set forth in Exhibit 1

and place the disclosure on the front of the solicitation, but may make *de minimis* variations in other aspects of the disclosure.

c. For all Vermont Access Check Offers sent from November 16, 2013 through November 15, 2016, Capital One shall clearly and conspicuously disclose on the front of the solicitation how accepting a Vermont Access Check Offer will affect the interest paid on future purchases made with the credit card, if accepting a Vermont Access Check Offer will affect the interest paid on future purchases. For the purpose of this paragraph, a disclosure is clear and conspicuous if it is presented on the front page of a solicitation in such a size, color, contrast, and location, compared to the other information with which it is presented, that it is readily noticeable, readable, and understandable to a reasonable person. A disclosure is not clear and conspicuous if it is contradicted by or inconsistent with other information on the solicitation.

d. Through November 15, 2013, the Vermont Attorney General's Office may by written request directed to Jonathan Campbell at the address below obtain copies sufficient to show the form of any Vermont Access Check Offer solicitations used from November 16, 2012 through the date of the written request.

2. *Consumer relief.*

a. For each Vermont business that paid interest between August 1, 2006 and September 30, 2011, on new purchases while a 0% access check balance was pending that it would not have paid absent that balance, Capital One shall, within thirty (30) business days of signing this Assurance of Discontinuance, credit the business' Capital One account, if any, or send a check to the business' last known address, by first-class mail, postage prepaid. The amount of the credit or check shall be the amount of all such interest charges that have

not been previously refunded. In either event, Capital One shall send to the business, by first-class mail, postage prepaid, a letter in substantially the form attached as Exhibit 2 hereto, which shall accompany the check if a check is sent. Capital One shall use due diligence to ensure that accurate payment amounts are provided to each business to which a payment is due under this Assurance of Discontinuance.

b. No later than forty-five (45) business days after signing this Assurance of Discontinuance, Capital One shall provide to the Vermont Attorney General's Office the names and addresses of the businesses to which letters and payments were sent or credits provided under this Assurance of Discontinuance, along with the date and amount of each payment.

c. No later than one hundred fifty (150) days after signing this Assurance of Discontinuance, Capital One shall mail to the Vermont Attorney General's Office, 109 State Street, Montpelier, VT 05609, a single check, payable to "Vermont State Treasurer," in the total dollar amount of all checks that were returned as undeliverable or that went uncashed, to be treated as unclaimed funds, along with a list, in Excel format on a compact disk, of the businesses whose checks were returned or were not cashed, and for each such business, the last known address and dollar amount due.

3. *Payment to the State.* Within thirty (30) business days of signing this Assurance of Discontinuance, Capital One shall pay to the State of Vermont, in care of the Vermont Attorney General's Office, the sum of one hundred fifty thousand dollars (\$150,000.00) as reimbursement for reasonable investigative costs.

4. *Binding effect.* This Assurance of Discontinuance shall be binding on Capital One, its successors and assigns.

5. *Release.* The State of Vermont hereby releases and discharges any and all claims that it may have against Capital One or its affiliates based on conduct described above that arose prior to the date of this Assurance of Discontinuance. The State of Vermont does not waive any legal rights it may have to enforce the laws of Vermont as to matters not covered by this Assurance of Discontinuance, including time periods not covered by this Assurance of Discontinuance, or to enforce the terms of this Assurance of Discontinuance.

6. *Admissibility.* Nothing in this Assurance of Discontinuance may be used or admitted as evidence or as an admission in any other adverse proceeding or action relating to Capital One, nor shall anything in this document be considered first-party evidence, except by Capital One to enforce the Release.

Date: 10/26/12

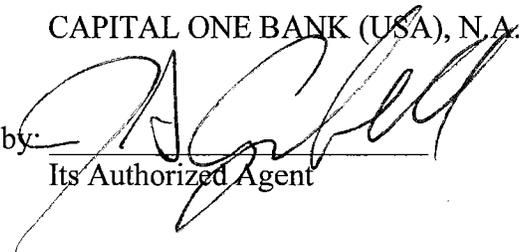
STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

by: 
Elliot Burg
Assistant Attorney General

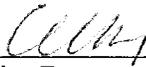
Date: 10/31/12

CAPITAL ONE BANK (USA), N.A.

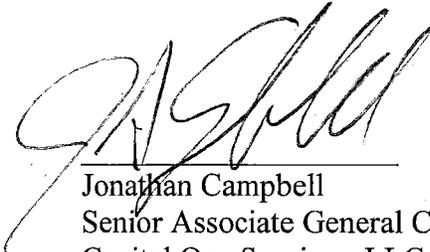
by: 
Its Authorized Agent

Office of the
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APPROVED AS TO FORM:



Elliot Burg
Assistant Attorney General
Office of Attorney General
109 State Street
Montpelier, VT 05609
For the State of Vermont



Jonathan Campbell
Senior Associate General Counsel
Capital One Services, LLC
15000 Capital One Drive
Richmond, VA 23238
For Capital One Bank (USA), N.A.

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This offer good until: **10/31/12**

Lee M. Cardholder
123 Main Street
Atlanta, GA 30306-0123

**0% APR for
12 months**



Your **total** credit limit as of 9/18/12: **\$10,000**

Dear Lee M. Cardholder,

The only thing worse than paying too much in interest is letting this offer expire.

**You have until 10/31/12 to start saving with a
0% Annual Percentage Rate (APR) for 12 months.**

After that, your rate will simply go to your purchase rate, which is currently 17.99%. Keep in mind, for each transaction, there's a fee of 3%.

SAVE! **Transfer balances—0% for 12 months**

Other credit cards can charge you as much as 14.9%. Stop overpaying—transfer higher-rate balances to your existing Capital One® account and save!

SAVE! **Write a check to yourself—0% for 12 months**

There are times when cash is the only answer. With this offer, write a check to yourself, deposit it at your bank, and get cash without those high cash advance rates.

SAVE! **Make a purchase—0% for 12 months**

Use one of the attached checks to make that special purchase you've been putting off—even at places that don't accept credit cards.

NOTE ▶ Please read:

If you accept this offer, you will pay interest on all purchases made with your credit card until your entire balance is paid off.

See Special Notice on the back of this offer.

This offer is good until 10/31/12, so start saving today!

Enjoy 3 convenient ways to save with this offer...



USE THE ENCLOSED CHECKS
by 10/31/2012



GIVE US A CALL
1-800-833-6393



GO ONLINE
capitalone.com/offers

Exhibit 2 (Letter to Businesses)

Dear [Name of Business]:

Our records show that you took advantage of a “0% for 12 months” access check offer, and that while the access check segment of your balance was pending, you paid interest on new purchases made on your credit card that you would not have paid absent the amount owed on the access check segment of your credit card account. Under a settlement with the Vermont Attorney General’s Office, we are enclosing a check to reimburse you for that interest.

If you have any questions about the settlement, you may contact the Attorney General’s Office at (802) 828-5507.

Sincerely,

Capital One Bank (USA)

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