

In the Matter of

ADIRONDACK TRUST COMPANY

Respondent.

**CONSENT ORDER UNDER
NEW YORK BANKING LAW §§ 9-D and 39**

The New York State Department of Financial Services (“DFS” or the “Department”) and Adirondack Trust Company (“Adirondack” or the “Bank”) are willing to resolve the matters described herein without further proceedings.

WHEREAS, Adirondack is a New York State chartered banking institution that maintains twelve branch locations in Saratoga and Warren counties, and is supervised by the Department;

WHEREAS, Adirondack has approximately \$1.5 billion in assets and \$1.3 billion in deposits as of December 31, 2020;

WHEREAS, the Department conducted an investigation into Adirondack’s underwriting and pricing of retail installment contracts that the Bank purchased from automobile dealers (known as “indirect automobile loans”) during the time period of January 1, 2016 through October 31, 2017 (the “Relevant Time Period”);

WHEREAS, Adirondack is committed to taking action which will serve to combat systemic racism in the communities in which it operates;

NOW, THEREFORE, the Department and Adirondack are willing to resolve the matters cited herein in lieu of proceeding by notice and a hearing.

FACTUAL BACKGROUND

1. Consumers finance the purchase of an automobile either directly from a bank, credit union, or other lending company, or through indirect lending, where financing is provided through an automobile dealer partnered with a bank.

2. Throughout the Relevant Time Period, Adirondack engaged in indirect automobile lending, working in conjunction with automobile dealers to provide financing to automobile purchasers.

3. In connection with indirect automobile lending, automobile dealers collected prospective borrowers' information and submitted applications to Adirondack on behalf of those borrowers.

4. Adirondack typically provided automobile dealers with the terms by which the Bank agreed to immediately purchase loans from dealers. The Bank set specified minimum interest rates (the "Buy Rate") for approved applications.

5. The Buy Rate was determined by Adirondack using a proprietary underwriting and pricing model and was communicated to dealers. Adirondack's Buy Rate reflected the minimum interest rate at which the Bank would finance or purchase the loan from dealers.

6. Adirondack participated in the decisions to extend credit to consumers by taking responsibility for underwriting, setting the terms of credit by establishing the risk-based minimum interest rate for the loan, and communicating those terms to automobile dealers.

7. Throughout the Relevant Time Period, Adirondack maintained a specific policy that provided automobile dealers discretion to mark-up prospective borrowers' interest rates above the Bank's risk-based Buy Rate.

8. In each case, an automobile dealer's compensation was based on the difference in projected interest revenue between the Buy Rate and the actual interest rate assigned to the consumer. The difference between the Buy Rate and a consumer's interest rate on the retail installment contract is known as the "Dealer Markup."

9. During the Relevant Time Period, Adirondack maintained a policy which permitted Dealer Markups of up to 2.00%, at the dealer's sole discretion and not controlled by the adjustments for creditworthiness and other objective criteria already reflected in the Bank's risk-based Buy Rate.

10. Adirondack's contracts with automobile dealers explicitly provided that the Bank approves all finance charges (including the Dealer Markups) prior to purchasing indirect automobile loans from dealers.

11. The Bank influenced the credit decision by indicating to automobile dealers whether or not the Bank would purchase loans on the terms specified.

APPLICABLE LAW

12. New York's Fair Lending Law and the federal Equal Credit Opportunity Act ("ECOA") prohibit discrimination against protected class membership for the granting, withholding, extending, renewing of credit or in the fixing of interest rates, terms or conditions of any form of credit. N.Y. Exec. L. § 296-a(1)(b); 15 U.S.C. § 1691 *et seq.* Creditors are permitted to price loans differently based on objective differences in borrowers' creditworthiness, such as "current income, assets and prior credit history . . . as well as reference to any other relevant factually supportable data." N.Y. Exec. L. § 296-a(3). Adirondack is a "creditor" as the term is defined by the New York Executive Law. *Id.* § 292(22).

13. The Superintendent is authorized to enforce state and federal fair lending laws, *id.* § 296-a(3), N.Y. Banking L. 9-d, N.Y. Fin. Servs. L. § 408(a)(1)(B) and is empowered to promulgate rules and regulations to effectuate the purposes of the Fair Lending Law. N.Y. Exec. L. § 296-a(11).

FINDINGS OF FACT

14. The Department analyzed the Dealer Markups of the loans that Adirondack purchased during the Relevant Time Period.

15. Pursuant to law, the loans analyzed by the Department did not contain information on the race or national origin of borrowers. Rather, to evaluate any differences in the Dealer Markup, the Department assigned race and national origin probabilities to applicants, and utilized a proxy methodology that combines geography-based and name-based probabilities, based on public data published by the United States Census Bureau, to form a joint probability using the Bayesian Improved Surname Geocoding (“BISG”) method. The BISG proxy probability is a commonly accepted proxy probability method in the scientific or academic community and is used across multiple disciplines. It is known for being more accurate than other statistical methods for approximating the overall reported distribution of race and ethnicity. The joint race and national origin probabilities obtained through the BISG method were used by the Department to estimate any disparities in Dealer Markup on the basis of race or national origin.

Dealer Markup Disparity as to Minority Borrowers

16. The Department’s analysis revealed that, during the Relevant Time Period, the Bank charged borrowers identified as Black approximately 59 basis points (.59%) more in discretionary Dealer Markups than borrowers identified as non-Hispanic white.

17. Moreover, during the Relevant Time Period, the Bank charged borrowers identified

as Hispanic approximately 46 basis points (.46%) more in discretionary Dealer Markups than borrowers identified as non-Hispanic white.

18. The Department's analysis further revealed that, during the Relevant Time Period, the Bank charged borrowers identified as Asian approximately 30 basis points (.30%) more in discretionary Dealer Markups than borrowers identified as non-Hispanic white.

19. These disparities are statistically significant and not based on creditworthiness or other objective criteria related to borrower risk.

20. These disparities mean that borrowers identified as Black, Hispanic, and Asian paid higher markups than the average markup paid by borrowers identified as non-Hispanic white and were obligated to pay more in interest than borrowers identified as non-Hispanic white over the life of their loans.

21. Additionally, during the Relevant Time Period, the Bank's fair lending monitoring process failed to maintain adequate controls for the purpose of reviewing and uncovering whether discrimination on a prohibited basis occurred through the charging of Dealer Markups across its portfolio of retail installment contracts.

22. Although the Department did not find evidence of any intentional discrimination against applicants on the part of the Bank or its employees, the Bank's specific policies and practices of allowing automobile dealers to markup a consumer's interest rate without any justification on the basis of objective credit-related factors above the Bank's established risk-based Buy Rate resulted in a disparate impact on the basis of race and national origin that was not justified by legitimate business need. Such policies and practices continued throughout the Relevant Time Period.

Remediation and Cooperation

23. The Department recognizes Adirondack's substantial cooperation with its investigation, through timely and appropriate responses to request for information and the production of documents and data to the Department.

24. In its interactions with the Department concerning the violations at issue herein, Adirondack has demonstrated a continuing interest and commitment to addressing systemic racism in the communities it serves.

25. After reviewing its indirect automobile program, Adirondack identified the potential fair lending problems associated with the specific policies and procedures in place during the Relevant Time Period. Thereafter, Adirondack voluntarily discontinued its indirect automobile lending program as of November 1, 2017.

26. The Department has given appropriate weight to the cooperation and remediation efforts set forth herein in agreeing to the terms and remedies of this Consent Order.

Violations of Laws and Regulations

27. The Bank, in violation of New York Executive Law § 296-a, instituted discretionary Dealer Markup policies that resulted in disparate impacts that negatively affected members of racial and ethnic minority groups, without any justification.

28. The Bank's specific policies and practices were not justified by legitimate business need and constituted discrimination against applicants with respect to credit transactions on the

basis of race and national origin in violation of New York Executive Law § 296-a.

SETTLEMENT PROVISIONS

Restitution

29. The Bank shall provide restitution calculated on an individualized basis to all Eligible Impacted Borrowers, meaning each borrower who paid more in Dealer Markup than the average markup for non-Hispanic white borrowers and whom the Department has identified as having a BISG probability of being Asian or Pacific Islander, Black or African American, or Hispanic that is greater than the probability of being a member of any other class. The Bank shall distribute restitution according to formulas approved by DFS. All Eligible Impacted Borrowers shall also receive from the Bank a statement accompanying the check to the effect that: (1) as a result of the settlement with DFS concerning the Bank's indirect lending program, the Bank is paying restitution to the Eligible Impacted Borrower; (2) unless the Eligible Impacted Borrower's loan has been completely paid off, the Eligible Impacted Borrower should continue to make payments in a new amount set by the Bank pursuant to this settlement agreement to reflect a lower dealer markup; and (3) the Eligible Impacted Borrower may seek further information on the settlement from DFS, including at the website <https://www.dfs.ny.gov>.

30. As soon as practicable, but no later than thirty (30) days from the execution of this Consent Order, the Bank shall provide the Department with a list of Eligible Impacted Borrowers fitting the description of those entitled to restitution in Paragraph 29 above to be approved by the Department.

31. The Bank shall use all reasonable efforts, including use of Lexis or a similar service to determine the Eligible Impacted Borrower's last known address, to mail a check satisfying the amount of restitution determined by DFS and the Bank to each impacted borrower within four

months after the Department has approved the list of Eligible Impacted Borrowers pursuant to Paragraph 30.

32. For any payment to an Eligible Impacted Borrower that is returned as undeliverable, the Bank shall again attempt to determine the borrower's current address and re-send the payment or notice.

33. As soon as practicable, but no later than forty-five (45) days from the execution of this Consent Order, the Bank shall post for public access on its website the Consent Order, a set of agreed-upon Frequently Asked Questions ("FAQs") and answers concerning the restitution process and refund opportunity relating to this settlement. Those materials shall be printable and downloadable. The website containing information relating to this settlement will include instructions for submitting claims, either by phone, fax (if original documentation is required, with such documents to be mailed or submitted by electronic mail to the Bank at a specified address), or by mail or electronic mail, at the election of the borrower. The website must be directly accessible from the Bank's home page, and the Bank is prohibited from engaging in a practice that would cause the website containing information relating to this settlement to be excluded from organic internet searches. The website shall remain open and accessible through a period of one year from the date of the first publication. A borrower must submit a restitution claim pursuant to this Paragraph within one year of the publication date of the website containing information relating to this settlement to be eligible for any restitution.

34. When the Bank receives a request for a restitution claim, whether written or oral, as provided for in Paragraph 33, by claimants whose Bank loan was purchased from an automobile dealer during the Relevant Time Period but who were not previously identified as Eligible Impacted Borrowers pursuant to this Consent Order, the Bank shall, within ten (10) days of receipt

of such claim, complete a thorough investigation and inform the claimant of any action taken in response to the claim. For any claims for which the Bank cannot or does not determine that restitution is warranted, the Bank must, within fourteen (14) days of receipt of the claim, forward copies of all documents relating to the claim, any supporting documentation provided by the claimant, and all documents sufficient to show the results of the Bank's investigation, along with information sufficient to show the buy rate, contract rate, and dealer markup for the claimant's indirect auto loan, to the Department via email.

35. The Department will, within a reasonable time and, in a fair and equitable manner and as the Department deems appropriate, determine whether an Asian or Pacific Islander, Black or African American, or Hispanic claimant is entitled to restitution, and if so, in what amount. Upon request, the Bank will provide the Department with any additional information within the Bank's possession, custody, or control that will assist the Department in identifying whether restitution is due to the claimants and in what amount. When a determination of entitlement to restitution is made, the Department will instruct the Bank to disburse the funds in accordance with Paragraphs 31 and 32.

36. Following a period of one year from the first publication date of the website as set forth in Paragraph 33, the Bank shall submit to the Department a list of claims it has received, paid, or denied in connection with Paragraphs 34, along with a justification for its determinations thereof.

Monetary Penalty

37. The Bank shall pay a total civil monetary penalty pursuant to Banking Law § 9-d to the Department in the amount of two hundred seventy-five thousand dollars (\$275,000). The Bank shall pay the entire amount within ten (10) days of executing this Consent Order. The

payment shall be in the form of a wire transfer in accordance with instructions provided by DFS. The Bank shall make an additional fifty thousand dollar (\$50,000) contribution to local community development organizations to be approved by DFS.

38. The Bank agrees that it will not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax, directly or indirectly, for any portion of the civil monetary penalty paid pursuant to this Consent Order.

39. The Bank further agrees that it shall neither seek nor accept, directly or indirectly, reimbursement or indemnification with respect to payment of the penalty amount, including but not limited to payment made pursuant to any insurance policy.

Full and Complete Cooperation

40. The Bank commits and agrees that it will fully cooperate with the Department regarding all terms of this Consent Order.

Waiver of Rights

41. The parties understand and agree that no provision of this Consent Order is subject to review in any court or tribunal outside the Department.

Parties Bound by the Consent Order

42. This Consent Order is binding on the Department and the Bank, as well as any successors and assigns. This Consent Order does not bind any federal or other state agency or any law enforcement authority.

43. No further action will be taken by the Department against the Bank for the conduct set forth in this Consent Order, provided that the Bank fully complies with the terms of the Consent Order.

44. Notwithstanding any other provision in this Consent Order, however, the Department may undertake additional action against the Bank for transactions or conduct that was not disclosed in the written materials submitted to the Department in connection with this matter.

Breach of Consent Order

45. In the event that the Department believes any party to this Consent Order to be in material breach of the Consent Order, the Department will provide written notice to the party, and the party must, within ten (10) business days of receiving such notice, or on a later date if so determined in the Department's sole discretion, appear before the Department to demonstrate that no material breach has occurred or, to the extent pertinent, that the breach is not material or has been cured.

46. The parties understand and agree that any party's failure to make the required showing within the designated time period shall be presumptive evidence of that party's breach. Upon a finding that a breach of this Consent Order has occurred, the Department has all the remedies available to it under New York Banking and Financial Services Law and may use any evidence available to the Department in any ensuing hearings, notices, or orders.

Notices

47. All notices or communications regarding this Consent Order shall be sent to:

For the Department:

Laura E. Meehan
Senior Assistant Deputy Superintendent for Enforcement
New York State Department of Financial Services
One State Street
New York, New York 10004

Madeline W. Murphy
Assistant Deputy Superintendent for Enforcement
New York State Department of Financial Services
One Commerce Plaza
Albany, NY 12257

For Adirondack Trust Company:

Warren W. Traiger, Esq.
Senior Counsel
Buckley LLP
1133 Avenue of the Americas
Suite 3100
New York, NY 10036

Miscellaneous

48. Each provision of this Consent Order shall remain effective and enforceable against the Bank, its successors and assigns until stayed, modified, suspended, or terminated by the Department.

49. 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 the Consent Order.

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