VT SUPERIOR COURT
WASHINGTON UNIT
CIVIL DIVISION

STATE OF VERMONT
SUPERIOR COURT
WASHINGTON UNIT

2014 OCT 16 A 11 51

In re: TD BANK, N.A.)

CIVIL DIVISION
Docket No. 615-10-14 Wncv

FILED

ASSURANCE OF DISCONTINUANCE

THE MATTER OF TD BANK, N.A. *
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ASSURANCE OF VOLUNTARY COMPLIANCE

This Assurance of Voluntary Compliance[1] is entered into by the Attorneys General of Connecticut[2], Florida, Maine, Maryland, North Carolina, New Jersey, New York, Pennsylvania, and Vermont (hereinafter collectively referred to as the "Attorneys General") and T.D. Bank, N.A. (the "Bank" and together with the Attorneys General, the "Parties") after an investigation into the policies, procedures, and practices of the Bank following an incident in which a locked bag containing two Backup Tapes, of which contained Personal Information, went missing from Bank premises in March 2012 ("Covered Conduct").

WHEREAS, the Attorneys General's investigation pertained to allegations that the Bank violated state law, including the consumer protection and personal information safeguards statutes listed on Attachment A;

WHEREAS, the Bank has continued in good faith to assist the Attorneys General in their investigation and has conferred with the Attorneys General regarding the concerns of the Attorneys General;

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[1] This Assurance of Voluntary Compliance shall, for all necessary purposes, also be considered an Assurance of Discontinuance.

[2] For ease of reference purposes, this entire group will be referred to collectively herein as the "Attorneys General" or individually as "Attorney General." Such designations, however, as they pertain to Connecticut, shall refer to the Commissioner of Consumer Protection.

WHEREAS, the parties wish to resolve all legal claims in lieu of the Attorneys General commencing actions pursuant to the consumer protection and personal information safeguards statutes listed on Attachment A.

NOW THEREFORE, without admitting wrongdoing or liability to any violation of law, all of which the Bank expressly denies, the Bank has voluntarily and knowingly entered into this Assurance of Voluntary Compliance ("Assurance") in order to avoid the time and expense of litigation and to resolve all matters between the Parties. The Attorneys General agree to accept this Assurance on the terms and conditions contained herein, pursuant to their respective state laws, in lieu of commencing an enforcement action. This Assurance resolves all existing claims the Attorneys General may have against the Bank pursuant to the consumer protection and personal information safeguards statutes listed on Attachment A resulting from the Covered Conduct.

NOW THEREFORE, the Parties agree and stipulate as follows.

I. DEFINITIONS

For the purposes of this Assurance, the following definitions shall apply:

1. "Backup Tape" shall mean a magnetic tape data storage device that is designed to be portable and to store large volumes of digital information such as copies of computer servers and network applications.

2. "Breach of security" shall have the same meaning as that term is defined in the breach notification and personal information safeguards laws sited in Attachment B.

3. "Effective Date" shall mean the date on which this Assurance is duly executed by the Parties.

4. "Personal Information" shall have the same meaning as that term is defined in the breach of security and personal information safeguards statutes listed in Attachment B.

5. "Transportation Service Provider" shall mean a third party service provider that the Bank retains to ship, transport, and/or store backup tape(s) on which Personal Information is or may be stored.

II. ASSURANCES

Pursuant to the consumer protection laws listed in Attachment A, unless otherwise specifically noted in this Section II, the Bank agrees as follows:

1. The Bank shall comply with the consumer protection and personal information safeguards statutes listed on Attachment A.

2. The Bank shall in the future: (a) timely notify residents of each Attorney General's state of any breach of security involving a breach of or the unauthorized access to or acquisition of Personal Information occurring after the Effective Date of this Agreement in accordance with each state's breach notification law listed in Attachment B; and (b) timely notify each Attorney General's Office of any future breach of security involving a breach of or the unauthorized access to or acquisition of Personal Information occurring after the Effective Date of this Agreement to the extent required by the respective breach notification laws listed in Attachment B.

3. The Bank shall maintain, and to the extent already in place shall continue to maintain, reasonable security policies and procedures designed to protect Personal Information.

4. The Bank shall not transfer or otherwise transport off of the Bank's business premises any Backup Tapes created on or after the Effective Date and which contain Personal Information of consumers unless computerized data on such Backup Tapes has been secured by

encryption and all protocols established by the Bank for the transport of personal information are fully complied with. For any Backup Tapes in existence prior to the Effective Date that are not secured by encryption, the Bank shall only transfer or otherwise transport such tapes off of the Bank's business premises via armored transport vehicle.

5. The Bank shall, at least bi-annually, review its existing internal policies and procedures regarding the collection, storage, transfer and transportation of Personal Information, and, where the review results in a determination by the Bank that it is necessary, promptly amend such policies and procedures to protect more adequately the privacy and confidentiality of Personal Information.

6. Such policies and procedures shall, at a minimum, provide for the following:

   a. Designation of an employee or employees to coordinate and supervise the Bank's program designed to protect the privacy and security of Personal Information;

   b. Annual employee training to, at a minimum:

      i. inform employees who are responsible for creating or handling Backup Tapes about the importance of consumer privacy and their duty to help maintain it; and

      ii. inform employees who are responsible for creating or handling Backup Tapes of the procedure for reporting to a supervisor any potential unauthorized disclosure of or access to Personal Information.

c. Implementation of reasonable steps to select and retain Transportation Service Providers that are capable of protecting the privacy of Personal Information;

d. Security policies for employees relating to the storage, access, and transfer/transportation of Backup Tapes outside of the Bank-owned or leased business premises designed to account for and secure all Backup Tapes containing Personal Information before, during and following transfer/transport of such Backup Tapes;

e. Regular assessments of the effectiveness of the Bank's internal controls and procedures related to Backup Tapes containing Personal Information and the implementation of updates to such controls based on those assessments; and

f. Continued development and maintenance of policies and procedures for responding to events involving unauthorized acquisition, access, use or disclosure of Personal Information.

III. PAYMENT TO THE STATES

Within thirty (30) days of the Effective Date, the Bank shall pay Eight Hundred Fifty Thousand Dollars ($850,000.00) to the Attorneys General. The money is to be allocated among the Attorneys General as determined solely by the Attorneys General. Said payment shall be used by the Attorneys General for such purposes that may include, but are not limited to attorneys' fees, and other costs of investigation and litigation, or to be placed in, or applied to, the consumer protection law enforcement fund, including future consumer protection or privacy enforcement, consumer education, litigation or local consumer aid fund or revolving fund, used

to defray the costs of the inquiry leading hereto, or for other uses permitted by state law, at the sole discretion of the Attorneys General.

IV. GENERAL PROVISIONS

1. Time shall be of the essence with regards to the Bank's obligations hereunder.

2. Any failure of the Attorneys General to exercise any of their rights under this Assurance shall not constitute a waiver of their rights hereunder.

3. The Bank hereby states that Al Raymond, U.S. Chief Privacy Officer, is authorized to enter into and execute this Assurance by and on behalf of the Bank.

4. This Assurance shall bind the Bank hereto and its agents, employees, successors, and assigns.

5. The Bank further agrees to execute and deliver all authorizations, documents and instruments which are necessary to carry out the terms and conditions of this Assurance.

6. Except as expressly provided in this Assurance, nothing in this Assurance shall be construed as relieving the Bank of its obligation to comply with all state and federal laws, regulations or rules, or as granting permission to engage in any acts or practices prohibited by such law, regulation or rule. Consent to this Assurance does not constitute an approval by the Attorneys General of any of the Bank's business past, present or future acts and practices.

7. The Bank shall use reasonable efforts to notify its board of directors of the existence of this Assurance and of the obligations, duties, and responsibilities imposed on the Bank by this Assurance at the next regular board meeting at which the board is scheduled to receive an update on privacy and information security.

8. Assurance sets forth all of the promises, covenants, agreements, conditions and understandings between the Parties, and supersedes all prior and contemporaneous agreements,

understandings, inducements or conditions, expressed or implied. There are no representations, arrangements, or understandings, oral or written, between the Parties relating to the subject matter of this Assurance that are not fully expressed herein or attached hereto. Each party specifically warrants that this Assurance is executed without reliance upon any statement or representation by any other party hereto, except as expressly stated herein.

9. If any portion of this Assurance is held invalid by operation of law, the remaining terms of this Assurance shall not be affected and shall remain in full force and effect.

10. Nothing in this Assurance shall be construed to waive, limit, or expand any claim of sovereign immunity the Attorneys General may have in any action or proceeding.

11. Unless otherwise prohibited by law, this Assurance may be executed in any number of counterparts and by different signatories on separate counterparts, each of which shall constitute an original counterpart hereof and all of which together shall constitute one and the same document. One or more counterparts of this Assurances may be delivered by facsimile or electronic transmission with the intent that it or they shall constitute an original counterpart hereof.

WHEREFORE, the following signatures are affixed hereto:

TD BANK, N.A.

By: Albert M. Raymond

Albert M. Raymond
U.S. Chief Privacy Officer
2059 Springdale Road
Cherry Hill, NJ 08003

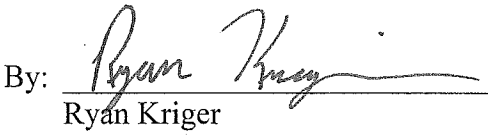
Dated: October 3, 2014

ACCEPTED on behalf of the Attorney General:

DATED at Montpelier, Vermont this 7th day of October, 2014.

STATE OF VERMONT

WILLIAM H. SORRELL
ATTORNEY GENERAL

By: 

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ATTACHMENT A

State	Consumer Protection Statute; Personal Information Safeguards
Connecticut	Unfair Trade Practices Act, Conn. Gen. Stat. §§ 42-110a, *et seq.* ; Safeguarding of Personal Information, Conn. Gen. Stat. § 42-471
Florida	Florida Deceptive and Unfair Trade Practices Act, Part II, Chapter 501, Fla. Stat. Ann §§ 501.201 *et seq.*
Maine	Maine Unfair Trade Practices Act, 5 M.R.S. sections 207 and 209.
Maryland	Maryland Consumer Protection Act, Md. Code Ann., Com. Law §§ 13-101 through 13-501 (2013 Repl. Vol.); Maryland Personal Information Act, Md. Code Ann., Com. Law §§ 14-3501 through 14-3508 (2013 Repl. Vol.)
New Jersey	New Jersey Consumer Fraud Act, N.J. Stat. Ann. §§ 56:8-1, *et seq.*
New York	N.Y. Exec. Law § 63(12); N.Y. Gen. Bus. Law §§ 349 and 350
North Carolina	North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. §§ 75-1.1, *et seq.*
Pennsylvania	Pennsylvania's Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et seq.*; Pennsylvania's Breach of Personal Information Notification Act, 73 P.S. § 2301, *et seq.*
Vermont	Vermont Consumer Protection Act, 9 V.S.A. §§ 2451-2461

ATTACHMENT B

State	Breach Notification Statute
Connecticut	Breach of Security re Computerized Data Containing Personal Information, Conn. Gen. Stat. § 36a-701b
Florida	Florida Information Protection Act, Fla. Stat. § 501.171
Maine	Maine "Notice of Risk to Personal Data" Act 10 M.R.S. section 1347 through 1349
Maryland	Maryland Personal Information Protection Act, Md. Code Ann., Com. Law §§ 14-3501 through 14-3508 (2013 Repl. Vol.)
New Jersey	Disclosure of Breach of Security of Computerized Records, N.J. Stat. Ann. § 56:8-163
New York	N.Y. Gen. Bus. Law § 899-aa
North Carolina	North Carolina Identity Theft Protection Act, Protection from security breaches, N.C. Gen. Stat. § 75-65
Pennsylvania	Pennsylvania's Breach of Personal Information Notification Act, 73 P.S. § 2301, *et seq.*
Vermont	Vermont Security Breach Notice Act, 9 V.S.A. §§ 2430-35