

ATTORNEY GENERAL OF THE STATE OF NEW YORK  
INTERNET BUREAU

IN THE MATTER OF

CITIBANK (SOUTH DAKOTA), N.A.

**ASSURANCE OF DISCONTINUANCE**

Pursuant to the provisions of Executive Law Section 63 subdivision 12 and the General Business Law ("G.B.L.") Article 22-A, ELIOT SPITZER, Attorney General of the State of New York (the "Attorney General"), caused an inquiry to be made into certain business practices of Citibank (South Dakota), N.A. ("Citibank" or the "Bank"), regarding online gambling activities carried on by third parties.

**ATTORNEY GENERAL'S FINDINGS**

As a result of such inquiry, the Attorney General finds:

**A. ONLINE GAMBLING: BACKGROUND**

1. It is estimated that in 2002, Americans will gamble more than \$4 billion over the Internet, the vast majority of it through credit cards. While all gambling has social costs, online gambling can have uniquely pernicious effects. For instance, individuals with gambling problems can wager privately in their own homes, without actual money or chips in hand – masking to some extent the destructive impacts of their behavior.

2. Indeed, a recent report published by the American Psychological Association found that of those gamblers among the surveyed population, the minority with online gambling

experience were substantially more prone to be classified by psychologists as "problem" or "pathological" gamblers. See Study: Internet Gambling Stakes are High, CNN.com/Health, March 17, 2002. That same report found that "[t]he availability of Internet gambling may draw individuals who seek out isolated and anonymous contexts for their gambling behaviors." Id.

3. Moreover, there is no effective way to prevent minors from gambling, whether with their own or with their parents' credit cards.

4. Other particularly pernicious effects of online gambling rest in its relative lack of regulation. Unlike casino gambling in the U.S., for instance, efforts to regulate online gambling have not been effective. No particular odds are required to be set, and few barriers against fraud exist.

5. Finally, and perhaps most destructive, online gamblers can -- and usually must -- gamble on credit. Such a gambler's credit card losses are limited not to what he possesses in hand, but rather to his entire line of credit, potentially on several different credit cards, and often incurring underlying interest charges.

**B. CITIBANK: BACKGROUND**

6. Citibank is a national bank that issues MasterCard and VISA credit cards ("bankcards") to consumers, including consumers with billing addresses in the State of New York.

7. The Bank has its principal place of business at 701 East 60<sup>th</sup> Street North, Sioux Falls, South Dakota. It is an affiliate of Citigroup Inc., a diversified financial holding company, which has Executive Offices located at 399 Park Avenue, New York, NY 10043.

8. The Bank is a member of both the Visa and MasterCard credit card associations, which are two competing associations of independent banks. The Bank participates in those

associations under the rules that they establish.

9. According to the January 2002 Nilson Report, in 2001 the Bank was the largest U.S. issuer of bankcards, with more than 33 million active bankcard accounts and with total receivables in excess of \$99.5 billion. The Bank has issued bankcards to several million cardholders with New York State billing addresses.

**C. VISA AND MASTERCARD'S COMPUTER "CODING" SYSTEMS**

10. For credit card transactions transmitted to Citibank through the Visa or MasterCard associations, the Bank generally either authorizes or declines transactions initiated by its cardholders at the time of sale. This process usually takes only a few seconds. If the Bank declines the transaction, the transaction is generally rejected by the merchant, also at the time of sale.

11. After the Bank authorizes a transaction and the transaction is completed, the respective card association debits the Bank, and credits the acquiring bank in the given situation for the amount of the authorized transaction. In essence, the Bank (like other issuing banks) extends credit to consumers by paying the merchant's acquiring bank, which in turn receives the payment on behalf of the merchant in question.

12. Visa and MasterCard do not prohibit online gambling merchants from accepting bankcards if the gambling activity is lawful in the place where the merchants do business. Visa and MasterCard have also adopted standards that require online gambling merchants to affix certain electronic codes to bankcard transactions that may involve payments for credits used in online gambling. Visa and MasterCard permit, but do not require, banks that issue bankcards to automatically refuse to authorize or "block" all charges bearing these codes.

13. Other U.S. issuing banks in the past two years have blocked transactions that are

coded by the VISA and MasterCard association merchants to indicate that a cardholder is engaging in transactions related to online gambling. Based upon discussions with the New York Attorney General's Office, the Bank has agreed to commence similar blocking.

**D. THE STATUS OF ONLINE GAMBLING**

14. Unauthorized betting and gambling are illegal in New York. N.Y. Gen. Oblig. Law § 5-401 states that “[a]ll wagers, bets or stakes, made to depend upon any race, or upon any gaming by lot or chance, or upon any lot, chance, casualty, or unknown or contingent event whatever, shall be unlawful.”

15. Likewise, the New York Constitution, art. I § 9 states, “no . . . bookmaking, or any other kind of gambling [with certain exceptions pertaining to lotteries and horseracing] shall hereafter be authorized or allowed within this state.”

16. In July 2001, the Second Circuit held in United States v. Cohen, 260 F.3d 68 (2d Cir. 2001), that 18 U.S.C. § 1084 can apply to a foreign offshore sports betting operation used by persons located in New York State.

17. Similarly, in People of the State of New York v. World Interactive Gaming Corp., 185 Misc. 2d 852 (Sup. Ct. N.Y. Co. 1999), the New York Supreme Court held that the State of New York could properly enjoin a gaming enterprise, legally licensed in another jurisdiction yet having a presence in New York State, from providing gambling to Internet users in New York, and recognized the “deep-rooted policy of the state against unauthorized gambling.”

18. In voluntary cooperation with the Attorney General, and as further set forth herein, the Bank has assured the Attorney General that commencing no later than sixty days after the Execution Date (as defined in Paragraph 42), it will block and decline authorizations for bankcard transactions that are coded and submitted to the Bank as online gambling transactions

consistent with, and pursuant to, then-standard VISA and MasterCard rules and procedures for posting to bankcard accounts that are marketed to consumers in the United States ("Agreed Blocking").

19. The Bank is voluntarily entering into this Assurance of Discontinuance without admitting to the Attorney General's findings or to any violation of law, and the Attorney General is willing to accept this Assurance of Discontinuance in lieu of commencing a statutory proceeding based on the activities described in Paragraphs 12 and 13 herein.

#### **STATEMENT OF RESPONDENT**

20. Citibank is in the business of extending credit to creditworthy consumers through general purpose credit cards. The Bank's agreements with its customers provide, among other things, that the cards are to be used for lawful purposes. The Bank does not supervise the purposes for which customers use their cards; customers determine the purposes for which they use their credit cards, just as they determine how to spend their cash. The Bank does not encourage its customers to use credit for gambling purposes, it does not promote gambling or gambling-related activities and it does not have agreements with Internet gambling casinos.

21. It is the Bank's further position that court decisions have repeatedly affirmed that a cardmember's use of a general purpose credit card in connection with gambling (including paying for electronic "chips" used in online gambling) does not mean that the credit card issuer is involved in gambling or the promotion of gambling, *e.g.*, *Cie v. Comdata Network*, 275 Ill. App.3d 759 (Ill. App. 1995), *appeal den.* 662 N.E.2d 423 (Ill. 1996); *In re MasterCard Int'l Inc.*, 132 F.Supp.2d 468 (E.D.La. 2001); *Jubelirer v. MasterCard Int'l Inc.*, 68 F.Supp.2d 1049 (W.D.Wis. 1999); *Reuter v. MasterCard Int'l* (4<sup>th</sup> Cir. Ill., Oct. 19, 2001).

22. Further, it is the Bank's position that the provision of a general purpose credit

card cannot be deemed the promotion or facilitation of gambling because the customer decides, with no involvement or encouragement by the issuer, to use a credit card in connection with gambling (including payment for electronic "chips" used in online gambling).

#### AGREEMENT

IT IS HEREBY UNDERSTOOD AND AGREED by and between the parties that:

23. This Assurance of Discontinuance ("Assurance") shall be binding on, and apply to Citibank, whether acting now or hereafter in its own capacity or through any other person or entity, including without limitation any Covered Person as defined in Paragraph 34 below, as well as any successors in interest. Notwithstanding any provision herein to the contrary, this Assurance shall not apply to any business activities conducted by a person or entity or persons or entities that hereafter own(s) or acquire(s) the capital stock or assets of the Bank unless such acquisition(s) result(s) in the divestiture by the Bank of all or substantially all of the credit card portfolios, capital stock or assets of the Bank. In that event, this Assurance shall apply only with respect to those business activities of the acquirer or acquirers that relate to the credit card assets acquired.

24. The Bank will institute and continue the Agreed Blocking, except as otherwise provided in this Assurance, commencing no later than sixty (60) days after the Execution Date. The Bank has no obligation to block or fail to honor any charge that is not coded and submitted to the Bank as an online gambling transaction consistent with, and pursuant to, then-standard Visa and MasterCard rules and procedures for posting to bankcard accounts that are marketed to consumers in the United States. The Bank makes no warranty that the Agreed Blocking will block such charges, nor does it warrant that the Agreed Blocking will block all charges on its U.S. bankcards that relate to online gambling.

25. The Bank agrees to pay, within fifteen (15) business days after the Execution Date, one hundred thousand dollars (\$100,000) to the New York State Department of Law, as and for costs of this investigation.

26. The Bank agrees to pay, no later than December 31, 2002, an aggregate amount of four hundred thousand dollars (\$400,000) into an escrow account held and administered by the Attorney General to be distributed to one or more not-for-profit organizations, each of which shall have been proposed by the Bank and approved by the Attorney General, that provide counseling to and/or improve the well-being of New York and other individuals and/or families who have been harmed by compulsive or problem gambling and/or that serve related or similar purposes and that do not have as a board member, an officer, director or employee of the Bank. The Bank will not base any claim for a tax deduction on any payment made pursuant to this Paragraph 26. The Bank may, at its option, make four separate equal payments to the Attorney General's escrow account for this purpose at any time prior to December 31, 2002.

27. Prior to and prerequisite to approval by the Attorney General, any such organization as described in Paragraph 26 must aver to the Attorney General that it shall utilize such distributions described in Paragraph 26 above over a period of time not to exceed five years for the express purpose of providing counseling to and/or improving the well-being of individuals and/or families who have been harmed by compulsive or problem gambling, and/or serving related or similar purposes; that the distribution shall be used only to fund activities that, but for the receipt of the distribution, would not be fully funded; if it uses its distribution to fund an activity that has previously been funded, that such distribution does not supplant existing funding. In appropriate circumstances, the Attorney General may waive one or more of the aforementioned provisions of this Paragraph 27.

28. Any formal public statement by the Bank or its affiliate organizations regarding the distribution described in Paragraphs 26 and 27, will reference that it is made pursuant to an agreement with the Attorney General.

29. Within one hundred and twenty (120) days of the Execution Date, the Bank shall provide to the Attorney General an affidavit completed by an officer of the Bank confirming that the Bank has instituted the Agreed Blocking, as described above.

30. Nothing contained in this Assurance shall be construed to limit, confer any rights upon, or otherwise affect the rights of any persons or entities who are not parties to this Assurance with respect to any of the matters contained herein.

31. The acceptance of this Assurance by the Attorney General of the State of New York shall not be deemed or construed as an approval by the Attorney General of any of the Bank's activities or practices, past or present, and the Bank will not make any representations to the contrary.

32. The aforementioned payments shall in no way foreclose and/or prohibit the Attorney General from taking action against the Bank for non-compliance with this Assurance.

33. Any agreement or forbearance on the part of the Attorney General, described herein, is conditioned upon the Bank's compliance with the conditions herein.

34. This Assurance: (a) constitutes a complete settlement and release by the Attorney General of all claims and causes of action that relate to or are based upon the processing, billing and/or collecting, prior to the Execution Date, of bankcard charges that were coded as online gambling transactions but which were not blocked by the Bank, which claims or causes of action were or could have been or (but for this Paragraph 34) could be asserted by the State of New York, whether through the Attorney General or otherwise, under any federal statutes or

regulations, statutes or regulations of the State of New York or any instrumentality or jurisdiction thereof, or New York common law, against the Bank, or any current or former parent, affiliate, subsidiary, predecessor, successor or assign or any of their respective employees, officers, agents (but specifically excluding MasterCard or VISA), or directors (collectively "Covered Persons"); and (b) resolves completely and finally the Attorney General's inquiry as to the Bank and all other Covered Persons into the matters released in clause (a) above.

35. Except as otherwise provided herein, the Bank will continue the Agreed Blocking for five (5) years. During and with respect to any period of time when the Agreed Blocking is in effect, the State of New York, whether through the Attorney General or otherwise, will not make any claim or institute any proceeding under federal statutes or regulations, statutes or regulations of the State of New York or any instrumentality or jurisdiction thereof, or New York common law, against the Bank or any other Covered Person regarding the processing, billing, and/or collecting of bankcard charges relating to online gambling transactions.

36. In the event that a federal or state law, rule, regulation, or judicial or administrative interpretation, including a regulation, interpretation, directive or instruction by the Office of the Comptroller of the Currency (collectively, "Law"), is or has been promulgated that poses a conflict with the parties entering into, or having entered into, this Assurance or the Bank's obligations hereunder, then the Bank's compliance with such Law shall not be deemed to be a violation of this Assurance. In any event, if a Law is or has been promulgated which the Bank has a good faith belief is inconsistent with the Agreed Blocking (or any other provision of this Assurance) such that the Bank cannot comply with the Agreed Blocking (or other provisions) without violating the Law, then compliance with the Law in lieu of the Agreed

Blocking (or other provisions) shall not be deemed a violation of this Assurance. To the extent that compliance with the Law will cause the Bank to discontinue the Agreed Blocking (or other provisions) with respect to bankcard transactions for consumers with New York billing addresses, the Bank shall inform the Attorney General as soon as practicable, but no later than fifteen (15) days prior to the date of compliance with the Law. In the event that the Attorney General does not agree with the Bank's position, then the Attorney General shall pursue the dispute resolution provisions of Paragraph 40.

37. In the event the Agreed Blocking becomes moot due to any Law, any change in technology or any other circumstances, the parties agree to negotiate in good faith to modify this Assurance to dispense with any unnecessary Agreed Blocking. In the event that such negotiation does not lead to a resolution, then the provisions of Paragraph 40 will apply.

#### **DISPUTES**

38. The Attorney General acknowledges that it is the position of the Bank and the Office of the Comptroller of the Currency ("OCC") that only the OCC may exercise visitorial powers over the Bank. The OCC has promulgated a regulation that provides in pertinent part:

"Only the OCC or an authorized representative of the OCC may exercise visitorial powers with respect to national banks . . . State officials may not exercise visitorial powers with respect to national banks, such as conducting examinations, inspecting or requiring the production of books or records of national banks, or prosecuting enforcement actions, except in limited circumstances authorized by federal law."

12 C.F.R. 7.4000 (a)(1). The OCC has advised the Bank that, in the OCC's view, the Attorney General does not have authority to require the Bank to enter into this Assurance, to examine or require reports concerning compliance with this Assurance, or to enforce any provisions of the Assurance against the Bank, since such actions would constitute an exercise of visitorial powers over a national bank that is prohibited under federal regulations. Accordingly, the parties

understand that the Bank may claim and/or argue that this Assurance is without force or effect; and/or that the power to supervise or enforce this Assurance resides solely with the OCC; and/or that the power to examine the Bank for compliance with any law also resides solely with the OCC. The Bank acknowledges that it remains the position of the Attorney General that the Attorney General, on behalf of the people of the State of New York, may contest the foregoing arguments, and may seek to enforce, as applicable, federal and state statutes, rules and regulations against the Bank. In addition, the parties understand that the Attorney General may seek to enforce the Assurance, and/or to seek to examine the Bank for compliance with this Assurance. The parties further understand that the Bank expressly reserves the right to respond in any such case by asserting its defenses as described above.

39. The Bank expressly disclaims and denies any wrongdoing whatsoever. Accordingly, this Assurance and all negotiations, statements, and proceedings in connection therewith shall not be construed as or deemed to be evidence of an admission or concession on the part of the Bank or any other Covered Person of any liability or wrongdoing by it, and shall not be offered or received in evidence in any action or proceeding, or used in any way, as an admission, concession or evidence of any liability or wrongdoing of any nature on the part of the Bank or any other Covered Person, and shall not be construed as, or deemed to be evidence of, an admission or concession that any person suffered any damage. Neither this Assurance nor any orders or documents contemplated herein or related hereto, nor any of the terms hereof or thereof, shall be offered or received in evidence as an admission of liability or wrongdoing on the part of the Bank or any other Covered Person.

40. In the event of a dispute relating to the Agreed Blocking or any other matter referenced herein, the parties will negotiate in good faith to resolve such dispute before initiating

any action or proceeding (including any inquiry by the Attorney General). To this end, each party to this Assurance agrees not to initiate any such action or proceeding against the other party without first: (i) furnishing written notice of the dispute to the other party's designated representative(s) identified in Paragraph 41 below at the addresses specified therein or such other addresses as may be designated by the other party; (ii) describing the nature of the dispute; (iii) allowing the party receiving the notice a period of fifteen (15) business days, or such additional time as may be agreed, to provide a written response to the notice; and (iv) if requested by the party receiving the notice, meeting with the recipient party to discuss the dispute and alternatives to the initiation of any such action or proceeding based on all of the circumstances.

#### **NOTICES**

41. All notices and other communications relating to this Assurance between the Attorney General and Citibank will be in writing and will be deemed to have been given when delivered in person to the applicable party's designated representative(s) at their addresses set forth below, or when received or refused if sent to such designated representative at their addresses set forth below by registered or certified mail with return receipt requested, or to such other representative or address as the parties shall designate by a notice sent in a like manner.

#### **Representatives of Citibank**

Att: General Counsel .....  
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#### **Representative of the Attorney General**

Chief, Internet Bureau .....  
State of New York Attorney General  
Department of Law  
120 Broadway, Third Floor  
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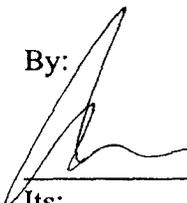
**EXECUTION**

42. This Assurance may be executed in counterparts. This Assurance shall take effect on the "Execution Date," which shall be June 21, 2002.

WHEREFORE, the following signatures are affixed hereto:

Citibank (South Dakota), N.A.

By:

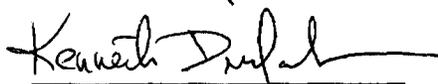


Its:

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