FEDERAL DEPOSIT INSURANCE CORPORATION / CONSUMER FINANCIAL PROTECTION BUREAU

WASHINGTON, D.C.

In the Matter of DISCOVER BANK GREENWOOD, DELAWARE (INSURED STATE NONMEMBER BANK)	)))))))))	JOINT CONSENT ORDER, ORDER FOR RESTITUTION, AND ORDER TO PAY CIVIL MONEY PENALTY Docket Numbers FDIC-11-548b; FDIC-11-551k & 2012-CFPB-0005

The Federal Deposit Insurance Corporation ("FDIC") is the appropriate Federal banking agency with respect to Discover Bank, Greenwood, Delaware ("Discover"), under section 3(q) of the Federal Deposit Insurance Act ("FDI Act"), 12 U.S.C. § 1813(q). The Consumer Financial Protection Bureau ("CFPB") has jurisdiction over Discover, pursuant to sections 1002(6), 1025 and 1053(b) of the Consumer Financial Protection Act ("CFP Act"), 12 U.S.C. §§ 5481(6), 5515 and 5563(b). The term "Discover" shall include Discover Bank and all institution-affiliated parties, as defined in section 3(u) of the FDI Act, 12 U.S.C. § 1813(u), and, in connection with the Products as defined herein, all affiliates of Discover who are service providers as defined in sections 1002(1) and (26) of the CFP Act, 12 U.S.C. §§ 5481(1) and (26).

The FDIC and CFPB have determined that Discover has engaged in deceptive acts and practices in or affecting commerce, in violation of section 5 of the Federal Trade Commission Act ("Section 5"), 15 U.S.C. § 45(a)(1), and in deceptive acts and practices in violation of sections 1031 and 1036 of the CFP Act (together "Section 1036"), 12 U.S.C. §§ 5531, 5536, in

connection with the marketing, sales, and operation of Discover's Payment Protection, Identity Theft Protection, Wallet Protection and Credit Score Tracker products, as well as any related predecessor products (each a "Product" and, collectively, the "Products") that were offered and sold to individual holders of Discover consumer credit card accounts (each a "Cardmember") by Discover. The FDIC further has determined that Discover has engaged in unsafe or unsound banking practices.

Discover, by and through its duly elected and acting Board of Directors ("Board"), has executed a STIPULATION AND CONSENT TO THE ISSUANCE OF A JOINT CONSENT ORDER, ORDER FOR RESTITUTION, AND ORDER TO PAY CIVIL MONEY PENALTY ("CONSENT AGREEMENT"), dated September 21, 2012, that is accepted by the FDIC and the CFPB. With the CONSENT AGREEMENT, Discover has solely for the purpose of this proceeding, without admitting or denying the findings of fact, conclusions of law, or any violations of law or regulation for which civil money penalties may be assessed herein, consented to the issuance of this JOINT CONSENT ORDER, ORDER FOR RESTITUTION, AND ORDER TO PAY CIVIL MONEY PENALTY (collectively "JOINT CONSENT ORDER") by the FDIC and the CFPB.

FINDINGS OF FACT

The FDIC and the CFPB find, and Discover neither admits nor denies, the following facts:

1. Discover marketed and sold the Products to Cardmembers during the period December 1, 2007 through August 31, 2011 (the "relevant time period"). During this time, Discover sold one or more Products to approximately 4.7 million Cardmembers.

2. During the relevant time period, Discover telemarketed the Products to Cardmembers through both outbound sales calls and inbound customer service calls. Discover contracted with telemarketing vendors to conduct outbound sales calls. Additionally, Discover's

in-house telemarketers marketed the Products when Cardmembers called to activate their Discover credit cards or placed other types of customer service calls.

3. Discover developed numerous versions of telemarketing scripts that were used to market each Product. Discover required its in-house and third-party telemarketers to adhere to these scripts. The scripts led telemarketers through the introduction and sales of the Products and the outbound telemarketing scripts also typically provided the telemarketers with specific responses to questions that Cardmembers might raise during a telemarketing call.

4. Discover's inbound and outbound telemarketing scripts contained material misrepresentations and omissions related to the Products. These misrepresentations and omissions were likely to mislead reasonable consumers about whether they were purchasing a Product during a telemarketing sales call. Examples of these misrepresentations and omissions include, but are not limited to, the following:

a. Introductory statements contained in the outbound telemarketing scripts that disguised the purpose of an outbound sales call by indicating to Cardmembers that Discover was placing a courtesy call and misleadingly implied that a Product was a free "benefit" rather than a program for which Discover charged an additional fee.

b. Language in telemarketing scripts that frequently asked Cardmembers if they agreed to "be enrolled" in or "become a member" of a Product program but omitted the material fact that enrollment or membership constituted an agreement to purchase the Product.

c. Language in telemarketing scripts that frequently solicited Cardmembers' interest in "enrolling" in a Product program before providing the Product's price or material terms and conditions.

d. Statements in telemarketing scripts that typically stated that Cardmembers would receive a letter describing the Payment Protection Product's material terms and conditions before Cardmembers were required to pay for that Product, implying that Cardmembers had not purchased the Product before receipt of the letter. In fact, Discover sent its Cardmembers this letter only after Cardmembers had been enrolled in the Payment Protection Product program.

e. Suggested rebuttal responses in outbound telemarketing scripts that implied that Cardmembers could comparison shop by reviewing a comprehensive list of Product terms and conditions before they were enrolled in a Product program. In fact, Cardmembers were required to first purchase a Product before receiving a comprehensive list of Product terms and conditions.

5. Frequently, Discover's telemarketers spoke more rapidly during the mandatory disclosure portion of the sales call, which included a statement of the Product's price and some – but not all – material terms and conditions of the Product. Discover's telemarketers also frequently downplayed this mandatory disclosure during their telemarketing sales presentation, implying to Cardmembers that the mandatory disclosure was not important, even though it was designed to alert Cardmembers to the Product's price and certain terms and conditions.

6. The impact of Discover's deceptive telemarketing scripts and presentations was compounded by the fact that Discover did not need to ask Cardmembers for their credit card numbers in order to bill them for the Products because it had access to Cardmembers' credit card numbers and could (and did) directly bill the cost of the Products to Cardmembers' Discover accounts.

7. Discover's telemarketing scripts for the Payment Protection Product also typically failed to disclose material terms and conditions of the Payment Protection Product. For example, these scripts failed to state that individuals who are self-employed, unemployed, employed part-time, or suffering from a pre-existing medical condition cannot obtain certain Payment Protection Product benefits.

Having determined that the requirements for issuance of an order under sections 8(b) and 8(i)(2) of the FDI Act, 12 U.S.C. §§ 1818(b) and 1818(i)(2), and sections 1053(b) and 1055(c) of the CFP Act, 12 U.S.C. §§ 5563(b) and 5565(c), have been satisfied, the FDIC and the CFPB hereby jointly issue the following order:

JOINT CONSENT ORDER

IT IS HEREBY ORDERED that Discover cease and desist from the following violations of law and regulations and from engaging in the following unsafe or unsound banking practices and deceptive acts and practices, all of which were identified through the investigation by the FDIC and the CFPB which focused on the time period December 1, 2007 through August 31, 2011:

(a) operating in violation of Section 5 or of Section 1036;

(b) engaging in deceptive marketing and sales of the Products in violation of Section 5 or of Section 1036;

(c) operating Discover with an inadequate compliance management system to ensure compliance with Section 5 and with Section 1036 and all implementing rules and regulations, regulatory guidance, and statements of policy;

(d) operating Discover without adequate oversight by the Board and supervision by senior management of the Products to ensure compliance with Section 5 and with Section 1036 and all implementing rules and regulations, regulatory guidance, and statements of policy; and

(e) operating Discover with an inadequate system of internal controls and an inadequate internal audit system with regard to the Products to ensure compliance with Section 5 and with Section 1036 and all implementing rules and regulations, regulatory guidance, and statements of policy.

IT IS FURTHER ORDERED that Discover take affirmative actions as follows:

BOARD OVERSIGHT

1. The Board shall participate fully in the oversight of Discover's compliance management system, and take full responsibility for ensuring that appropriate policies and procedures are in place. The Board shall also ensure that Discover adequately supervises its compliance-related activities, consistent with the role and expertise commonly expected for directors of banks of comparable size and complexity and offering comparable banking products and services. Without limiting the generality of the foregoing, the Board shall require, consistent with this Order, policies and objectives to ensure that all marketing, sales, and operations efforts relating to the Products comply with Section 5 and with Section 1036, as described more particularly herein.

CORRECTIVE ACTIONS

2. (a) Within 60 days from the effective date of this JOINT CONSENT ORDER, Discover shall take all actions necessary to eliminate all violations of Section 5 and of Section 1036 concerning the marketing, sales and/or operation of the Products. In addition, Discover shall take all necessary steps to ensure future compliance with Section 5 and with Section 1036, as described more particularly, and in accordance with the time frames set forth, herein.

(b) Within 60 days from the effective date of this JOINT CONSENT ORDER, unless an alternate timeframe is set forth in this JOINT CONSENT ORDER, Discover shall take all actions necessary to ensure the revision of any and all advertising, marketing, and promotional materials, and any other oral, written, or electronic communications used in connection with any

solicitation that mentions any of the Products, to disclose clearly and prominently (1) all material conditions, benefits, and restrictions concerning the Products; and (2) that Cardmembers are being asked to purchase a Product that is not required for the extension of credit.

3. (a) Discover shall not make, or allow to be made, any material misleading or deceptive representation, statement, or omission, expressly or by implication, in the marketing materials, telemarketing scripts and/or sales presentation used to solicit any Cardmember or prospective Cardmember, or in any similar communication in connection with any Product.

(b) Within 60 days from the effective date of this JOINT CONSENT ORDER, Discover shall take all actions necessary to comply with the specific guidance set forth in *Unfair or Deceptive Acts or Practices by State-Chartered Banks* (FIL-26-2004, issued March 11, 2004).

(c) Without limiting the generality of the foregoing, Discover shall not make or allow to be made, directly or indirectly, any misrepresentation or omission, expressly or by implication, about any material term of an offer related to any Product in connection with the advertising, marketing (including telemarketing and online marketing), offering, soliciting, eligibility, billing, servicing, or account maintenance with respect to a Product, including but not limited to misrepresentations or omissions as to the following:

(i) any and all fees, costs, expenses, and charges associated with the Products;

(ii) all material conditions, benefits, and restrictions related to the Products;

(iii) the purpose of sales calls and/or sales portions of servicing or other calls;

(iv) payment terms for a Product, including a description of when a Cardmember will be charged for a Product or incur charges for a Product;

(v) refunds or adjustments for a Product fee and Discover policies for such refunds and adjustments; and

(vi) the balance upon which any percentage fee charge for the Payment Protection Product would be based, and the fact that the Cardmember will

be charged a fee for the Payment Protection Product even if the Cardmember pays the outstanding balance in full on the due date thereof.

4. (a) When soliciting the Products by telephone, Discover shall:

(i) comply with all requirements of the Telemarketing Sales Rule ("TSR"), 16 C.F.R. Part 310;

(ii) state promptly after beginning an outbound telemarketing call, and promptly after beginning discussion of a Product on an inbound telemarketing call, that the purpose of the call or portion of the call is to determine whether a Cardmember has interest in and wishes to purchase an optional Product;

(iii) for all Products other than the Payment Protection Product, disclose clearly, prior to purchase, the total cost of the Product and how frequently the fee is assessed, and, as to the Payment Protection Product, disclose clearly, prior to purchase, how the fee is calculated and that the Cardmember will be charged a fee for the Product at the end of each billing cycle during which the Cardmember has a balance, regardless of whether the Cardmember paid the balance in full by the due date thereof;

(iv) disclose clearly, prior to purchase, all material conditions, benefits and restrictions relating to a Product;

(v) disclose clearly, prior to purchase, that the Cardmember is not required to purchase the Product, and that the purchase of the Product is voluntary and optional;

(vi) clearly and prominently explain relevant material restrictions on eligibility for the Products, including, in the case of the Payment Protection Product, explaining to Cardmembers the restrictions on eligibility for benefits, such

as those related to being unemployed, self-employed, or on a leave of absence from their place of employment, or suffering from a pre-existing medical condition;

(vii) disclose all Product disclosures, including any disclosures required herein or otherwise required by law, in a clear manner and at a reasonable speed; and

(viii) after such disclosures are read, require that a Cardmember acknowledge that the purchase of the Product is optional and voluntary and that the Cardmember affirmatively requests or consents to purchase the Product.

(b) Directly after a Cardmember purchases a Product by telephone, Discover shall disclose clearly the following information during that same telephone call:

(i) that the Cardmember has purchased the Product;

(ii) that the Cardmember's Discover credit card will be charged or that the Cardmember's account will start to incur charges for the Product within two billing cycles or less, but no sooner than fifteen days from the date of the telephone call, pending completion of additional enrollment verification steps and other enrollment procedures and that the charge for the Product will appear on the Cardmember's billing statement;

(iii) the Product's cancellation policy and the phone number that the Cardmember must use to cancel enrollment in the Product program; and

(iv) the Product's refund policy, including the time frame within which the Cardmember must cancel before incurring a fee.

(c) When Cardmembers request that additional information about a Product be sent prior to purchasing that Product, Discover shall provide the Cardmember with that information, including but not limited to the material conditions, benefits, and restrictions of the Product and

shall not condition in any way the provision of such materials on the Cardmember agreeing to purchase or enroll in a Product program. The materials may be provided in electronic or hard copy format.

(d) Discover shall refrain from marketing or soliciting the Products during or in connection with activation calls, unless, prior to any solicitation, the Cardmember is first informed that activation is complete; that listening to the Product solicitation is optional; and that the Product being sold is optional and not a condition for the extension of credit.

(e) Within three business days after a Cardmember purchases the Payment Protection Product, and within seven business days after a Cardmember purchases any Product other than the Payment Protection Product, Discover shall mail the Cardmember a disclosure that clearly and prominently presents the following information:

(i) the fact that the Cardmember has purchased a Product, the date on which the Cardmember purchased the Product and the amount of the fee for the Product;

(ii) the Product's material conditions, benefits and restrictions;

(iii) the fact that the Cardmember's Discover credit card account will incur fee charges for the Product and the date when those charges will appear on his or her billing statement;

(iv) the billing period during which the Product fee charges will begin appearing on the Cardmember's account statement;

(v) for all Products other than the Payment Protection Product, the total cost of the Product and how frequently the fee is assessed, and, as to the Payment Protection Product, how the fee is calculated and that the Cardmember will be charged a fee at the end of each billing cycle during

which the Cardmember maintains a balance, regardless of whether the Cardmember pays the balance in full during the applicable grace period;

(vi) the Product's cancellation policy and the phone number the Cardmember must use to cancel; and

(vii) the Product's refund policy, including the date by which the Cardmember must cancel before incurring a fee.

(f) Discover must obtain the Cardmember's express affirmative consent to purchase the Product, separate from any consent Discover may obtain to pull a Cardmember's consumer report. In obtaining a Cardmember's consumer report in relation to any of the Products, Discover must comply with the Fair Credit Reporting Act, 16 U.S.C. § 1681 *et seq*.

(g) Discover shall include a message on the first three periodic statements on which a Product charge appears, highlighting inclusion of the charge. The statement shall be positioned in a clear and conspicuous manner and shall be in 12-point font or any larger type.

(h) In any telephone conversation in which a Cardmember indicates that he or she did not authorize the purchase of, does not want, or wishes to cancel a Product, Discover shall immediately agree to cancel the Product, no longer charge that Cardmember for the Product, and not attempt to re-sell the Product to that Cardmember during the cancellation call. In addition, in response to a Cardmember's inquiry or complaint that a Product purchase was not agreed to, Discover shall review whether any such Product purchase was agreed to by the Cardmember. If Discover determines that the purchase was agreed to, Discover shall provide the Cardmember with all information providing the basis for this determination, including but not limited to any voice recording of a telemarketing sales call or portion of such a call. Discover shall make any such determination by reviewing all relevant information, including any voice recording, and this determination shall only be made by a Bank employee who is specifically trained to determine whether a telemarketing sales call complied with the provisions of this JOINT CONSENT

ORDER and all other disclosures required by law. If Discover determines that a purchase was not agreed to, Discover shall promptly refund all of the Product Fees and finance charges on Product Fees incurred by the Cardmember.

(i) If at any time a Cardmember applies for, but is denied, benefits related to a Product, or the Cardmember's benefits are suspended, Discover must clearly and prominently explain the relevant material limitations of the Product and restrictions on eligibility for the Product, including, in the case of the Payment Protection Product, explaining to Cardmembers the restrictions on eligibility for benefits, such as those related to being unemployed, self-employed, or on a leave of absence from their place of employment, or suffering from a pre-existing medical condition. After disclosing such material limitations and restrictions on eligibility, Discover must require that the Cardmember acknowledge that the purchase of the Product is optional and voluntary and that the Cardmember affirmatively requests or consents to remain enrolled in and continue to pay for the Product.

(j) During any telemarketing solicitation in which a Cardmember requests or expresses a desire that Discover make no further calls to the Cardmember with respect to a Product, Discover shall immediately place the Cardmember on Discover's No Call List. Discover shall provide an updated copy of the No Call List to all third-party telemarketers on a bi-weekly basis.

(k) With respect to Paragraphs 3(c), 4(a)(i), 4(a)(iv), 4(a)(vi), 4(b)(ii), 4(b)(iv), 4(d), 4(e), 4(h), and 4(i), Discover shall have 120 days from the effective date of this JOINT CONSENT ORDER to comply with the requirements set forth in those Paragraphs.

COMPLIANCE MANAGEMENT SYSTEM

5. (a) Within 60 days from the effective date of this JOINT CONSENT ORDER, Discover shall review, revise, and/or develop as necessary a risk-based compliance management system, including a comprehensive written compliance program ("Compliance Program") to ensure that the marketing, sale, and operation of the Products comply with Section 5 and with Section 1036. This Compliance Program shall be designed to comply with all provisions of this JOINT CONSENT ORDER. At a minimum, the Compliance Program shall provide for:

(i) Board designation of Discover management responsible for review and approval prior to first use, and subsequent re-reviews as may be required by, among other things, regulatory guidance and changes in laws and/or regulations, of (1) all marketing and solicitation materials, including direct mail or Internet solicitations, promotional materials, advertising, and telemarketing scripts regarding the Products, (2) other materials provided to Cardmembers generated in connection with the administration and servicing of the Products, and (3) changes or amendments with respect to the materials described in (1) and (2);

(ii) a training program that includes regular, specific, and comprehensive training related to Section 5, Section 1036, and all implementing rules and regulations, regulatory guidance, and statements of policy for appropriate Discover personnel and, specifically, for employees having responsibilities that relate to Section 5 and to Section 1036, including senior management and the Board, commensurate with their individual job functions and duties;

(iii) a training and compliance program that monitors all third parties, including all telemarketing vendors and Product program administrators,

involved in the marketing, sales, and/or operation of the Products to ensure that these third parties comply with Section 5, Section 1036, and all implementing rules and regulations, regulatory guidance and statements of policy;

(iv) an appropriate number of compliance personnel, as reasonably determined by Discover, with sufficient experience in and knowledge of the Products and applicable laws, including but not limited to Section 5 and Section 1036, to administer the Compliance Program;

(v) procedures for promptly addressing and resolving all consumer complaints arising from any Product, regardless of the source of the complaints or the channel through which the complaint was submitted, including through any third parties, and maintaining appropriate records of all complaints and the resolution of the complaints; and

(vi) a policy providing that any bonus or incentive compensation payable to any employee, agent, or third party that is calculated based directly on the sale of one or more of the Products will not be due or payable if the Cardmember to whom the Product is sold did not maintain the Product for at least three billing cycles.

(b) The Compliance Program shall be administered by compliance personnel with sufficient experience in, and knowledge of, Section 5 and Section 1036 and shall provide for sufficient personnel in order to fully comply with all requirements of this JOINT CONSENT ORDER.

(c) Within 60 days from the effective date of this JOINT CONSENT ORDER, Discover shall submit the written Compliance Program to the Regional Director of the FDIC's New York Regional Office ("FDIC Regional Director"), the CFPB Assistant Director of the

Office of Enforcement, and the CFPB Regional Director, Midwest Regional Office ("CFPB Regional Director") for review and non-objection.

(d) Within 60 days following receipt of comments or non-objection from the FDIC Regional Director, the CFPB Assistant Director of the Office of Enforcement, and the CFPB Regional Director, Discover shall adopt and implement the Compliance Program, as revised, and shall record the adoption of the Compliance Program in the minutes of the Board.

INTERNAL CONTROL SYSTEM

6. Within 90 days from the effective date of this JOINT CONSENT ORDER, Discover shall enhance its internal control system to provide for:

(a) an organizational structure for the day-to-day operation and oversight of the Products, and internal controls systems related thereto, that provides for (i) clear lines of authority and identification of reporting lines; (ii) clear assignment of responsibility along the lines of authority for assessing and monitoring the compliance of Discover with all requirements of Section 5 and Section 1036, as well as all applicable policies and procedures of Discover; and (iii) clear assignment of responsibility for reporting to the Board the results of the assessment and monitoring activity performed under this subparagraph, including specification of information and data to be reported to the Board on a periodic, but not less than quarterly, basis;

(b) initial and periodic, but not less than quarterly, written reports to the Board assessing the regulatory and compliance risks associated with the Products and related marketing; and

(c) an adequate number of staff to effect and maintain full and complete compliance with subparagraphs (a) and (b) above.

COMPLIANCE AUDIT PROGRAM

7. (a) Within 60 days from the effective date of this JOINT CONSENT ORDER, Discover shall review and revise its internal compliance audit program as necessary to ensure an

effective and independent review of Discover's internal policies and procedures and compliance with Section 5 and with Section 1036 with respect to the Products and internal compliance audit functions related thereto. The revised internal compliance audit program shall, at a minimum, include policies, procedures, and processes that ensure:

(i) that the internal compliance audits of the Products are independent and adequate in scope and that the audit and compliance staff is comprised of a sufficient number of qualified persons;

(ii) completion of an internal compliance audit plan each calendar year that is reviewed and approved by the Board;

(iii) annual risk assessments of the Products to ensure that internal compliance audits are performed with reasonable frequency;

(iv) assignment of ratings or expressions of opinion as to the adequacy, effectiveness, and efficiency of the internal control environment of the Products; and

(v) provisions for a formal tracking and monitoring system for exceptions identified by internal compliance audits and regulatory examinations, the tracking of deficiencies and exceptions noted in audit reports with periodic, but not less than quarterly, status reports to the Board with each deficiency and material exception identified, the source of the deficiency or exception and date noted, responsibility for correction assigned, and the date corrective action was taken in the report.

(b) Internal compliance audit findings, deficiencies, and recommendations shall be documented in a written report and provided to the Board within thirty (30) days after completion of the audit. Discover shall promptly forward a copy of each internal compliance audit report and the minutes reflecting the Board's review of such report to the FDIC Regional

Director, the CFPB Assistant Director of the Office of Enforcement, and the CFPB Regional Director. No later than at its next regularly scheduled board meeting following receipt of the written audit report, the Board shall take action to address the audit's findings, correct any deficiencies noted, and implement any recommendations. The Board may, where appropriate, direct management to take certain actions related thereto, and where management has been so directed, ensuring that findings, deficiencies, and recommendations are appropriately addressed. The Board's review of the written report shall be fully documented in its minutes, together with a report of the actions in response to the audit, including, where applicable, an explanation as to why a recommendation has not been implemented.

OVERSIGHT COMMITTEE

8. (a) Within 30 days from the effective date of this JOINT CONSENT ORDER, the Board shall establish an oversight committee ("Oversight Committee") or designate an existing Board committee as an Oversight Committee. This Committee shall be charged with the responsibility of ensuring compliance with the provisions of this JOINT CONSENT ORDER.

(b) The Oversight Committee shall monitor compliance with this JOINT CONSENT ORDER and submit a written report quarterly to the entire Board, prior to the regularly scheduled meeting of the Board, and a copy of the report and any discussion related to the report or this JOINT CONSENT ORDER shall be part of the minutes of the Board meeting. Copies of the quarterly report shall be submitted to the FDIC Regional Director, the CFPB Assistant Director of the Office of Enforcement, and the CFPB Regional Director, as part of the quarterly progress reports and certificates of compliance required by Paragraph 9 of this JOINT CONSENT ORDER. Nothing contained herein shall diminish the responsibility of the entire Board to ensure compliance with the provisions of this JOINT CONSENT ORDER.

PROGRESS REPORTS AND CERTIFICATIONS OF COMPLIANCE

9. Within 30 days from the end of each calendar quarter following the effective date of this JOINT CONSENT ORDER, Discover shall furnish to the FDIC Regional Director, the CFPB Assistant Director of the Office of Enforcement, and the CFPB Regional Director, written progress reports addressing each provision of this JOINT CONSENT ORDER and detailing the form, manner, results, and dates of any actions taken to secure compliance with the provisions of this JOINT CONSENT ORDER. All progress reports shall be reviewed by the Board and made a part of the Board minutes. The progress reports shall be true and accurate and accompanied by a certification of compliance by a member of the Board who is a member of the Oversight Committee. The certification of compliance shall include the following:

(a) a statement confirming that Discover is in compliance with all provisions of the JOINT CONSENT ORDER, or

(b) if Discover is not in compliance with all provisions of the JOINT CONSENT ORDER, Discover must provide:

(1) a list of the provisions with which Discover is not yet in compliance, an explanation of why Discover is not yet in compliance with each specific provision, and a description of the actions Discover has taken to comply with the provision; and

(2) a statement that Discover will be in full compliance with the JOINT CONSENT ORDER, as well as a description of the actions Discover will take to be in full compliance, no later than 90 days from submission of the first progress report and certificate of compliance submitted to the FDIC and the CFPB following the effective date of the JOINT CONSENT ORDER.

SHAREHOLDERS

10. Discover shall provide or otherwise furnish to its shareholders a description of this JOINT CONSENT ORDER. The description shall fully describe the JOINT CONSENT

ORDER in all material respects. The description and any accompanying communication, statement, or notice shall be sent to the FDIC, Division of Depositor and Consumer Protection, Accounting-Registration, Disclosure and Securities Section, 550 17th Street, N.W., Washington, D.C. 20429 and to the CFPB, Office of Enforcement, 1700 G Street, N.W., Washington, D.C. 20552, for non-objection or comment prior to dissemination to shareholders. Any changes requested to be made by the FDIC or CFPB shall be made prior to dissemination of the description, communication, notice, or statement. This description shall be disseminated in conjunction with Discover's next shareholder communication and in conjunction with its notice or proxy statement preceding Discover's next shareholder meeting. The terms "next shareholder communication" and "next shareholder meeting" mean the next shareholder communication and next shareholder meeting immediately after the FDIC and CFPB provide Discover with either non-objections to or comments about the description.

RECORDKEEPING

11. (a) For a period of at least two years from the date a Cardmember is no longer enrolled in a Product program, Discover must retain the following records concerning that Cardmember and his or her enrollment in that Product program:

(i) A file containing the name, address, phone number, dollar amounts paid, quantity of Products purchased, description of the Product(s) purchased, date on which the Product(s) was purchased, and records reflecting the date on which the required welcome kit was mailed for each Cardmember (if a Cardmember left the program, include the date the Cardmember left a Product program and the reason the Cardmember left the Product program); and

(ii) Records for each Cardmember reflecting that a Cardmember expressly agreed to purchase the Product, including time-stamped copies of voice

recordings of telephone calls during which a Cardmember purchased the Product.

(b) For a period of six years from the effective date of this JOINT CONSENT ORDER, Discover must retain the following records:

(i) All documents and records necessary to demonstrate full compliance with each provision of this JOINT CONSENT ORDER;

(ii) Records reflecting, on an annual basis, the number of Cardmembers who canceled a Product, the number of Cardmembers who were enrolled in a Product Program who closed their Cardmember accounts, and the number of Cardmembers who were enrolled in a Product Program whose Cardmember accounts were charged off by Discover;

(iii) All Cardmember complaints and refund requests (whether received directly or indirectly, such as through a third party) related to the Products, and any responses to those complaints or requests;

(iv) Copies of all versions of sales scripts, training materials, advertisements, or other marketing materials, including terms and conditions, fulfillment packages, and welcome kits related to the Products, including any such materials used by a third party on Discover's behalf; and

(v) All records pertaining to the restitution described below in Paragraph 12, including, but not limited to, documentation of the processes and procedures used to determine the Eligible Consumers, as that term is defined below, the names, contact, and account information of the Eligible Consumers, any mailing records, and documentation that the appropriate restitution was made.

(c) For a period of two years from the effective date of this JOINT CONSENT ORDER, Discover must retain accounting records that reflect the cost of Product(s) sold and revenues generated.

RESTITUTION AND OTHER RELIEF

IT IS FURTHER ORDERED that

12. (a) Within 90 days from the effective date of this JOINT CONSENT ORDER, Discover shall commence the restitution and other relief described below and complete such restitution within 150 days from the effective date of this JOINT CONSENT ORDER.

(b) Restitution shall be provided to all Eligible Consumers, as that term is defined below, notwithstanding any waiver or relinquishment contained in any settlement notice applicable to any class action or settlement class from which an Eligible Consumer did not opt-out or any other waiver executed by an Eligible Consumer.

(c) For purposes of this JOINT CONSENT ORDER, the following definitions will apply:

(i) "Account" shall mean a Discover individual credit card account associated with a Cardmember at any time during the Eligibility Period (as defined herein).

(ii) "90 Days of Fees" shall mean, with respect to a particular Product, (1) the total Product Fees (as defined herein) charged to a Cardmember for the particular Product during the Restitution Period (as defined herein), (2) divided by the total number of calendar days the Cardmember was enrolled in the particular Product, even if multiple enrollment periods were not contiguous, during the Restitution Period (as defined herein), (3) multiplied by 90.

(iii) "Eligible Consumer" shall mean any Cardmember who has had an Account to which a Product Fee was posted at any time during the Eligibility Period due to any Product purchase made during the Eligibility Period. The term "Eligible Consumer" shall include all existing and former Cardmembers, including all Cardmembers whose Accounts have been closed, charged-off, sold, or otherwise transferred, through securitization or otherwise, by Discover. The term "Eligible Consumer" shall not include, with respect to the Payment Protection Product, any Cardmember enrolled in the Payment Protection Product, if the Cardmember activated and received Payment Protection Product benefits at any time during the Eligibility Period. Nonetheless, any Cardmember enrolled in the Payment Protection Product who is not an "Eligible Consumer" with respect to the Payment Protection Product may be an "Eligible Consumer" with respect to any other Product purchased during the Eligibility Period regardless of the receipt of any Payment Protection Product benefits. With respect to each Product, the term "Eligible Consumer" shall include only those Cardmembers who purchased the Product through a telemarketing sales channel.

(iv) "Eligibility Period" shall mean the period beginning on December 1, 2007 and ending on August 31, 2011.

(v) "Product Fees" shall mean all fees, charges, premiums, or other amounts posted to, or otherwise charged to, an Eligible Consumer's Account with respect to any Product or Products, however characterized. Product Fees shall not include finance charges or interest associated with the Products.

(vi) "Refunded Product Fees" shall mean any refunds of Product Fees made by Discover and received by an Eligible Consumer prior to the effective date of this JOINT CONSENT ORDER (including any payments to Eligible Consumers by Discover pursuant to the settlement of any class action litigation).

(vii) "Restitution Amount" shall mean, with respect to each Eligible Consumer, an amount, if greater than zero, equal to:

(A) for all Eligible Consumers who were enrolled in any Product for an aggregate total of 364 days or less, the total amount of Product Fees charged to the Cardmember related to each such Product during the applicable Restitution Period, minus Refunded Product Fees, if the resulting amount is greater than zero; and

(B) for all Eligible Consumers who were enrolled in any Product for an aggregate total of 365 days or more, 90 Days of Fees minus Refunded Product Fees, if the resulting amount is greater than zero.

(viii) "Restitution Period" shall mean, for each Eligible Consumer, all periods beginning on the date any Cardmember was enrolled in a Product and ending on the last date of the billing cycle in which a Product Fee was posted to the Account, but ending no later than August 31, 2011.

(d) Discover shall provide restitution to each Eligible Consumer pursuant to the following process based on the Account status as of the effective date of the JOINT CONSENT ORDER:

(i) for any open Account, Discover shall provide a credit posted to the Account for the Restitution Amount, regardless of whether such action results in a credit balance.

(ii) for any closed Account, unless the Account has an outstanding balance, has been charged off, or is delinquent, Discover shall mail a certified restitution check in the Restitution Amount to such Eligible Consumer.

(iii) for any closed Account that is delinquent but not charged off, Discover shall issue a credit decreasing the delinquent balance by the Restitution Amount. Where the Restitution Amount is greater than the delinquent balance, Discover shall mail a restitution check for the difference between the delinquent balance and the Restitution Amount to the affected Eligible Consumer.

(iv) for any charged-off Account, Discover shall issue a credit decreasing the charged-off balance by the Restitution Amount. Where the Restitution Amount is greater than the existing charged-off balance, Discover shall mail a restitution check for the difference between the charged-off balance and the Restitution Amount to the affected Eligible Consumer.

(v) with respect to any bankruptcy, probate, accounts in litigation and sold charged-off accounts, for which Discover has notice, Discover shall take all appropriate action to reflect the credit of the Restitution Amount and any additional Restitution Amount as appropriate, consistent with the requirements set forth in Paragraph 12(g).

(e) In the event that the aggregate Restitution Amounts provided to all Eligible Consumers pursuant to Paragraph 12(d) equal an amount less than $200,000,000, Discover shall promptly inform the FDIC Regional Director, the CFPB Assistant Director of the Office of

Enforcement, and the CFPB Regional Director, of the amount of the difference between the aggregate Restitution Amounts provided and $200,000,000 (such amount is referred to as the "Additional Restitution"). In such an event, the Additional Restitution shall be distributed in equal amounts to all Eligible Consumers who were enrolled in any Product for an aggregate total of 365 days or more in accordance with the process set forth in Paragraph 12(d) above.

(f) Discover shall not condition the payment of Restitution Amounts or Additional Restitution to any Eligible Consumer on that Eligible Consumer waiving any right.

(g) With respect to any Eligible Consumer's Account that receives a Restitution Amount and/or Additional Restitution in the form of a credit that decreases the existing balance or charged-off balance, Discover shall:

(i) report the updated balance to each credit reporting agency to which Discover had previously furnished balance information for the account; or

(ii) delete the account trade line at each credit reporting agency to which Discover had previously furnished balance information for the account; or

(iii) in the case of an account sold to an unaffiliated third party, also inform the third party of the credit to the Account and the resulting adjustment of the unpaid balance and request that such third-party owner of the debt report the updated balance to, or delete the account trade line at, each credit reporting agency to which the third-party owner of the debt had previously furnished balance information for the account.

(h) (i) Within 30 days from the effective date of this JOINT CONSENT ORDER, Discover shall submit to the FDIC Regional Director, the CFPB Assistant Director of the Office of Enforcement, and the CFPB Regional Director for review and non-objection the proposed text of the letters that will be sent to Eligible Consumers regarding Restitution Amounts in the form of

account credits or restitution checks. Such letters shall include language explaining the reason Discover is crediting an Account or sending a restitution check, together with an explanation of the manner in which the amount of restitution was calculated, and shall include a statement that the restitution payment is because of, and in accordance with, the terms of this JOINT CONSENT ORDER.

(ii) Upon receipt by Discover of the written non-objection of, or comments from, the FDIC Regional Director, the CFPB Assistant Director of the Office of Enforcement, and the CFPB Regional Director the letters described above shall be promptly mailed, incorporating the comments, if any, of the FDIC Regional Director and the CFPB Assistant Director of the Office of Enforcement, by United States Postal Service certified mail, address correction service requested. The envelopes shall contain no materials other than the approved letters, restitution checks, when appropriate, and any other materials reviewed and not objected to by the FDIC Regional Director, the CFPB Assistant Director of the Office of Enforcement, and the CFPB Regional Director. Discover shall make reasonable attempts to locate Eligible Consumers whose notification letter and/or restitution check is returned for any reason, including conducting a standard address search using the National Change of Address System. Discover shall promptly re-mail all returned letters and any restitution checks to corrected addresses, if any.

(i) Within 90 days from the effective date of this JOINT CONSENT ORDER, and every 30 days thereafter until completion of the restitution required by this JOINT CONSENT ORDER, Discover's "Audit and Risk Committee," or the equivalent Committee of the Board,

shall prepare and send to the FDIC Regional Director, the CFPB Assistant Director of the Office of Enforcement, and the CFPB Regional Director, a detailed written report that explains the processes and procedures by which Discover identified the Eligible Consumers and determined the applicable Restitution Amounts described above. The report shall also include the following: (i) total number of Eligible Consumers, (ii) names, contact, and account information of the Eligible Consumers, (iii) Restitution Amount and/or Additional Restitution to which each Eligible Consumer is entitled, (iv) total amount of Restitution Amounts and/or Additional Restitution to be paid, (v) Discover's procedures for contacting Eligible Consumers who no longer maintain an Account and (vi) number of Eligible Consumers for whom the Restitution Amount and/or Additional Restitution has yet to be determined.

(j) Within 30 days from the effective date of this JOINT CONSENT ORDER, Discover shall hire an independent auditor that is acceptable to the FDIC Regional Director, the CFPB Assistant Director of the Office of Enforcement, and the CFPB Regional Director to verify that Discover has accurately identified Eligible Consumers and the Restitution Amount and/or Additional Restitution with respect to whom restitution checks are to be issued or for whom Accounts are to be credited as required by this JOINT CONSENT ORDER. The independent auditor shall prepare a detailed written report of the processes and procedures by which Discover intends to make the restitution. Before Discover initiates the restitution process and within 90 days from the effective date of this JOINT CONSENT ORDER, the report described shall be submitted to the FDIC Regional Director, the CFPB Assistant Director of the Office of Enforcement, and the CFPB Regional Director for review, comment and non-objection. A detailed written report from the independent auditor describing the status of Discover's restitution distribution shall be submitted to the FDIC Regional Director, the CFPB Assistant Director of the Office of Enforcement, and the CFPB Regional Director for review, comment

and non-objection every 30 days thereafter until completion of the restitution required by this JOINT CONSENT ORDER.

JOINT ORDER TO PAY

IT IS FURTHER ORDERED that, by reason of the alleged violations of law and/or regulations, and after taking into account the CONSENT AGREEMENT, the appropriateness of the penalty with respect to the financial resources and good faith of Discover, the gravity of the conduct by Discover, the severity of the risks to or losses of consumers, the history of previous conduct by Discover, and such other matters as justice requires, pursuant to section 8(i)(2) of the FDI Act, 12 U.S.C. § 1818(i)(2) and section 1055(c) of the CFP Act, 12 U.S.C. § 5565(c): a civil money penalty of FOURTEEN MILLION UNITED STATES DOLLARS ($14,000,000.00) is assessed against Discover. Within fifteen (15) days of the effective date of this JOINT CONSENT ORDER, Discover shall pay such civil money penalty to the Treasury of the United States and to the Consumer Financial Civil Penalty Fund administered by the CFPB under section 1017(d) of the CFP Act, 12 U.S.C. § 5497(d), as directed by the FDIC and CFPB. Discover shall pay such civil money penalty itself, and is prohibited from seeking or accepting indemnification for such payment from any third party.

MISCELLANEOUS

The provisions of this JOINT CONSENT ORDER shall not bar, estop, or otherwise prevent the FDIC, the CFPB or any other federal or state agency or department from taking any other action against Discover.

This JOINT CONSENT ORDER shall be effective on the date of issuance.

The provisions of this JOINT CONSENT ORDER shall be binding upon Discover Bank, all institution-affiliated parties, as defined in section 3(u) of the FDI Act, 12 U.S.C. § 1813(u), and in connection with the Products as defined herein, all affiliates of Discover who are service

providers as defined in sections 1002(1) and (26) of the CFP Act, 12 U.S.C. §§ 5481(1) and (26), and any successors and assigns thereof.

Calculation of time limitations for compliance with the terms of this JOINT CONSENT ORDER shall be based on calendar days, unless otherwise noted.

The provisions of this JOINT CONSENT ORDER shall remain effective and enforceable except to the extent that, and until such time as, any provision has been modified, terminated, suspended, or set aside in writing by the FDIC and the CFPB.

Any violation of this JOINT CONSENT ORDER may result in the imposition by the CFPB of the maximum amount of civil money penalties allowed under section 1055(c) of the CFP Act, 12 U.S.C. § 5565(c).

The provisions of this JOINT CONSENT ORDER shall be enforceable by either the FDIC or the CFPB.

Issued Pursuant to Delegated Authority this 24th day of September, 2012.

By:

Sylvia H. Plunkett
Senior Deputy Director
Division of Depositor and Consumer Protection
Federal Deposit Insurance Corporation

Issued this 24th day of September, 2012.

By:

Richard Cordray
Director
Consumer Financial Protection Bureau