

In the Matter of

FIRST PREMIER BANK

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

Pursuant to the provisions of Executive Law § 63(12), General Business Law ("GBL") Article 22-A, and Personal Property Law Article 10, ANDREW CUOMO, Attorney General of the State of New York, caused an inquiry to be made into certain business practices of FIRST PREMIER BANK ("First Premier"). As a result of such inquiry, the Attorney General has determined as follows:

FINDINGS OF THE ATTORNEY GENERAL

1. First Premier is a South Dakota corporation with a principal place of business located in Sioux Falls, South Dakota. In the ordinary course of business, First Premier enters into open end credit agreements with consumers throughout the United States, including the State of New York.

2. Since at least 1989, First Premier has offered unsecured credit cards to consumers in New York. Many of these 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 "subprime credit market."

3. First Premier's "subprime credit cards" typically provide consumers with a low credit limit - often less than \$300 - which is immediately reduced by the \$178 in various fees that are charged to the account upon issuance of the credit card. As a result, most First Premier cardholders have less than \$150 in available credit when they open their account and are dangerously close to their credit limit.

4. In addition to the up-front fees charged when the accounts are opened, First Premier also charges a \$72 "Participation Fee," which is periodically billed to the account at the rate of \$6 per month (the initial \$6 monthly Participation Fee is included in the up-front fees), and a \$25 Credit Limit Increase Fee whenever First Premier deems a cardholder eligible for and approves such an increase. Also, a \$48 "Annual Fee" is charged on the anniversary date of each account (the initial \$48 Annual Fee is included in the up-front fees). Cardholders who request an additional card, access their account on the Internet, make a payment through an auto draft service or request Express Delivery of their card are charged for these services fees in the amounts of \$20, \$3.95, \$11 and \$25, respectively.

5. First Premier also charges a \$25 Over Limit fee whenever a cardholder exceeds their credit limit during any billing cycle, charges a \$25 Late fee whenever cardholders fail to make their minimum monthly payment (which will include any Over Limit fee) on or before their due date, and increases significantly the annual percentage rate charged to consumers whenever the account becomes delinquent.

Solicitation Issues

6. The combination of the low credit limit and high initial balance resulting from the up-front fees charge to the accounts, recurring or periodic fees, and significant penalties for exceeding the credit limit or making late payments makes First Premier's subprime credit cards a risky - though potentially beneficial- product for low income consumers or those consumers seeking to rebuild their credit histories. Nevertheless, First Premier attempts to imbue its cards with the cache traditionally associated with elite credit cards. Thus, First Premier designates its credit cards as "Gold" or "Platinum" cards and markets them to these consumers in solicitations that highlight the "Gold Card Prestige" or "Gold Member Status." In contrast, First Premier's solicitations do not alert these consumers to the inherent risks associated with these credit cards,

or attempt to educate these consumers on how to properly manage their accounts to avoid default and improve their credit ratings.

7. In the past, First Premier marketed these subprime credit cards with solicitations boldly proclaiming that there would be "No Processing Fee" charged to the cardholder, despite the fact that First Premier charged \$178 in up-front fees as a condition of processing a consumer's application for a credit card. In November 2003, First Premier on its own initiative terminated this practice.

8. Also in the past, First Premier marketed these subprime credit cards with direct mail solicitations boldly proclaiming that the consumer has been pre-approved for a combined credit limit of up to \$2,000 (First Premier would market two cards in the same solicitation, each with a credit limit of up to \$1,000), despite the fact that few consumers received credit limits even approaching this amount, and most consumers received credit limits of \$300 or less. In December 2001, First Premier on its own initiative terminated this practice.

Billing Issues

9. First Premier sends billing statements to consumers approximately 7 to 10 days after consumers receive their credit card, which statements reflect a balance of at least \$178, with a minimum monthly payment payable on the due date reflected in the billing statement. In fact, because New York consumers have not used their card to make purchases or cash advances, they are not legally obligated to make payments on the account.

10. Sending New York consumers who may have not yet used the credit card a bill reflecting a \$178 balance with a statement that a payment is due by a date certain could have the effect of misleading consumers into believing that they are legally obligated to make a payment. As a result, New York consumers, many of whom apply for the card to improve their credit

rating, may make the requested payment out of the mistaken belief that failure to do so will further harm their credit rating.

Servicing Issues

11. **First Premier** charges cardholders a \$48 Annual Fee on each anniversary of the date on which their account was opened. For the many consumers who carry balances at or near their credit limit, the imposition of this Annual Fee is likely to result in the cardholders' exceeding their credit limit and incurring an Over Limit fee.

12. To alert customers to this possibility, First Premier includes a written notice in the billing statement sent immediately prior to the billing of the annual fee which provides as follows:

Your next statement will include the (\$ amount) annual fee. This amount could put your balance over limit resulting in an over-limit fee. To avoid that possibility, why not include the annual fee with your next payment? Refer to the other side for terms on renewing your account.

13. Since this notice only states that the upcoming annual fee could put the cardholder over limit and does not clearly state that the customer needs to pay their annual fee in order to avoid exceeding the credit limit during the following billing cycle, it is deemed to be an inadequate disclosure.

14. The foregoing acts and practices violate Executive Law § 63(12), GBL Article 22-A, and Personal Property Law Article 10.

AGREEMENT

IT NOW APPEARING THAT First Premier desires to settle and resolve the investigation without admitting or denying the Attorney General's findings, the Attorney General and First Premier hereby enter into this Assurance of Discontinuance, pursuant to Executive Law § 63(15), and agree as follows:

1. First Premier, its direct and indirect subsidiaries, affiliates, officers, directors, employees, agents, related entities, successors and assigns shall not engage in any deceptive, fraudulent or illegal business acts or practices concerning its subprime credit card business or any other credit card business, in violation of Executive Law § 63(12) or GBL Article 22-A, including, but not limited to the acts and practices set forth in paragraphs 2 through 13 below.

Practices Relating to Credit Card Solicitations and Disclosures

2. First Premier shall not promote a credit card as having no "processing fees" if, in fact, it charges consumers any fee for applying for, activating, and/or receiving the credit cards or opening credit card accounts.

3. First Premier shall not represent that cardholders have been pre-approved for or can receive a credit limit "up to" a specified amount that is not representative of the initial credit limit that most of its subprime consumers receive.

4. First Premier shall prominently disclose in any advertisement, solicitation or telephone sales presentation in which it offers a "Gold," "Silver," "Platinum" or similarly designated credit card, which provides most consumers with a credit limit under \$500 or requires up-front fees that leave the cardholder with less than \$300 in available credit when the account is opened (a) the up-front and periodic fees that will be charged to the account; (b) the initial available credit limit that most consumers receive, and (c) a statement informing the consumer that they need to carefully manage their account to avoid exceeding their credit limit and incurring additional charges.

Practices Relating to Opening, Activating and Billing Accounts

5. First Premier shall not attempt to collect payments from New York consumers before the consumers have consummated their credit agreements under New York law by using the credit cards to make purchases or cash advances.

6. First Premier shall not misrepresent to New York consumers who have not consummated their credit agreements that they are legally obligated for fees charged to their accounts or any portion thereof, or that failure to pay such fees could affect the consumers' credit ratings.

Restitution

7. First Premier shall, upon execution of this Assurance of Discontinuance, pay to the Attorney General's Office the sum of Four Million Five Hundred Thousand Dollars (\$4,500,000), which money shall be used, at the Attorney General's discretion, to pay refunds to consumers who file complaints against First Premier within 120 days of the execution of this Assurance of Discontinuance. Any money remaining after refunds are paid to such consumers shall be retained by the State of New York as costs for the Attorney General's investigation.

Penalties and Costs

8. First Premier shall, upon execution of this Assurance of Discontinuance, pay by certified check, to the State of New York, a civil penalty in the sum of \$100,000.00 pursuant to GBL § 350-d.

9. First Premier shall, upon execution of this Assurance of Discontinuance, pay by certified check, to the State of New York, \$5,000.00 for the costs of the Attorney General's investigation.

10. First Premier shall deliver all payments pursuant to paragraphs "7," "8" and "9" herein to Attorney General Andrew M. Cuomo, 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-1 0, Albany, New York 12224 (or such other place as he may designate).

Enforcement

11. 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 Attorney General.

Notices And Change Of Address

12. 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:

ANDREW M. CUOMO
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 First Premier:

J. Kevin Costley, Esq.
Lindquist & Vennum, P.L.L.P.
4200 IDS Center
80 South Eighth Street
Minneapolis, MN 554002

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

13. First Premier shall provide written notice to the Attorney General of any change in address within ten days of such change.

MISCELLANEOUS PROVISIONS

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

2. First Premier consents to the jurisdiction of the Attorney General in any proceeding or action to enforce this Assurance of Discontinuance.

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

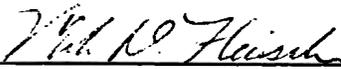
4. This Assurance of Discontinuance, together with its attachments, constitutes the entire agreement between the Attorney General and First Premier and supersedes any prior communication, understating or agreement, whether written or oral, concerning the subject matter of this Assurance of Discontinuance.

5. This Assurance of Discontinuance shall be effective and binding only when this Assurance is signed by all parties. This Assurance of Discontinuance maybe 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 23 day of July, 2007.

Andrew M. Cuomo, Attorney General
State of New York
The Capitol
Albany, New York 12224

**BUREAU OF CONSUMER FRAUDS
AND PROTECTION**

By: 
Mark D. Fleischer
Assistant Attorney General

FIRST PREMIER BANK

By: 