

OCC Issues Consent Order against Citizens Bank for Deposit Reconciliation Practices

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The Office of the Comptroller of the Currency (“OCC”) has entered into a consent order with Citizens Bank, National Association (the “Bank”), finding that the Bank’s deposit reconciliation practices constituted unfair and deceptive practices under the Federal Trade Commission Act. The OCC’s action appears to be the first of its kind by a regulatory agency against a financial institution for deception in reconciling deposits.

From January 2008 through November 2013, it was the Bank’s policy to reconcile discrepancies between the number of funds deposited by a customer and the amount written on the customer’s deposit slip if the discrepancy was above a certain threshold. From January 2008 to September 2012, the Bank only looked into discrepancies greater than \$50. From September 2012 to November 2013, the Bank only looked into discrepancies greater than \$25.

The Bank’s employees, however, did not consistently follow the Bank’s own policy. Instead of reconciling and correcting discrepancies above the set threshold, Bank employees often determined that the amount encoded from deposit slips was controlling, regardless of the amount of the discrepancy. To the extent the amounts encoded from these deposit slips differed from the amounts actually deposited, customers received the deposit slip amount, which may have been more or less than the amounts actually deposited. The Bank did not notify the affected customers of the discrepancy or any adjustments. In addition, the Bank’s deposit account agreements did not accurately describe the Bank’s processes for resolving deposit discrepancies and how resulting adjustments to accounts were made.

As a result of the Consent Order, the Bank will make full reimbursement to all eligible customers that were under-credited on deposits (those over-credited will keep the difference). The violations also resulted in a \$10 million civil money penalty assessed against the Bank, and the requirement to implement a comprehensive action plan to comply with the Consent Order. It is important to note that, in addition to the amount of the civil penalty and the required reimbursements, the expense associated with retaining the required independent consultant to conduct the “look back” that will determine the amount of the reimbursements can rival the other penalties to the institution arising from this incident.

In light of the OCC’s Consent Order, financial institutions should review their deposit reconciliation practices and ensure that the institution is properly following and disclosing those practices to its customers.

If you have any questions regarding the Consent Order or deposit reconciliation practices in general, please feel free to contact Joseph D. Simon at 516-357-3710 or via email at jsimon@cullenanddykman.com, Kevin Patterson at 516-296-9196 or via email at kpatterson@cullenanddykman.com, or Diana R. Acosta at 516-357-3739 or via email at dacosta@cullenanddykman.com.

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