



NEW YORK STATE  
DEPARTMENT OF FINANCIAL SERVICES  
ONE STATE STREET  
NEW YORK, NEW YORK 10004

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In the Matter of :

RHINEBECK BANK :

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**CONSENT ORDER**

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

WHEREAS, Rhinebeck is a New York State chartered banking institution that maintains fifteen branch locations in Dutchess, Ulster, and Orange counties, and is supervised by the Department;

WHEREAS, Rhinebeck has approximately \$1.13 billion in assets and \$1.10 billion in deposits as of December 31, 2021;

WHEREAS, the Department conducted an investigation into Rhinebeck’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, 2017, through December 31, 2021 (the “Relevant Time Period”);

WHEREAS, the Department’s investigation determined that, during the Relevant Time Period, the indirect automobile loans purchased from the automobile dealerships by Rhinebeck charged Black, Hispanic, and Asian borrowers a higher average Dealer Markup<sup>1</sup> in certain testing periods during the Relevant Time Period than the average Dealer Markup for non-Hispanic white borrowers; and

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

NOW THEREFORE, to resolve this matter without further proceedings pursuant to the Superintendent’s authority under Sections 39 and 44 of the New York State Banking Law, the Department finds as follows:

### **THE DEPARTMENT’S FINDINGS**

#### **Introduction**

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 an indirect lender that will purchase the retail installment contract after the sale is consummated.
2. Rhinebeck engages in indirect automobile lending, working in conjunction with automobile dealers to provide financing to automobile purchasers.
3. In connection with this indirect automobile lending, automobile dealers collect prospective borrowers’ information and submit completed applications to Rhinebeck and/or

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<sup>1</sup> See Paragraph 8, below.

other lenders for approval. Rhinebeck has no direct interaction with the applicants during this process.

4. Rhinebeck provides automobile dealers with the terms by which the Bank will agree to immediately purchase loans from dealers. The Bank sets a specified risk-based interest rate (the “Buy Rate”) for approved applications.

5. Rhinebeck determines the Buy Rate by using a proprietary underwriting and pricing model, and that rate is communicated to dealers. Rhinebeck’s Buy Rate reflects the minimum interest rate at which the Bank will purchase the loan from a dealer.

6. Rhinebeck thus participates in the decisions to extend credit to consumers by taking responsibility for underwriting the loans, setting the terms of credit by establishing the Buy Rate for the loan, and communicating those terms to automobile dealers.

7. Although Rhinebeck sets a minimum Buy Rate, the Bank maintains a policy that provides automobile dealers with the discretion to markup prospective borrowers’ interest rates above the Bank’s Buy Rate.

8. An automobile dealer’s compensation on the loan is 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. Between January 1, 2017, and December 15, 2020, Rhinebeck maintained a general policy that permitted Dealer Markup of 2.5% on loans up to 66 months, 2% on loans 67 to 75 months and 1.5% on loans 76 to 84 months at the dealer’s sole discretion.<sup>2</sup> Thereafter, Rhinebeck implemented a new policy that imposed a maximum Dealer Markup of up to 2% for

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<sup>2</sup> However, the Bank did permit a small number of automobile dealers to impose a Dealer Markup of up to 3% during this time.

retail installment contracts with terms of up to seventy-two (72) months and 1.5% for retail installment contracts with terms of seventy-three (73) to eighty-four (84) months.

10. Dealer Markups are based on the dealer’s discretion and are not controlled by adjustments for creditworthiness and other objective criteria, which are already reflected in the Bank’s Buy Rate.

#### Applicable Law

11. 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).

12. Rhinebeck 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).

#### Events at Issue

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

15. 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 and 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 within a given set of names.

16. The joint race and national origin probabilities obtained through the BISG methodology were used by the Department to identify any statistically significant disparities in Dealer Markup on the basis of race or national origin.

*Dealer Markup Disparity as to Minority Borrowers*

17. The Department’s analysis revealed that, during various periods within the Relevant Time Period, Black, Hispanic, and Asian borrowers, on average, paid more in discretionary Dealer Markups than non-Hispanic white borrowers, at the following, statistically significant, rates:

a. Between January 1, 2017 and September 30, 2018, Hispanic borrowers were charged approximately 33 basis points (0.33%) more in discretionary Dealer Markups than non-Hispanic white borrowers.

b. Between October 1, 2018 and August 31, 2020, Hispanic borrowers were charged approximately 32 basis points (0.32%) more in discretionary Dealer Markups than non-Hispanic white borrowers.

c. Between September 1, 2020 and December 31, 2021, Hispanic borrowers were charged approximately 21 basis points (0.21%) more in discretionary Dealer Markups than non-Hispanic white borrowers.

d. Between January 1, 2017 and September 30, 2018, Black or African American borrowers were charged approximately 39 basis points (0.39%) more in discretionary Dealer Markups than non-Hispanic white borrowers.

e. Between October 1, 2018 and August 31, 2020, Black or African American borrowers were charged approximately 31 basis points (0.31%) more in discretionary Dealer Markups than non-Hispanic white borrowers.

f. Between October 1, 2018 and August 31, 2020, Asian borrowers were charged approximately 15 basis points (0.15%) more in discretionary Dealer Markups than non-Hispanic white borrowers.

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

19. Although the Department did not find evidence of any intentional discrimination on the part of the Bank or its employees, the Bank's specific policies and practices allowed automobile dealers to markup a consumer's interest rate above the Bank's established Buy Rate, which resulted in a disparate impact on the basis of race and national origin.

20. Moreover, prior to 2020, the Bank did not monitor for differences in average Dealer Markup by prohibited basis group across its portfolio of retail installment contracts.

#### Violations of Law and Regulations

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

NOW THEREFORE, to resolve this matter without further proceedings, the Department and the Bank stipulate and agree to the following terms and conditions:

## **SETTLEMENT PROVISIONS**

### Monetary Penalty

22. No later than ten (10) days after the Effective Date (as defined below) of this Consent Order, the Bank shall pay a total civil monetary penalty pursuant to Banking Law § 44 to the Department in the amount of Nine Hundred Fifty Thousand Dollars and 00/100 Cents (\$950,000.00). The payment shall be in the form of a wire transfer in accordance with instructions provided by the Department.

23. The Bank shall not claim, assert, or apply for a tax deduction or tax credit with regard to any U.S. federal, state, or local tax, directly or indirectly, for any portion of the civil monetary penalty paid pursuant to this Consent Order.

24. The Bank 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.

25. In assessing a penalty for violations of New York Executive Law §296-a, the Department has taken into account factors that include, without limitation: the extent to which the Bank has cooperated with the Department in the investigation of such conduct, the gravity of the violations, and such other matters as justice and the public interest may require.

### Restitution

26. The Bank shall provide restitution to Eligible Impacted Borrowers. Eligible Impacted Borrowers shall mean a borrower residing in New York State at the time of their loan origination who paid more than the average markup for non-Hispanic white borrowers during the period January 1, 2017, through March 31, 2022, and who has been identified as being Black, Hispanic, or Asian either through a BISG probability determination or through a finding made

after a claim submitted pursuant to paragraphs 32 and 33 below.<sup>3</sup> The Bank shall distribute restitution according to formulas approved by the Department.

27. The Bank shall provide all Eligible Impacted Borrowers an electronic or paper statement with the delivery of the restitution payment stating, in sum or substance, that: (1) as a result of the settlement with the Department 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 paid off, the Eligible Impacted Borrower should continue to make payments as before; and (3) the Eligible Impacted Borrower may seek further information on the settlement from DFS, including at the website <https://www.dfs.ny.gov>.

28. As soon as practicable, but no later than thirty (30) days from the execution of this Consent Order, the Bank will provide the Department with a list of Eligible Impacted Borrowers fitting the description of those entitled to restitution in Paragraph 26.

29. The Bank shall use reasonable efforts, including last known address in the Bank's records and/or Lexis or a similar service, to determine the current address for all Eligible Impacted Borrowers who do not have active loans with Rhinebeck, and to mail a check satisfying the amount of restitution determined by DFS and the Bank to each such borrower within six months of the effective date of this Consent Order.

30. For any payment to an Eligible Impacted Borrower that is returned as undeliverable or not deposited within six months, the Bank shall conduct a reasonable search for a current address, through the use of Lexis or a similar service. Should the search show a more current address, the Bank shall re-send or re-issue, as appropriate, the check. Such checks must

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<sup>3</sup> The term Eligible Impacted Borrowers does not include any borrowers who defaulted on their loans or were determined to have engaged in fraud in connection with their loan.



be valid for six months after the date of mailing in the amount of the returned or undeposited check.

31. If an Eligible Impacted Borrower does not cash his or her check before the void date of the check, or the check is returned after the Bank has re-sent it as described in Paragraph 30, the Bank shall follow all applicable provisions of the New York State Abandoned Property Law, including all reporting, mailing, and remittance requirements.

32. 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 and 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 by phone, fax, mail or electronic mail, at the election of the borrower. If original documentation is required to submit a claim, the Bank shall specify a mailing address where originals must be mailed after electronically submitting a claim. 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.

33. To the extent the Bank receives a request for a restitution claim resulting from the publication notices set forth in Paragraph 32 by claimants who were not previously identified as Eligible Impacted Borrowers pursuant to this Consent Order, the Bank shall make a determination as to whether the claimant is eligible for restitution on the basis of being a potential member of a protected class who paid more in Dealer Markup between January 1,

2017, and March 31, 2022, than the average paid by non-Hispanic white borrower, subject to the Department's review. If the Bank determines that any such claimant is eligible for restitution in accordance with this Paragraph, the Bank shall provide restitution pursuant to the formula approved by the Department in accordance with Paragraph 26 of this Consent Order. 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. Following a period of one year from the date of the first publication date of the website as set forth in Paragraph 32, the Bank shall submit to the Department a list of claims it has received, paid, or denied in connection with Paragraphs 32 and 33, along with a justification for its determinations thereof.

#### Remediation

35. Within sixty (60) days of the Effective Date of this Consent Order, Rhinebeck shall provide the Department with a proposed compliance plan that conforms with the requirements of this Consent Order ("Compliance Plan").

36. The Department's approval of the Bank's proposed Compliance Plan will not be unreasonably withheld. The Bank shall not implement the proposed Compliance Plan until obtaining the approval of the Department.

37. The Compliance Plan shall include, but need not be limited to, the following measures:

- a. The Bank will update and submit an indirect automobile lending policy that limits Dealer Markup on retail installment contracts purchased by the Bank to basis point thresholds no more than the Bank's limits in effect since December 15, 2020.

b. The Bank will update and maintain general compliance management systems reasonably designed to ensure compliance with all applicable federal and state consumer financial protection laws, including ECOA, New York Executive Law § 296-a, and the Department's "Indirect Automobile Lending and Compliance with New York's Fair Lending Law Statute," issued on August 23, 2018.

c. With respect to monitoring Dealer Markup for compliance with the above-referenced laws and agency guidance, the Bank must, at a minimum:

i. Send annual notices to all dealers participating in the Bank's indirect automobile program on the date the notice is sent that (1) outlines the Bank's expectations with respect to compliance with federal and state fair lending laws, and (2) articulates the dealer's obligation to price retail installment contracts in a non-discriminatory manner ("Annual ECOA Notice");

ii. Conduct periodic, at least quarterly, portfolio-level assessments of the Bank's indirect automobile lending program designed to monitor for disparities based on race or ethnicity and provide restitution in accordance with the parameters set forth in the Compliance Plan; and

iii. Develop and implement a dealer escalation program that includes parameters for when a dealer will be shifted to a flat-fee model.

38. On an annual basis, beginning one (1) year after the Effective Date of this Consent Order, the Bank shall submit an affidavit of compliance with the terms of this Consent Order, including a report of any restitution provided to borrowers pursuant to the Compliance Plan, for a period of three (3) years commencing from the Effective Date of this Consent Order.

Full and Complete Cooperation

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

Further Action by the Department

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

41. 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.

Waiver of Rights

42. The Bank submits to the authority of the Superintendent to effectuate this Consent Order.

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

Parties Bound by the Consent Order

44. 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.

### Breach of Consent Order

45. In the event that the Department believes the Bank to be in material breach of the Consent Order, the Department will provide written notice to the Bank, and the Bank must, within ten (10) 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 Bank understands and agrees that its failure to make the required showing within the designated time period shall be presumptive evidence of the Bank's breach. Upon a finding that a breach of this Consent Order has occurred, the Department has all the remedies available to it under the New York Banking and Financial Services Laws, and any other applicable laws, 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:

Madeline W. Murphy  
Assistant Deputy Superintendent for Enforcement  
New York State Department of Financial Services  
One Commerce Plaza, 20<sup>th</sup> Floor  
Albany, New York 12257

#### For Rhinebeck Bank:

Karen E. Morgan-D'Amelio  
General Counsel & Chief Risk Officer  
Rhinebeck Bank  
2 Jefferson Plaza  
Poughkeepsie, NY 12601

With copies to:

Gary Lax  
Partner  
Luse Gorman, PC  
5335 Wisconsin Avenue, NW  
Suite 780  
Washington, DC 20015

Andrea Mitchell  
Managing Partner  
Mitchell Sandler LLC  
1120 20<sup>th</sup> Street, NW  
Suite 725  
Washington, DC 20036

Miscellaneous

48. This Consent Order and any dispute thereunder shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.

49. This Consent Order may not be altered, modified, or changed unless in writing and signed by the parties hereto.

50. This Consent Order constitutes the entire agreement between the Department and the Bank and supersedes any prior communication, understanding, or agreement, whether written or oral, concerning the subject matter of this Consent Order, provided, however, that the Department may enter into a separate agreement with the Company to formally memorialize the terms of the Compliance Plan required by this Consent Order.

51. 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.

52. In the event that one or more provisions contained in this Consent Order shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Consent Order.

53. 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.

54. Nothing in this Consent Order shall be construed to prevent any consumer or any other third party from pursuing any right or remedy at law.

55. This Consent Order may be executed in one or more counterparts and shall become effective when such counterparts have been signed by each of the parties hereto (the “Effective Date”).

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IN WITNESS WHEREOF, the parties have caused this Consent Order to be signed on the dates set forth below.

**NEW YORK STATE DEPARTMENT OF FINANCIAL SERVICES**

**RHINEBECK BANK**

By: /s/ Madeline W. Murphy  
MADELINE W. MURPHY  
Assistant Deputy Superintendent  
Consumer Protection and Financial  
Enforcement

October 4, 2022

By: /s/ Michael J. Quinn  
Michael J. Quinn  
President & Chief Executive  
Officer

September 23, 2022

By: /s/ Christopher B. Mulvihill  
CHRISTOPHER B. MULVIHILL  
Deputy Superintendent for  
Consumer Protection and Financial  
Enforcement

October 4, 2022

By: /s/ Kevin R. Puvalowski  
KEVIN R. PUVALOWSKI  
Acting Executive Deputy Superintendent for  
Consumer Protection and Financial  
Enforcement

October 5, 2022

**THE FOREGOING IS HEREBY APPROVED. IT IS SO ORDERED.**

/s/ Adrienne A. Harris  
ADRIENNE A. HARRIS  
Superintendent of Financial Services

October 5, 2022