

ATTORNEY GENERAL OF THE STATE OF NEW YORK
BUREAU OF CONSUMER FRAUDS AND PROTECTION

In the Matter of

COLUMBUS BANK AND TRUST COMPANY
and COMPUCREDIT CORPORATION

**ASSURANCE OF DISCONTINUANCE
PURSUANT TO EXECUTIVE LAW
SECTION 63, SUBDIVISION 15**

Pursuant to the provisions of Executive Law § 63(12), General Business Law (“GBL”) Articles 22-A and 29-H, and Personal Property Law Article 10, ELIOT SPITZER, Attorney General of the State of New York, caused an inquiry to be made into certain business practices of COLUMBUS BANK and TRUST COMPANY (“CB&T”) and COMPUCREDIT CORPORATION (“CompuCredit”) (collectively “Respondents”). As a result of such inquiry, the Office of the Attorney General (“OAG”) has determined as follows:

FINDINGS

Parties

1. CB&T is a Georgia corporation with a principal place of business located in Columbus, Georgia. In the ordinary course of business, CB&T enters into open end credit agreements with consumers throughout the United States, including the State of New York.
2. CompuCredit is a Georgia corporation with a principal place of business located in Atlanta, Georgia. CompuCredit provides origination, marketing, servicing and collection services to consumer financial service providers throughout the United States. CompuCredit

provides origination, marketing, servicing and collection services for CB&T.

3. CB&T is a principal creditor and CompuCredit is an agent of a principal creditor. Accordingly, they are subject to New York's Debt Collection Practices Law, GBL Article 29-A.

Aspire Program

4. Pursuant to an Affinity Agreement, CB&T issues credit cards for which CompuCredit provides marketing, customer service and collections.

5. Since at least January 1, 2000, Respondents have offered "Aspire" unsecured credit cards to consumers in New York. The Aspire credit cards are designed for consumers who, due to events in their credit history, generally do not qualify for credit under traditional underwriting guidelines and principles. This group of consumers is commonly referred to as the "sub-prime credit market."

6. Respondents offer two distinct Aspire credit card programs: the "Little Rock" program and the "Core" program. The Little Rock program is designed for consumers with extremely low credit scores. Consumers who qualify for the Little Rock program receive an initial credit line of \$300. This credit line is immediately reduced upon activation of the account by \$179 in "account opening" and "annual" fees. The Core account is designed for consumers with slightly better credit scores. Core consumers typically receive a credit line of approximately \$1,800. However, only 50 percent of the credit limit is actually available to account holders for the first four months after activation of the card. Core account holders are charged higher annual percentage rates for their purchases and cash advances than Little Rock account holders, but are generally not charged fees to open their accounts.

Little Rock Solicitations

7. Respondents have marketed their Little Rock accounts with solicitations boldly proclaiming that there is “NO APPLICATION FEE” and “NO DEPOSIT FEE” charged to the account holder.

8. In fact, Respondents charge Little Rock cardholders the highest fees associated with opening an account in the sub-prime credit card industry. Specifically, Respondents charge a \$29 “account opening fee” and a \$150 “annual fee” upon activation of a Little Rock account. These fees are described in the account holder agreements as consideration for “the privilege of an account” and “the use of your card and access to all Card benefits. . .” Respondents require Little Rock consumers to pay \$20 towards these fees before and as a condition of activating their account.

Little Rock Billing

9. Respondents repeatedly and persistently attempt to collect payments from Little Rock consumers who have not consummated a credit card agreement by making purchases or obtaining cash advances with the card. Respondents send billing statements to consumers at or about the same time that consumers receive their credit card, which reflect a balance of at least \$179, with a minimum monthly payment payable on the due date. In fact, because New York Little Rock consumers have not used the card to make purchases or cash advances, pursuant to New York Personal Property Law (“PPL”) § 413, they are not legally obligated to make payments on the account.

10. By sending New York Little Rock consumers who have not yet used the credit card a bill reflecting a \$179 balance with a statement advising that a payment is due by a date

certain, Respondents repeatedly and persistently mislead consumers to believe that they are legally obligated to make a payment. As a result, New York Little Rock consumers, many of whom apply for the card to improve their credit rating, often make the requested payment out of the mistaken fear that failure to do so will further harm their credit rating.

Core Solicitations

11. Respondents' solicitations for the Core program proclaim boldly that the consumers have been approved for a "generous" credit limit in a specified amount, typically \$1,800. In fact, however, Respondents allow consumers access to only half of the credit line for the first four months after activation. Respondents do not disclose this material limitation in the text of the solicitation or in proximity to the credit line disclosures, but rather hide the feature in a footnote on the bottom of the page.

12. In addition, Respondents repeatedly and persistently fail to disclose that they place a hold on the consumer's credit line for several days after receiving payment on the account, and that consumers are prevented from accessing portions of their credit line during this period.

Third Party Membership Programs

13. Respondents repeatedly and persistently enroll account holders in "third party membership programs," such as "Buyer's Edge," without the consumer's knowledge or authorization. Pursuant to a contract with the company that offers these programs, Respondents share in the profits generated by enrollment of cardholders in the programs.

14. In addition, Respondents repeatedly and persistently bill account holders for third party membership programs that were renewed without the account holder's knowledge or authorization.

Credit Card Servicing

15. Respondents impose significant obstacles on consumers who attempt to contact Respondents' customer service department. Respondents often keep consumers on hold for unreasonable lengths of time and do not permit consumers to reach a live person. Consumers are repeatedly disconnected when a live person finally picks up the phone.

16. Further, at least until September 2005, Respondents denied some cardholders whose accounts were delinquent access to a live customer service representative. When such cardholders call customer service, their calls were automatically re-routed to Respondents' collection department.

Collection Practices

17. Respondents repeatedly and persistently engage in the following collection practices: disclosing personal credit card information to third parties; harassing cardholders by contacting them multiple times per day; harassing cardholders by repeatedly calling them at work, even after being instructed not to do so; harassing cardholders by leaving messages for them with neighbors; yelling at cardholders, talking to them in a disparaging manner and hanging up on them; and communicating directly with cardholders after being advised that they are represented by an attorney.

18. The acts and practices described in paragraphs 4 through 17 violate Executive Law § 63(12), GBL §§ 349 and 601 and PPL § 413.

AGREEMENT

IT NOW APPEARING THAT Respondents desire to settle and resolve the investigation without admitting or denying the OAG's findings, the OAG and Respondents hereby enter into

this Assurance of Discontinuance, pursuant to Executive Law § 63(15), and agree as follows:

1. This Assurance of Discontinuance shall apply to Respondents, whether acting through their principals, directors, officers, shareholders, employees, representatives, agents, assigns, successors, or other business entities whose acts, practices or policies are formulated or directed by Respondents.

2. Respondents shall not engage in any deceptive, fraudulent or illegal business acts or practices concerning the Aspire Visa Program or any other credit card program in violation of Executive Law § 63(12), General Business Law Articles 22-A and 29-H, and Personal Property Law Article 10, including, but not limited to the acts and practices set forth in paragraphs 4 through 17 above.

Practices Relating to Credit Card Solicitations and Disclosures

3. Respondents shall not promote any credit card to New York residents as having no “application fees” if, in fact, the consumer will be charged a fee for applying for, activating, and/or receiving the credit card, or for opening the account.

4. Respondents shall not promote a credit card to New York residents as having no “deposit fees” if, in fact, consumers will be required to make an advance payment toward their future balance before using the credit card.

5. Respondents shall:

(A) prominently disclose to New York residents any limitation on access to the account holder’s full credit line, in close proximity to and in equal prominence with any statement Respondents make with respect to the account holder’s expected or actual credit limit; and

- (B) prominently disclose, in any offer for a credit card to New York residents, the amount of credit that will be available to the account holder upon activation and opening of the account after any “account opening,” “annual,” “processing,” “application,” “activation” or other similar fees are applied to the account balance.

6. Respondents shall prominently disclose to New York residents in both the “Your Credit Line” and “Application of Payments” (or similarly titled) sections of the account holder agreement whether Respondents may restrict the account holder from accessing any portion of his or her credit limit while Respondents wait for the account holder’s payment to clear, and the maximum length of time before Respondents will apply the account holder’s payment to the available credit line. Respondents shall comply with all such time periods in applying payments made by account holders.

Practices Relating to Credit Card Billing and Charges

7. Respondents shall not, in violation of PPL § 413, attempt to collect payments from New York consumers before the consumers have consummated their credit agreement under New York law by using the credit card to make a purchase or cash advance.

8. Respondents shall not misrepresent to any New York consumer who has not consummated a credit agreement that the consumer is legally obligated for fees charged to the account, or that failure to pay such fees could affect the consumer’s credit rating.

Practices Relating to Third Party Membership Programs

9. Respondents shall not bill to New York account holders fees (including renewal fees) for third party membership programs without the account holders’ knowledge and express consent. Respondents shall:

- (A) within 60 days of execution of this Assurance, clearly and conspicuously disclose in all periodic monthly statements sent to account holders who are enrolled in a third party membership program the name and contact information (including a toll free telephone number) of the third party membership provider, and include a statement advising cardholders in advance of the expiration of any time in which they may cancel the program without cost;
- (B) prominently disclose in the fulfillment materials sent to any account holder the deadline, if any, by which the account holder can cancel or opt out of a program without cost;
- (C) package fulfillment materials and renewal notices in a manner that clearly identifies the third party service provider and its affiliation with the Aspire Visa Program, or any other program offered by or through the Respondents, in which the consumer is enrolled;
- (D) clearly describe in the fulfillment materials the benefits and costs of the program; and
- (E) permit those account holders who enroll in a third party membership program that is not offered on a monthly basis to cancel the program at any time and to receive a pro rata refund of any fees paid.

Practices Relating to Debt Collection

10. Respondents shall not engage in any debt collection practices that violate New York or federal law or otherwise can reasonably be expected to abuse or harass New York cardholders, including but not limited to:

- (A) disclosing information about the cardholder's debt to third parties;
- (B) making telephone contact with a cardholder or any individual or leaving a recorded voice message on any answering machine or other recording device that Respondents reach at the cardholder's residence or place of employment, for the purpose of collecting a payment, more than once per day, unless the cardholder or some other individual affirmatively requests that Respondents attempt to contact the cardholder again within that time period; provided that if the individual is not the cardholder, Respondents may attempt to make a second telephone contact with the cardholder during that day;
- (C) attempting to make telephone contact with a cardholder at his or her place of employment after the cardholder has requested that Respondents not do so;
- (D) leaving messages for the cardholder with neighbors or other third parties; and
- (E) yelling at or disparaging cardholders or intentionally hanging up on them.

Practices Relating to Customer Service

11. Respondents shall not prohibit any New York cardholder or class of New York cardholders from contacting a live person for customer service. In addition, Respondents shall monitor their customer service operation and automated call answering system and shall make reasonable efforts to insure that cardholders are provided with adequate access to customer service. For purposes of this Assurance of Discontinuance "adequate access to customer service" shall require, at a minimum, that:

- (A) consumers do not experience unreasonable delays in reaching a live person;
- (B) consumers are not disconnected from Respondents' automated call answering system while waiting for assistance;

- (C) consumers who leave a phone message with Respondents' customer service department receive a return phone call within 24 hours; and
- (D) consumers who call to inquire about closing their accounts are provided with accurate information about their account balance and clear instructions as to the steps they need to take to close the account.

Restitution

12. Because New York Little Rock cardholders were billed an account opening fee and an annual fee prior to having consummated their credit agreements under PPL § 413, Respondents shall, within 60 days of execution of this Assurance of Discontinuance:

- (A) credit to the account of every New York consumer who opened an Aspire "Little Rock" account and whose account has since been closed, the account opening fee and initial annual fee charged to the consumer and not previously credited, and refund any resulting credit balance; and
- (B) credit to the account of every New York consumer who opened an Aspire "Little Rock" account and whose account is open, the account opening fee and initial annual fee charged to the consumer and not previously credited.

13. Respondents shall, within 30 days of execution of this Assurance of Discontinuance, send the letter annexed as Attachment 1 to every New York consumer who was enrolled in a fee-based third party membership program on or after August 1, 2001 and who has not already received a credit or refund of all third party membership program fees incurred. The letter shall be delivered in an envelope that prominently states that the enclosed letter concerns important information regarding a New York State Attorney General Settlement. Respondents

shall, within 60 days of receiving a timely response to the letter required by this paragraph, provide a credit of all third party membership fees charged and not previously credited to all consumers who notify Respondents that they did not authorize their enrollment, have never used the Program, and, for those currently enrolled, do not wish to remain enrolled in the third party membership program. Consumers whose accounts have been closed will receive a refund of any resulting credit balance.

14. Respondents shall, within 120 days of notice of execution of this Assurance of Discontinuance, submit sworn affidavits by officers of Respondents demonstrating compliance with paragraphs 12 and 13 above.

Penalties and Costs

15. Respondents shall, within three business days of notice of entry of this Assurance of Discontinuance, pay by certified check, to the State of New York, a civil penalty in the sum of \$500,000 pursuant to GBL § 350-d;

16. Respondents shall, within three business days of notice of entry of this Assurance of Discontinuance, pay by certified check, to the State of New York, \$25,000 for the costs of the OAG's investigation.

17. Respondents shall deliver all payments pursuant to paragraphs "15" through "16" herein to the OAG, in care of Mark D. Fleischer, Assistant Attorney General at the New York State Department of Law, State Capitol, Bureau of Consumer Frauds and Protection, Justice Building, Room D-10, Albany, New York 12224 (or such other place as the OAG may designate).

Enforcement

18. Pursuant to Executive Law § 63(15), any violation of the terms of this Assurance of Discontinuance shall constitute *prima facie* proof of violation of the applicable law in any civil action or proceeding thereafter commenced by the OAG.

Notices and Change of Address

19. Any notices, statements or other written documents required by this Assurance of Discontinuance shall be provided by first-class mail to the intended recipient at the addresses set forth below, unless a different address is specified in writing by the party changing such address:

For The People of the State of New York:

ELIOT SPITZER
Attorney General of the State of New York
Consumer Frauds and Protection Bureau
The Capitol
Albany, New York 12224
ATTN: Mark D. Fleischer, Assistant Attorney General

For Respondents:

Stephen M. Colangelo, Esq.
Morrison & Foerster, LLP
2000 Pennsylvania Avenue, N.W.
Suite 5500
Washington, D.C. 20006-1888

H. Rodgin Cohen, Esq.
Sullivan & Cromwell LLP
125 Broad Street
New York, New York 10004-2498

Such notices, statements and documents shall be deemed to have been given upon mailing.

20. Respondents shall provide written notice to the OAG of any change in address

within ten days of such change.

MISCELLANEOUS PROVISIONS

1. Respondents will not transfer or assign the Affinity Agreement for the Aspire Program to any other entity, unless that entity agrees to be bound by the terms of this Assurance of Discontinuance. CompuCredit will not enter into any Affinity Agreement for a sub-prime credit card program with any entity affiliated with CB&T, unless that entity agrees to be bound by the terms of this Assurance.

2. Nothing in this Assurance of Discontinuance shall be construed to deprive any person of any right or remedy.

3. This Assurance of Discontinuance and any dispute related thereto shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

4. No failure or delay by the OAG in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies provided herein shall be cumulative.

5. This Assurance of Discontinuance concludes the investigation brought by the Attorney General and any action the OAG could commence against Respondents or any of its current corporate affiliates arising from or relating to the subject matter of the investigation, provided that nothing contained in this Assurance of Discontinuance shall be construed to cover claims of any type by any other state agency or claims that may be brought by the Attorney General to enforce Respondents' obligations arising from or relating to the provisions contained in this Assurance of Discontinuance. This Assurance of Discontinuance shall not prejudice,

waive or affect any claims, rights or remedies of the OAG with respect to any person or entity not a party hereto except for Respondents and their current corporate affiliates, all of which claims, rights and remedies are expressly reserved.

6. Respondents consent to the jurisdiction of the OAG in any proceeding or action to enforce this Assurance of Discontinuance.

7. Respondents enter into this Assurance of Discontinuance voluntarily and represent that no threats, offers or promises, or inducements of any kind have been made by the OAG or any member, officer, employee, agent or representative of the OAG to induce Respondents to enter into this Assurance of Discontinuance.

8. This Assurance of Discontinuance may be changed, amended or modified only by a writing signed by all parties hereto.

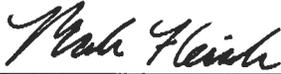
9. This Assurance of Discontinuance, together with its attachments, constitutes the entire agreement between the OAG and Respondents and supersedes any prior communication, understating or agreement, whether written or oral, concerning the subject matter of this Assurance of Discontinuance.

10. This Assurance of Discontinuance shall be effective and binding only when this Assurance is signed by all parties. This Assurance of Discontinuance may be executed in one or more counterparts, each of which shall be deemed an original but all of which together constitute one instrument.

WHEREFORE, the following signatures are affixed hereto this 30 day of June,
2006.

ELLIOT SPITZER
Attorney General of the State of New
York

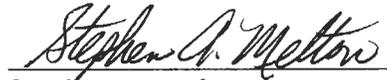
By:



Mark Fleischer
Assistant Attorney General
Bureau of Consumer Frauds and
Protection

**COLUMBUS BANK AND TRUST
COMPANY**

By:



Stephen A. Melton
President and CEO

COMPUCREDIT CORPORATION

By:

[Name]

[Title]

ATTACHMENT 1
(On Aspire Visa letterhead)

(Name and Address of Consumer)

IMPORTANT REFUND NOTIFICATION

Dear New York Consumer:

Pursuant to a settlement agreement with New York State Attorney General Eliot Spitzer, we have agreed to refund money to certain Aspire Visa cardholders who incurred fees relating to “third party membership programs,” that are occasionally offered to consumers in connection with their Aspire card application. These programs are typically offered as trial memberships. Some consumers have indicated that they were unaware that they were enrolling in these programs or that they would be subsequently billed for them.

You are receiving this notice because our records indicate that you incurred charges in the amount of (\$____) for enrolling in [and, if applicable, renewing your enrollment in] the (name of program).

If you have not used the products and services available through the program, and were not aware that you were enrolled in the program, you will receive a credit of all third party membership program fees incurred by returning a signed copy of this letter (with the information requested below) within 45 days to the address listed below. Alternatively, you can call toll free XXX-XXX-XXXX within 45 days of receiving this letter.

A credit will be applied to your account balance within 60 days, and any resulting credit balance will be refunded to you within 90 days. If you are currently enrolled in the (name of program), your enrollment will be cancelled within 45 days of the date of receipt of your return letter or call. If you wish to remain enrolled in (name of program) you do not need to do anything. However, you will not receive a credit.

If you have any questions about this process, please call the New York Attorney General at 1-800-771-7755.

Current full name: _____
Current mailing address: _____
Current telephone number: _____

I request that my membership charges be credited as described above and certify that I have not used the products and services available through this program and was not aware that I was enrolled in the program.

Signature

Send your return letter to: (ADDRESS)