

NEW YORK STATE DEPARTMENT
OF FINANCIAL SERVICES

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In the Matter of

WELLS FARGO BANK, N.A.
ON BEHALF OF
WELLS FARGO FINANCIAL CREDIT
SERVICES OF NEW YORK, INC.

CONSENT ORDER

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This Consent Order is made and entered into by and between Wells Fargo Bank, N.A., a national banking association (“Wells Fargo Bank”), in its capacity as the current owner of certain New York accounts produced by Wells Fargo Financial Credit Services of New York, Inc. (“WFFCS”), and the New York State Department of Financial Services (the “Department”) to address various issues arising out of the Department’s 2005 and 2008 examinations of WFFCS.

I.

RECITALS

WHEREAS, in a 2005 examination of WFFCS, the Department found that WFFCS produced and Wells Fargo Financial Bank (“WFFB”), a former South Dakota chartered affiliate, acquired for its portfolio “Nowline Home Equity Lines of Credit” (hereinafter referred to as “Nowline Visa Platinum Credit Card Accounts”), that permitted New York borrowers to make retail credit card purchases that were secured by an interest in the borrower’s home. *See* N.Y. Personal Property Law § 413(11);

WHEREAS, in a 2008 examination of WFFCS, the Department found evidence that certain mortgage loan origination files contained altered and falsified New York borrowers’ income documents by inflating such borrowers’ income levels to facilitate

qualification for loans that such borrowers were not qualified to receive;

WHEREAS, the Department raised concerns that WFFCS charged New York borrowers loan discount fees to reduce the initial interest rates, but failed to give New York borrowers the discounted interest rates associated with such fees, and this failure deprived New York borrowers of the associated discounts in violation of Part 38.7(1) of the Banking Law;

WHEREAS, following the 2008 surrender of license by WFFCS, Wells Fargo Bank took ownership of the Nowline Visa Platinum Credit Card Accounts, previously produced by WFFCS for WFFB;

WHEREAS, on July 20, 2011, the Board of Governors of the Federal Reserve System (the “Board”) entered into a Cease and Desist Order and an Order of Assessment of Penalty (the “Orders”) against Wells Fargo & Company and Wells Fargo Financial, Inc., both registered bank holding companies engaged in “nonbank” lending operations, for violations of various federal and state lending laws that had been asserted as to certain conduct of now-closed loan production offices of Wells Fargo Financial, Inc., which had operated in certain areas of New York State. Specifically, the Orders addressed allegations that borrowers who were potentially eligible for prime interest rate loans were directed into loans at higher cost, subprime rates. The Orders also addressed allegations that sales personnel falsified information regarding borrowers’ income levels to facilitate the qualification of borrowers for loans, or for loan amounts, that such borrowers were not qualified to receive;

WHEREAS, there were, as of January 1, 2006 in total, 2155 Nowline Visa Platinum Credit Card Accounts opened for New York residents;

WHEREAS, Wells Fargo Bank is entering into this Consent Order in its capacity

as the owner of Nowline Visa Platinum Credit Card Accounts produced by WFFCS for WFFB;

NOW, THEREFORE, in light of the foregoing, the Department and Wells Fargo Bank, in its capacity as owner of Nowline Visa Platinum Credit Card Accounts, agree to the terms and conditions detailed below in Section II for Relief and Payments and Section III for Miscellaneous Terms and Conditions of this Consent Order, respectively.

II.

RELIEF AND PAYMENTS

1. Nowline Visa Platinum Credit Card Accounts:

(a) Release of Security Interest in Real Property: Within 90 days of the execution date of this Consent Order, Wells Fargo Bank, in its capacity as the owner of Nowline Visa Platinum Credit Card Accounts agrees to:

- (i) File the necessary documents to release any security interest it or any of its affiliates holds, or is held on its behalf or on behalf of any of its affiliates (i.e., real estate liens) in connection with, or relating to, any and all Nowline Visa Platinum Credit Card Accounts of New York borrowers secured by residential property located in New York;
- (ii) Take all necessary steps, including filing the proper documents, to ensure that any security interest it or any of its affiliates holds or is held on its behalf or on behalf of any of its affiliates in connection with, or relating to, any and all terminated Nowline Visa Platinum Credit Card Accounts of New York borrowers, secured by residential property located in New York, has been or will be released in accordance with New York State laws;

- (iii) Notify the borrowers of the release of the subject security interest and an option for currently open accounts to apply for a new home equity line of credit or a new account secured by real estate as a refinance of their NowLine account in compliance with applicable law. Such notification must explain that borrowers may forfeit reduced interest payments going forward if they refinance their loans, and it must otherwise be satisfactory to the Department and must provide borrowers with a minimum of 45 days to respond to the notice; and
- (iv) Establish a customer service response line dedicated to assisting customers with the notice described above regarding the release of the security interest and notify customers of such service.

(b) Interest Rate Reduction and Refund to Borrowers and Restitution: Wells Fargo Bank agrees to compensate the New York holders of Nowline Visa Platinum Credit Card Accounts, as outlined below, for interest collected in connection with, or related to, Nowline Visa Platinum Credit Card Accounts in excess of the applicable interest rate. Specifically, Wells Fargo Bank, in its capacity as owner of Nowline Visa Platinum Credit Card Accounts, agrees to:

- (i) Reduce the Annual Percentage Rate by 2% (200 basis points) for the remaining term of Nowline Visa Platinum Credit Card Accounts;
- (ii) Recalculate interest paid by New York borrowers in connection with, or related to, Nowline Visa Platinum Credit Card Accounts, from January 1, 2006 to the date such Accounts are paid off, or the

date the previously applicable annual interest rate was permanently reduced by 200 basis points, incorporating the 2% reduction by multiplying the New York borrowers' average daily balances by 2%, and refunding or crediting the difference in the interest rate to such borrowers. Wells Fargo Bank has advised the Department that this will result in approximately \$2,177,728 in restitution to New York borrowers for the years 2006 through December 31, 2014, plus an approximate future remedial relief with respect to the current Nowline Visa Platinum Credit Card Accounts (based on estimated run-off rates) totaling \$311,619 in reduced interest to the New York holders of such Accounts over the following five (5) years (2015 through 2019). The interest restitution provided for in the prior sentence may be reduced going forward to the extent that consumers elect to refinance their existing accounts in accordance with section 1(a)(iii) hereof; and

(c) Identification of Nowline Visa Platinum Credit Card Account Holders: Wells Fargo Bank, as owner of Nowline Visa Platinum Credit Card Accounts, shall adopt the following process of categorization to identify the New York holders of Nowline Visa Platinum Credit Card Accounts secured by residential property located in New York who are entitled to a refund of interest, as well as release of security interest in real property:

- (i) Nowline Visa Platinum Credit Card Accounts with outstanding balances on or after January 1, 2006 that were paid off, including pay-offs resulting from refinancing, judgment and/or secured creditor status in bankruptcy as referenced in Section 2 below,

prior to the effective date of this Consent Order. Such Accounts are deemed closed without balances as of the effective date of this Consent Order, but not including Accounts on which Wells Fargo Bank charged off or forgave a principal amount greater than the interest refund that would otherwise be due under this agreement, which will not be entitled to interest refund but will be entitled to release of security interests in real property.

- (ii) Closed Nowline Visa Platinum Credit Card Accounts with balances as of the effective date of this Consent Order.
- (iii) Open Nowline Visa Platinum Credit Card Accounts with balances on or after January 1, 2006.

2. Bankruptcy Accounts.

(a) Release of Secured Creditor Status in Bankruptcy. Wells Fargo Bank agrees to notify the bankruptcy trustee for all New York holders of Nowline Visa Platinum Credit Card Accounts secured by residential property located in New York currently in Chapter 7 and Chapter 13 bankruptcy for which Wells Fargo Bank is no longer a secured creditor.

(b) Repayment of Bankruptcy Proceeds. Wells Fargo Bank, as owner of Nowline Visa Platinum Credit Card Accounts, agrees to repay the Chapter 13 bankruptcy trustee for all New York holders of Nowline Visa Platinum Credit Card Accounts secured by residential property located in New York all monies it collected, as a secured creditor, with respect to such Accounts in bankruptcy, which Wells Fargo Bank has advised the Department to equal approximately \$58,399 as of December 31, 2014.

3. Loan Modification: Wells Fargo Bank agrees that any and all New York borrowers who are currently in default, foreclosure, or facing imminent default and whose mortgage application documents were altered or falsified as outlined in Section I of this Consent Order, may be reviewed for loan modifications under Wells Fargo Bank's available loan modification programs, whether or not such borrowers have already either filed claims, and/or received the required restitution.
4. Penalty: Wells Fargo Bank, as the owner of Nowline Visa Platinum Credit Card Accounts, agrees to pay a penalty of \$2,000,000.00 to the Department promptly after the effective date of this Consent Order to address the concerns and issues identified during the 2005 and 2008 examinations of WFFCS referred in Section I of this Consent Order.
5. Borrower Relief Reports: Wells Fargo Bank agrees to provide the Department with reports as requested to facilitate the identification of the borrowers entitled to relief and/or payment under the provisions of Section II of this Consent Order.
6. Compliance Reports: Wells Fargo Bank, as owner of Nowline Visa Platinum Credit Card Accounts, agrees to provide a compliance report to the Department within ninety (90) days of the date of the execution of this Consent Order identifying all the borrowers entitled to relief and/or payment and describing how Wells Fargo Bank has satisfied and complied with all the requirements of this Consent Order and provided the relief and/or payment under Section II of this Consent Order.
7. Compliance Progress Reports: Wells Fargo Bank, as owner of Nowline Visa Platinum Credit Card Accounts, agrees to provide the Department with a

report on a quarterly basis following the report in Paragraph 6 above until all the terms and requirements identified in Section II of this Consent Order have been fully met to the satisfaction of the Department. The Department may, in writing, and in its discretion, discontinue the requirement for such progress reports or modify the requirement.

III.

MISCELLANEOUS TERMS AND CONDITIONS

1. Wells Fargo Bank is entering into this Consent Order for the purpose of addressing the concerns and issues raised by the Department solely with respect to retail products previously offered by a state chartered affiliate of Wells Fargo Bank that no longer exists. Wells Fargo submits that, as a matter of federal law, it is subject to the exclusive visitorial authority of the Office of the Comptroller of the Currency as a federally chartered national bank, and does not submit to regulation of its activities by the Department except to the extent that such regulation is authorized or required by the terms of this Consent Order. Wells Fargo Bank acknowledges that the failure of Wells Fargo Bank to comply with any of the terms and conditions or requirements of this Consent Order may result in the Department taking further action against Wells Fargo Bank in its capacity as owner of Nowline Visa Platinum Credit Card Accounts.
2. The provisions of this Consent Order shall not bar, estop, or otherwise prevent the Superintendent, or any state, federal or local agency or department or any prosecutorial authority from taking any other action affecting Wells Fargo Bank, any of its affiliates, current or former owners, officers, directors, employees, agents, or insiders, or their respective successors or assigns.

3. No further action will be taken by the Department against Wells Fargo Bank for the specific violations cited on page 2 of this Consent Order, provided that Wells Fargo Bank complies with all the terms, conditions and requirements of this Consent Order to the Department's satisfaction. However, the Department may take action against Wells Fargo Bank for transactions or conduct that Wells Fargo Bank or its affiliates did not disclose to the Department in written materials or other information Wells Fargo Bank or any of its affiliates provided to the Department during the Department's 2005 and 2008 examinations, or in connection with this Consent Order.
4. This Consent Order may not be altered, modified or changed unless in writing signed by the Superintendent or his designee.
5. This Consent Order shall be enforceable and remain in effect unless stayed or terminated in writing by the Superintendent or his designee.
6. By executing this Consent Order, Wells Fargo Bank represents and warrants to the Department that it is authorized to enter into this Consent Order and has authorized and directed Assistant General Counsel, David V. Gorsche, to enter into this Consent Order on behalf of Wells Fargo Bank, waiving any and all rights to judicial review of this Consent Order or to challenge or contest the issuance, validity, effectiveness, terms, or enforceability of the provisions of this Consent Order.
7. All written communications to the Department regarding this Consent Order should be sent as follows

Attention:

Daniel Burstein
Executive Deputy Superintendent of Real Estate Finance
New York State Department of Financial Services
One State Street,

New York, New York 10004
Email: daniel.burstein@dfs.ny.gov

and

Rholda Ricketts
Deputy Superintendent of Banks
New York State Department of Financial Services
One State Street
New York, New York 10004
Email: rholda.ricketts@dfs.ny.gov

All written communications to Wells Fargo Bank and WFFCS regarding this Consent Order should be sent as follows:

Attention:

David V. Gorsche
Assistant General Counsel
Wells Fargo Bank, N.A.
Wells Fargo Law Department
MAC N0001-11B
800 Walnut Street
Des Moines, Iowa 50309
Email: david.gorsche@wellsfargo.com

8. The provisions of this Consent Order shall be binding on Wells Fargo Bank and its successors and assigns.
9. No promise, assurance, representation, or understanding other than those contained in this Consent Order has been made to induce any party to agree to the provisions of this Consent Order.
10. This Consent Order is not confidential; therefore, it shall be made available to the public.

IN WITNESS WHEREOF, the Department and Wells Fargo Bank have caused this Consent Order to be executed as of _____, 2015, which will be the effective date of this Consent Order.

By: _____
David V. Gorsche
Assistant General Counsel
Wells Fargo Bank, N.A.
on *behalf of Wells Fargo Financial Credit Services of New York, Inc.*

By: _____
Daniel Burstein
Executive Deputy Superintendent
of Real Estate Finance
New York State Department of Financial Services

Dated: _____, 2015