

# *Your* DEPOSIT ACCOUNT

- *Terms and Conditions*
- *Electronic Transfers*
- *Funds Availability*
- *Substitute Checks*
- *Truth in Savings*

**Metropolitan  
Commercial Bank**   
The **Entrepreneurial** Bank Since 1999

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# Terms and Conditions of Your Account

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## Agreement

This document, along with any other documents we give you pertaining to your account(s), is a contract (also referred to as “this agreement”) that establishes rules which control your account(s) with us. Please read this carefully and retain it for future reference. If you open the account (whether in-person, electronically, or by any other method permitted by us) or continue to use the account after receiving a notice of change or amendment, you agree to these rules. You will receive a separate schedule of rates, qualifying balances, and fees if they are not included in this agreement. If you have any questions, please ask us. This agreement applies to your consumer account. Consumer accounts may only be used for personal or household purposes. Notwithstanding the foregoing, certain trusts can own a consumer account, as long as the funds in the account are used solely for personal or household purposes, of natural persons. Certain protections described in this agreement apply only to consumer accounts. If we determine that an account or applicable transaction was not for personal or household purposes, we may treat such account or transaction as if it is a business account or transaction.

This agreement is subject to applicable federal laws, the laws of the state of New York and other applicable rules such as the operating letters of the Federal Reserve Banks and payment processing system rules (except to the extent that this agreement can and does vary such rules or laws). The body of state and federal law that governs our relationship with you, however, is too large and complex to be reproduced here. The purpose of this agreement is to:

- (1) summarize some laws that apply to common transactions;
- (2) establish rules to cover transactions or events which the law does not regulate;
- (3) establish rules for certain transactions or events which the law regulates but permits variation by agreement; and
- (4) give you disclosures of some of our policies to which you may be entitled or in which you may be interested.

If any provision of this agreement is found to be unenforceable according to its terms, all remaining provisions will continue in full force and effect. We may permit some variations from our standard agreement, but we must agree to any variation in writing either on the signature card for your account or in some other document, signed by one of our authorized representatives. Nothing in this agreement is intended to vary our duty to act in good faith and with ordinary care when required by law. This agreement sets forth the instances where a fee may be imposed, the current fees that are applicable to the Account are set forth in the most current schedule of Fees and Charges.

As used in this agreement the words “we,” “our,” and “us” mean the financial institution and the words “you” and “your” mean the account holder(s) and anyone else with the authority to deposit, withdraw, or exercise control over the funds in the account. There are provisions that may apply to persons who are only granted permission to view statements and account activity, the context of those provisions shall control. However, this agreement does not intend, and the terms “you” and “your” should not be interpreted, to expand an individual’s responsibility for an organization’s liability. “Business day” means the active banking days as designated by the Federal Reserve Bank of New York excluding Saturday, Sunday, and specified holidays. The headings in this agreement are for convenience or reference only and will not govern the interpretation of the provisions. Unless it would be inconsistent to do so, words and phrases used in this agreement should be construed so the singular includes the plural and the plural includes the singular.

## Liability

You agree, for yourself (and the person or entity you represent if you sign as a representative of another) to the terms of this account and the schedule of charges. You authorize us to deduct these charges, without notice to you, directly from the account balance as accrued. You will pay any additional reasonable charges for services you request which are not covered by this agreement.

Each of you also agrees to be jointly and severally (individually) liable for any account shortage resulting from charges or overdrafts, whether caused by you or another with access to this account. This liability is due immediately, and we can deduct any amounts deposited into the account and apply those amounts to the shortage. You have no right to defer payment of this liability, and you are liable regardless of whether you signed the item or benefited from the charge or overdraft.

You will be liable for our costs as well as for our reasonable attorneys’ fees, to the extent permitted by law, whether incurred as a result of collection or in any other dispute involving your account. This includes, but is not limited to, disputes between you and another joint owner; you and an authorized signer or similar party; or a third party claiming an interest in your account. This also includes any action that you or a third party takes regarding the account that causes us, in good faith, to seek the advice of an attorney, whether or not we become involved in the dispute. All costs and attorneys’ fees can be deducted from your account when they are incurred, without notice to you.

## Deposits

We will give only provisional credit until collection is final for any items, other than cash, we accept for deposit (including items drawn “on us”). Before settlement of any item becomes final, we act only as your agent, regardless of the form of indorsement or lack of indorsement on the item and even though we provide you provisional credit for the item. We may reverse any provisional credit for items that are not paid by the payor bank for any reason. Unless prohibited by law, we also reserve the right to charge back to your account the amount of any item deposited to your account or cashed for you which was initially paid by the payor bank and which is later returned to us due to an allegedly forged, unauthorized or missing indorsement, claim of alteration, encoding error, counterfeited or other problem which in our judgment justifies reversal of credit. You authorize us to attempt to collect previously returned items without giving you notice, and in attempting to collect we may permit the payor bank to hold an item beyond the midnight deadline. Actual credit for deposits of, or payable in, foreign currency will be at the exchange rate in effect on final collection in U.S. dollars. We are not responsible for transactions by mail or outside depository until we actually record them.

If you deliver a deposit to us and you will not be present when the deposit is counted, you must provide us an itemized list of the deposit (deposit slip). To process the deposit, we will verify and record the deposit and credit the deposit to the account. If there are any discrepancies between the amounts shown on the itemized list of the deposit and the amount we determine to be the actual deposit, we will notify you of the discrepancy. You will be entitled to credit only for the actual deposit as determined by us, regardless of what is stated on the itemized deposit slip. We will treat and record all transactions received after our “daily cutoff time” on a business day we are open, or received on a day we are not open for business, as if initiated on the next business day that we are open. At our option, we may take an item for collection rather than for deposit. Generally, we do not accept items endorsed by any party other than the payee of the item. If we accept a third-party check or draft, we will do so for deposit only (and you must endorse such item accordingly), and we may require any third-party endorsers to verify or guarantee their endorsements, or endorse in our presence.

## Withdrawals

**Important terms for accounts where more than one person can withdraw** - Unless clearly indicated otherwise on the account records, any of you, acting alone, who signs to open the account or has authority to make withdrawals may withdraw or transfer all or any part of the account balance at any time. Each of you (until we receive written notice to the contrary and have a reasonable time to act upon such notice) authorizes each other person who signs or has authority to make withdrawals to indorse any item payable to you or your order for deposit to this account or any other transaction with us.

**Postdated checks** - A postdated check is one which bears a date later than the date on which the check is written. We may properly pay and charge your account for a postdated check even though payment was made before the date of the check. Unless we have received written notice of the postdating in time to have a reasonable opportunity to act. We will not be liable for paying a post-dated, stale-dated or any item that is otherwise properly payable item, and the date on an item presented for payment by us will not in itself make an item not properly payable.

**Checks and withdrawal rules** - If you do not purchase your check blanks from us, you must be certain that we approve the check blanks you purchase. We may refuse any withdrawal or transfer request which you attempt on forms not approved by us or by any method we do not specifically permit. We may refuse any withdrawal or transfer request which is greater in number than the frequency permitted by our policy, or which is for an amount greater or less than any withdrawal limitations. We will use the date the transaction is completed by us (as opposed to the date you initiate it) to apply any frequency limitations. In addition, we may place limitations on the account until your identity is verified.

Even if we honor a nonconforming request, we are not required to do so later. If you violate the stated transaction limitations (if any), in our discretion we may close your account, charge a fee, or reclassify your account as another type of account. If we reclassify your account, your account will be subject to the fees and earnings rules of the new account classification, as well as any applicable “reclassification fee”.

If we are presented with an item drawn against your account that would be a “substitute check,” as defined by law, but for an error or defect in the item introduced in the substitute check creation process, you agree that we may pay such item.

**Cash withdrawals** - We recommend you take care when making large cash withdrawals because carrying large amounts of cash may pose a danger to your personal safety. As an alternative to making a large cash withdrawal, you may want to consider a cashier's check or similar instrument. You assume full responsibility of any loss in the event the cash you withdraw is lost, stolen, or destroyed. You agree to hold us harmless from any loss you incur as a result of your decision to withdraw funds in the form of cash. Our banking centers hold only limited amounts of cash at any given time. If you need large amounts of cash, you will need to give us advanced notice. We reserve the right to refuse to honor any request for large cash withdrawals, or charge a cash handling and additional security fee.

**Multiple signatures, electronic check conversion, and similar transactions** – **We do not allow items to be properly payable only with multiple signatures.** Any authorized signer may sign and authorize any payment on the account. An electronic check conversion transaction is a transaction where a check or similar item is converted into an electronic fund transfer as defined in the Electronic Fund Transfers regulation. In these types of transactions the check or similar item is either removed from circulation (truncated) or given back to you. As a result, we have no opportunity to review the signatures or otherwise examine the original check or item. You agree that, as to these or any items as to which we have no opportunity to examine the signatures, you waive any requirement of multiple signatures.

**Notice of withdrawal** - We reserve the right to require not less than 7 days’ notice in writing before each withdrawal from an interest-bearing account, other than a time deposit or demand deposit, or from any other savings deposit as defined by Regulation D. (The law requires us to reserve this right, but it is not our general policy to use it.) Withdrawals from a time account prior to maturity or prior to any notice period may be restricted and may be subject to penalty. See your separately provided notice of penalty for early withdrawal.

## Understanding and Avoiding Overdrafts and Returned Items

**Generally** - The information in this section is being provided to help you understand what happens if your account is overdrawn. Understanding the concepts of overdrafts and nonsufficient funds (NSF) is important and can help you avoid being assessed fees or charges. This section also provides contractual terms relating to overdrafts and NSF transactions.

As a general matter, we do not allow your account to have a balance that is less than zero dollars (i.e. being “overdrawn, and the transaction causing the negative balance is an “overdraft”), but in certain circumstances your account may become overdrawn. Generally, an overdraft occurs when there is not enough money in your account to pay for a transaction, but we pay (or cover) the transaction anyway. An NSF transaction is slightly different. In an NSF transaction, we do not cover the transaction. Instead, the transaction is rejected and the item or requested payment is returned. In either situation, we reserve the right to charge you a fee.

**Determining your available balance** - We use the “available balance” method to determine the amount of funds available to honor an item, draft or payment order at the time it is presented for payment, and to determine whether your account is overdrawn, that is, whether there is enough money in your account to pay for a transaction. Importantly, your “available” balance may not be the same as your account’s “actual” balance. This means an overdraft or an NSF transaction could occur regardless of your account’s actual balance.

Your account's actual balance (sometimes called the ledger balance) only includes amounts related to transactions that have settled, or otherwise are made "available" in accordance with our funds availability policy, at a particular point in time. The actual balance does not include outstanding transactions (such as checks that have not yet been made available to you in accordance with our funds availability policy, and electronic transactions that have been authorized but which are still pending). The balance on your periodic statement is the ledger balance for your account as of the statement date.

As the name implies, your available balance is calculated based on the money "available" in your account to make payments or withdrawals. In other words, the available balance takes ACH credit transactions and debit card transactions that have been authorized, but not yet settled, and adds or subtracts them from the actual balance. In addition, when calculating your available balance, any "holds" placed balances are also subtracted from the actual balance. For more information on how certain common holds placed on funds in your account can impact your available balance, read the subsection titled "A temporary debit authorization hold affects your account balance."

**Nonsufficient funds (NSF) fees** - If an item drafted by you (such as a check) or a transaction you set up (such as a preauthorized transfer) is presented for payment in an amount that is more than the amount of money available in your account, and we decide not to pay the item or transaction, you agree that we are entitled to charge you an NSF fee for returning the payment. We reserve the right to charge an NSF fee. Be aware that such an item or payment may be presented multiple times by the merchant or other payee until it is paid, and that we do not monitor or control the number of times a transaction is presented for payment. An NSF fee could be assessed each time a payment is presented if the amount of money available in your account is not sufficient to cover the payment, regardless of the number of times the payment is presented. The collecting bank or the payee of the item or payment order may assess a fee for a returned item, and we have no liability to you or them for such fee, and that fee is solely your responsibility.

**Payment types** - Some, but not necessarily all, of the ways you can access the funds in your account include debit card transactions, wire transfer, automated clearing house (ACH) transactions, and check transactions. All these payment types can use different processing systems and some may take more or less time to post. This information is important for a number of reasons. For example, keeping track of the checks you write and the timing of the preauthorized payments you set up will help you to know what other transactions might still post against your account. For information about how and when we process these different payment types, see the "Payment order of items" subsection below.

**Important information regarding "decoupled" cards** - Decoupled debit cards are debit cards offered or issued by an institution or merchant other than us. As part of the issuing process, you provide the decoupled debit card issuer with the information it needs to link the decoupled debit card to your account with us. Once this is done, you can typically use the decoupled debit card as you would any other debit card. Importantly, however, while transactions initiated with these decoupled debit cards may originate as debit card transactions paid by the card issuer, we receive and process them as ACH transactions. Additionally, you need to refer to your agreement with the decoupled debit card issuer to understand the terms of use for that card. Thus, when our documentation refers to "debit cards," "everyday debit card transactions," or "one-time debit card transactions," we are referring to debit cards issued by us, not decoupled debit cards issued by other institutions or merchants. Different payment types can use different processing systems and some may take more or less time to post. Knowing which card you are using and how the transaction is processed can help you manage your finances, including helping you to avoid overdrafts, returned items, or rejected payment orders.

**Balance information** - Keeping track of your balance is important. You can review your balance in a number of ways including reviewing your periodic statement, reviewing your balance online, accessing your account information by phone, or coming into one of our branches.

**Funds availability** - Knowing when funds you deposit will be made available for withdrawal is another important concept that can help you avoid being assessed fees or charges. Please see our funds availability disclosure under the Your Ability to Withdraw Funds section of this disclosure booklet for information on when different types of deposits will be made available for withdrawal. For an account to which our funds availability policy disclosure does not apply, you can ask us when you make a deposit when those funds will be available for withdrawal. An item may be returned after the funds from the deposit of that item are made available for withdrawal. In that case, we will reverse the credit of the item.

**A temporary debit authorization hold affects your account balance** - Typically each point of sale debit card transaction you make starts with an authorization for the amount of the transaction. Based on the amount of the authorization, a hold is placed on the funds in your account, in the amount of the authorization. In some cases, the amount of the temporary hold may be more than the actual amount of your purchase. Some common transactions where this occurs involve purchases of gasoline, hotel rooms, or meals at restaurants. When this happens, our processing system cannot determine that the amount of the hold exceeds the actual amount of your purchase. This temporary hold, and the amount charged to your account, will eventually be adjusted to the actual amount of your purchase, but it could be three calendar days, or even longer in some cases, before the adjustment is made. While the hold remains on the authorized amount, the available balance in your account will be reduced by the amount of the temporary hold. A typical hold on a debit card authorization lasts for the earlier of (a) the date the funds are taken from the account to settle the transaction, or (b) three business days. It is possible that the hold on funds based on a debit card purchase authorization can expire before the transaction settles. This will result in your available balance being higher than pending payments. If an intervening transaction settles before the initial debit card transaction settles, an overdraft could occur. When you deposit a check, we place a hold on the entire amount of the check, and release all or a portion of the hold as time passes, according to our funds availability policy. The fact that the funds are included in your available balance does not mean that the check had been paid by the paying bank (i.e. it has not yet "cleared" the payor bank), and may still be returned by the payor bank.

**Payment order of items** - When processing items drawn on your account, our policy is to pay non-check items in the order that they are received and checks will be paid by dollar amount from smallest to largest on the business day they are received. Note that items may not be processed in the order they are received. We encourage you to make careful records and practice good account management. This will help you to avoid creating items without sufficient funds and potentially incurring the resulting fees.

## **Ownership of Account and Beneficiary Designation**

These rules apply to this account depending on the form of ownership and beneficiary designation, if any, specified on the account records. We reserve the right to refuse some forms of ownership and beneficiary designations on any or all of our accounts unless otherwise prohibited by law. We make no representations as to the appropriateness or effect of the ownership and beneficiary designations, except as they determine to whom we pay the account funds.

*Joint Account - With Survivorship* - This is owned by two or more persons. Deposits and any additions to the account are the property of the owners as joint tenants with right of survivorship. This means that we may release the entire account to any owner during the lifetime of all owners. We may honor withdrawal requests (including checks or other orders) from any owner during the lifetime of all owners. We may be required to release money in the account to satisfy a judgment against or other valid debt incurred by any owner. We may honor withdrawal requests (including checks or other orders) from any surviving owner after the death of any owner, and may treat the account as the sole property of the surviving owner(s). We will not be liable for honoring any item made by an owner of the account, until a reasonable time after we have been given written notice that an owner should be removed from an account. After we receive such a notice, we may require written authorization of any or all joint owners for any further payments or deliveries.

*Joint Account - Without Survivorship* - This is owned by two or more persons. Deposits and any additions to the account are the property of the owners as joint tenants with right of survivorship declined. This means that we may release the entire account to any owner during the lifetime of any of the owners. We may honor withdrawal requests (including checks or other orders) from any owner until we receive notice of the death of an owner. After we receive such a notice, we may require specific testamentary documentation of any or all joint owners for any further payments or deliveries.

*Revocable Trust Account*. If two or more of you create such an account, you own the account jointly with survivorship. Beneficiaries cannot withdraw unless: (1) all persons creating the account die, and (2) the beneficiary is then living. If two or more beneficiaries are named and survive the death of all persons creating the account, such beneficiaries will own this account in equal shares, without right of survivorship. The person(s) creating this account type reserve the right to: (1) change beneficiaries, (2) change account types, and (3) withdraw all or part of the account funds at any time.

## **Interest Paid**

### **Earnings in the form of interest, dividends, or credits will be paid only on average available balance, unless otherwise provided by law or our policy. Stop Payments**

The rules in this section cover stopping payment of items such as checks and drafts. Rules for stopping payment of other types of transfers of funds, such as consumer electronic fund transfers, may be established by law or our policy. If we have not disclosed these rules to you elsewhere, you may ask us about those rules.

A stop-payment order must be given in the manner required by law and must be received in time to give us a reasonable opportunity to act on it. Because the most effective way for us to execute a stop-payment order is by using an automated process, to be effective the order must precisely identify the number, date and amount of the item, and the payee. We will honor a stop-payment request by the person who signed the particular item, and, by any other person, even though such other person did not sign the item.

Generally, if your stop-payment order is given to us in writing it is effective for six months. Your order will lapse after that time if you do not renew the order in writing before the end of the six-month period. If the original stop-payment order was oral your stop-payment order will lapse after 14 calendar days if you do not confirm your order in writing within that time period. We are not obligated to notify you when a stop-payment order expires.

You agree to indemnify us for those damages or expenses, including attorneys' fees. You assign to us all rights against the payee or any other holder of the item. You agree to cooperate with us in any legal actions that we may take against such persons. You should be aware that anyone holding the item may be entitled to enforce payment against you despite the stop-payment order.

## **Amendments and Termination**

We may amend or delete any term of this agreement. We may also add new terms to this agreement. In addition, we may suspend, modify, convert, or terminate a service, convert this account to another account type, or close this account for any reason. For any of these types of changes, we will give you reasonable notice in writing by any reasonable method including by mail, by any electronic communication method to which you have agreed, on or with a periodic statement, or through any other method permitted by law. If we close the account, we will tender the account balance to you or your agent personally, by mail, or by another agreed upon method.

Reasonable notice depends on the circumstances, and in some cases, such as when we cannot verify your identity or we suspect fraud, it might be reasonable for us to give you notice after the change becomes effective. For instance, if we suspect fraudulent activity with respect to your account, and if we deem it appropriate under the circumstances and necessary to prevent further fraud, we might immediately freeze or close your account and then give you notice.

Unless otherwise indicated in the notice of change, if we have notified you of a change to your account, and you continue to have your account and do not close the account before the effective date of the change, you have accepted and agreed to the new or modified terms. You should review any change in terms notice carefully as the notice will provide important information of which you may need to be aware.

We reserve the right to waive any term of this agreement. However, such waiver shall not affect our right to enforce the term at a later date. If you request that we close your account, you are responsible for leaving enough money in the account to cover any outstanding items or transactions to be paid from the account. Once any outstanding items or transactions are paid, we will close the account and tender the account balance, if any, to you or your agent personally, by mail, or by another agreed upon method.

Any items and transactions presented for payment after the account is closed will be dishonored. Any deposits we receive after the account is closed will be returned. We will not be liable for any damages for not honoring any such debits or deposits received after the account is closed.

Our ability to change interest rates are described separately in the Truth-in-Savings disclosure or in another document. In addition, for accounts or circumstances where changes in interest rates are governed by a specific law or regulation, we will abide by those laws or regulations.

## **Correction of Clerical Errors**

Unless otherwise prohibited by law, you agree, if determined necessary in our reasonable discretion, to allow us to correct clerical errors, such as obtaining your missing signature, on any account documents or disclosures that are part of our agreement with you. For errors on your periodic statement, please refer to the STATEMENTS section.

## **Notices**

Any written notice you give us is effective when we actually receive it, and it must be given to us according to the specific delivery instructions provided elsewhere, if any. We must receive any notice in time to have a reasonable opportunity to act on it. If a notice is regarding a check or other item, you must give us sufficient information to be able to identify the check or item, including the precise check or item number, amount, date and payee. Notice we give you via the United States Mail is effective when it is deposited in the United States Mail with proper postage and addressed to your mailing address we currently have on file. Notice we give you through your email of record, or other electronic method to which you agreed, will be treated as delivered to you when sent. Notice to any of you is notice to all of you.

## **Statements**

*Your duty to report unauthorized signatures, alterations and forgeries* - You must examine your statement of account with "reasonable care and promptness." If you discover (or reasonably should have discovered) any unauthorized signatures (including forgeries and counterfeit checks) or alterations, you must promptly notify us of the relevant facts. As between you and us, if you fail to do either of these duties, you will have to bear the entire loss. Your loss could be not only with respect to items on the statement but other items with unauthorized signatures or alterations by the same wrongdoer. We lose these protections if you establish that we failed to exercise ordinary care in paying an item with an unauthorized signature or alteration.

You agree that the time you have to examine your statement and report to us will depend on the circumstances, but will not, in any circumstance, exceed a total of 14 days from when the statement is first sent or made available to you.

You further agree that if you fail to report any unauthorized signatures or alterations in your account within 60 days of when we first send or make the statement available, you cannot assert a claim against us on any items in that statement, and as between you and us the loss will be entirely yours. This 60-day limitation is without regard to whether we used ordinary care. The limitation in this paragraph is in addition to that contained in the first paragraph of this section.

*Your duty to report other errors or problems* - In addition to your duty to review your statements for unauthorized signatures and alterations, you agree to examine your statement with reasonable promptness for any other error or problem - such as an encoding error or an unexpected deposit amount. Also, if you receive or we make available either your items or images of your items, you must examine them for any unauthorized or missing indorsements or any other problems. You agree that the time you have to examine your statement and items and report to us will depend on the circumstances. However, this time period shall not exceed 60 days from when the statement is first sent or made available to you. Failure to examine your statement and items and report any errors to us within 60 days of when we first send or make the statement available precludes you from asserting a claim against us for any errors on items identified in that statement and as between you and us the loss will be entirely yours.

It should not be inferred that notification within the time frames specified above will guarantee full recovery as a number of potential factors may determine the outcome. However, we shall make good faith and timely efforts to recover funds on your behalf.

*Errors relating to electronic fund transfers or substitute checks* - For information on errors relating to electronic fund transfers (e.g., online, mobile, debit card or ATM transactions) refer to your Electronic Fund Transfers disclosure and the sections on consumer liability and error resolution. For information on errors relating to a substitute check you received, refer to your disclosure entitled Substitute Checks and Your Rights.

*Duty to notify if statement not received* - You agree to immediately notify us if you do not receive your statement by the date you normally expect to receive it. Not receiving your statement in a timely manner is a sign that there may be an issue with your account, such as possible fraud or identity theft. Absent a lack of ordinary care by us, a failure to receive your statement in a timely manner does not extend the time you have to conduct your review under this agreement.

## **Account Transfer**

This account may not be transferred or assigned without our prior written consent.

## **Direct Deposits**

If we are required for any reason to reimburse the federal government for all or any portion of a benefit payment that was directly deposited into your account, you authorize us to deduct the amount of our liability to the federal government from the account or from any other account you have with us, without prior notice and at any time, except as prohibited by law. We may also use any other available legal remedy to recover the amount of our liability.

## **Setoff**

We may (without prior notice and when permitted by law) set off the funds in this account against any due and payable debt any of you owe us now or in the future. If this account is owned by one or more of you as individuals, we may set off any funds in the account against a due and payable debt a partnership owes us now or in the future, to the extent of your liability as a partner for the partnership debt. If your debt arises from a promissory note, then the amount of the due and payable debt will be the full amount we have demanded, as entitled under the terms of the note, and this amount may include any portion of the balance for which we have properly accelerated the due date.

This right of setoff does not apply to this account if prohibited by law. For example, the right of setoff does not apply to this account if: (a) it is an Individual Retirement Account or similar tax-deferred account, or (b) the debt is created by a consumer credit transaction under a credit card plan (but this does not affect our rights under any consensual security interest), or (c) the debtor's right of withdrawal only arises in a representative capacity. We will not be liable for the dishonor of any check when the dishonor occurs because we set off a debt against this account. You agree to hold us harmless from any claim arising as a result of our exercise of our right of setoff.

## **Restrictive Legends or Indorsements**

We are not required to honor any restrictive legend or restrictive indorsement on checks you write unless we have agreed in writing to the restriction. Examples of restrictive legends are "must be presented within 90 days" or "not valid for more than \$1,000.00." The payee's signature accompanied by the words "for deposit only" is an example of a restrictive indorsement.

## **Facsimile Signatures**

Unless you make advance arrangements with us, we have no obligation to honor facsimile signatures on your checks or other orders. If we do agree to honor items containing facsimile signatures, you authorize us, at any time, to charge you for all checks, drafts, or other orders, for the payment of money, that are drawn on us. You give us this authority regardless of by whom or by what means the facsimile signature(s) may have been affixed so long as they resemble the facsimile signature specimen filed with us. You must notify us at once if you suspect that your facsimile signature is being or has been misused.

## **Check Processing**

We process items mechanically by relying almost exclusively on the information encoded in magnetic ink along the bottom of the items. This means that we do not individually examine all of your items to determine if the item is properly completed, signed and indorsed or to determine if it contains any information other than what is encoded in magnetic ink. You agree that we have exercised ordinary care if our automated processing is consistent with general banking practice, even though we do not inspect each item. Because we do not inspect each item, if you write a check to multiple payees, we can properly pay the check regardless of the number of indorsements. We are not responsible for any unauthorized signature or alteration that would not be identified by a reasonable inspection of the item. Using an automated process helps us keep costs down for you and all accountholders. As between you and us, you are solely responsible for the compatibility of your check stock with the machines used to read the information on them during the presentment and payment process, even if we endorsed or otherwise provided you a link to the company that provided the check stock.

## **Check Cashing**

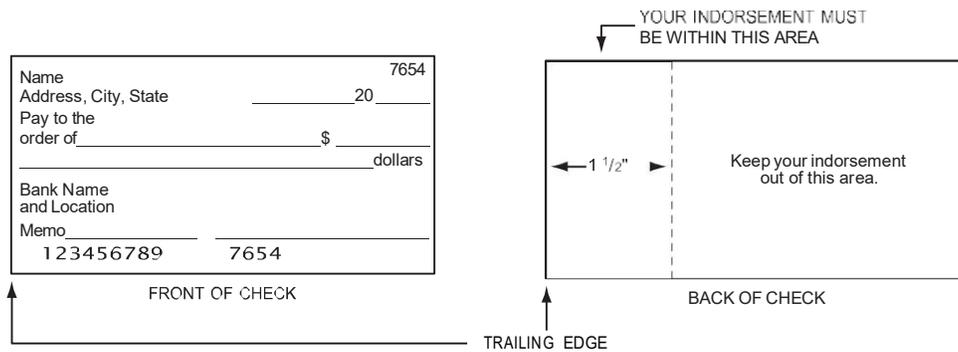
We reserve the right to refuse to honor any check presented by anyone that does not have an account with us, who is cashing a check, draft or other instrument written on your account. We may also require reasonable identification to cash a check, draft or other instrument. We can decide what identification is reasonable under the circumstances and such identification may be documentary or physical and may include collecting a thumbprint or fingerprint. We may also decline, for any reason, cashing a check for anyone who does not have an account with us.

## **Indorsements**

We may accept for deposit any item payable to you or your order, even if they are not indorsed by you. We may give cash back to any one of you. We may supply any missing indorsement(s) for any item we accept for deposit or collection, and you warrant that all indorsements are genuine.

To ensure that your check or share draft is processed without delay, you must indorse it (sign it on the back) in a specific area. Your entire indorsement (whether a signature or a stamp) along with any other indorsement information (e.g. additional indorsements, ID information, driver's license number, etc.) must fall within 1½" of the "trailing edge" of a check. Indorsements must be made in blue or black ink, so that they are readable by automated check processing equipment.

As you look at the front of a check, the "trailing edge" is the left edge. When you flip the check over, be sure to keep all indorsement information within 1½" of that edge.



It is important that you confine the indorsement information to this area since the remaining blank space will be used by others in the processing of the check to place additional needed indorsements and information. You agree that you will indemnify, defend, and hold us harmless for any loss, liability, damage or expense that occurs because your indorsement, failure to indorse, another indorsement or information you have printed on the back of the check obscures our indorsement.

These indorsement guidelines apply to both personal and business checks.

## Death or Incompetence

You agree to notify us promptly if any person with a right to withdraw funds from your account(s) dies or is adjudicated (determined by the appropriate official) incompetent. We may continue to honor your checks, items, and instructions until: (a) we know of your death or adjudication of incompetence, and (b) we have had a reasonable opportunity to act on that knowledge. You agree that we may pay or certify checks drawn on or before the date of death or adjudication of incompetence for up to ten (10) days after your death or adjudication of incompetence unless ordered to stop payment by someone claiming an interest in the account.

## Fiduciary Accounts

Accounts may be opened by a person acting in a fiduciary capacity. A fiduciary is someone who is appointed to act on behalf of and for the benefit of another. We are not responsible for the actions of a fiduciary, including the misuse of funds. A fiduciary account may be opened and maintained by a person or persons named as a trustee under a written trust agreement, or as executors, administrators, or conservators under court orders. You understand that by merely opening such an account, we are not acting in the capacity of a trustee in connection with the trust nor do we undertake any obligation to monitor or enforce the terms of the trust or letters.

## Credit Verification

You agree that we may verify credit and employment history by any necessary means, including preparation of a credit report by a credit reporting agency, and you specifically consent to our querying any credit reporting agency in connection with the opening or maintenance of the account.

## Legal Actions Affecting Your Account

If we are served with a subpoena, restraining order, writ of attachment or execution, levy, garnishment, search warrant, or similar order relating to your account (termed "legal action" in this section), we will comply with that legal action as required by applicable law. However, nothing in this agreement shall be construed as a waiver of any rights you may have under applicable law with regards to such legal action. Subject to applicable law, we may, in our sole discretion, choose to freeze the assets in the account and not allow any payments or transfers out of the account, or take other action as may be appropriate under the circumstances, until there is a final court determination regarding the legal action. We may do these things even if the legal action involves less than all of you. In these cases, we will not have any liability to you if there are insufficient funds to pay your items because we have withdrawn funds from your account or in any way restricted access to your funds in accordance with the legal action and applicable law. Any fees or expenses we incur in responding to any legal action (including, without limitation, attorneys' fees, and our internal expenses) may be charged against your account, unless otherwise prohibited by applicable law. The list of fees applicable to your account(s) - provided elsewhere - may specify additional fees that we may charge for responding to certain legal actions.

## Account Security

**Your duty to protect account information and methods of access** - Our policy may require methods of verifying your identity before providing you with a service or allowing you access to your account. We can decide what identification is reasonable under the circumstances. For example, process and identification requirements may vary depending on whether they are online or in person. Identification may be documentary or physical and may include collecting a fingerprint, voiceprint, or other biometric information.

It is your responsibility to protect the account numbers and electronic access devices (e.g., an ATM card) we provide you for your accounts. You should also safeguard your username, password, and other access and identifying information when accessing your account through a computer or other electronic, audio, or mobile device or technology. If you give anyone authority to access the account on your behalf, you should exercise caution and ensure the trustworthiness of that agent. Do not discuss, compare, or share information about your account

numbers with anyone unless you are willing to give them full use of your money. An account number can be used by thieves to issue an electronic debit or to encode your number on a false demand draft which looks like and functions like an authorized check. If you furnish your access device or information and grant actual authority to make transfers to another person (a family member or coworker, for example) who then exceeds that authority, you are liable for the transfers unless we have been notified that transfers by that person are no longer authorized, sufficiently in advance of that transfer occurring so that we have time to act on the notice. Your account number can also be used to electronically remove money from your account, and payment can be made from your account even though you did not contact us directly and order the payment.

You must safeguard your blank checks. Notify us at once if you believe your checks have been lost or stolen. We will not be responsible for any losses you incur due to an alteration or forgery if we have paid the check in good faith and in accordance with reasonable commercial standards.

**Positive pay and other fraud prevention services** - Except for consumer electronic fund transfers subject to Regulation E, you agree that if we offer you services appropriate for your account to help identify and limit fraud or other unauthorized transactions against your account, and you reject those services, you will be responsible for any fraudulent or unauthorized transactions which could have been prevented by the services we offered. You will not be responsible for such transactions if we acted in bad faith or to the extent our negligence contributed to the loss. Such services include positive pay or commercially reasonable security procedures. If we offered you a commercially reasonable security procedure which you reject, you agree that you are responsible for any payment order, whether authorized or not, that we accept in compliance with an alternative security procedure that you have selected. The positive pay service can help detect and prevent check fraud and is appropriate for account holders that issue a high volume of checks, a lot of checks to the general public, or checks for large dollar amounts.

## **Telephonic Instructions**

Unless required by law or we have agreed otherwise in writing, we are not required to act upon instructions you give us via facsimile transmission, email, voicemail, or phone call to a facsimile number, email address, or phone number not designated by us for a particular purpose or for a purpose that is unrelated to the request or instruction.

## **Monitoring and Recording Telephone Calls and Consent to Receive Communications**

Subject to federal and state law, we may monitor or record phone calls for security reasons, to maintain a record, and to ensure that you receive courteous and efficient service. You consent in advance to any such recording.

To provide you with the best possible service in our ongoing business relationship for your account, we may need to contact you about your account from time to time by telephone, text messaging, or email. In contacting you about your account, we may use any telephone numbers or email addresses that you have previously provided to us by virtue of an existing business relationship or that you may subsequently provide to us.

You acknowledge that the number we use to contact you may be assigned to a landline, a paging service, a cellular wireless service, a specialized mobile radio service, other radio common carrier service, or any other service for which you may be charged for the call. You acknowledge that we may contact you by voice, voicemail, or text messaging. You further acknowledge that we may use pre-recorded voice messages, artificial voice messages, or automatic telephone dialing systems.

If necessary, you may change or remove any of the telephone numbers, email addresses, or other methods of contacting you at any time using any reasonable means to notify us.

## **Claim of Loss**

The following rules do not apply to a transaction or claim related to a consumer electronic fund transfer governed by Regulation E (e.g., an everyday/one-time consumer debit card or ATM transaction). The error resolution procedures for consumer electronic fund transfers can be found in our initial Regulation E disclosure generally titled, "Electronic Fund Transfers." For other transactions or claims, if you claim a credit or refund because of a forgery, alteration, or any other unauthorized withdrawal, you agree to cooperate with us in the investigation of the loss, including giving us an affidavit containing whatever reasonable information we require concerning your account, the transaction, and the circumstances surrounding the loss. You will notify law enforcement authorities of any criminal act related to the claim of lost, missing, or stolen checks or unauthorized withdrawals. We will have a reasonable period of time to investigate the facts and circumstances surrounding any claim of loss. Unless we have acted in bad faith, gross negligence, or otherwise in violation of applicable law, we will not be liable for any such transfer, including for special or consequential damages, including loss of profits or opportunity, or for attorneys' fees incurred by you.

If we are liable for any claim of loss, you agree that you will not waive any rights you have to recover your loss against anyone who is obligated to repay, insure, or otherwise reimburse you for your loss. You will pursue your rights or, at our option, assign them to us so that we may pursue them. Our liability will be reduced by the amount you recover, waive, are entitled to recover, or have waived, from these other sources.

## **Early Withdrawal Penalties (and involuntary withdrawals)**

We may impose early withdrawal penalties on a withdrawal from a time account even if you don't initiate the withdrawal. For instance, the early withdrawal penalty may be imposed if the withdrawal is caused by our setoff against funds in the account or as a result of an attachment or other legal process. We may close your account and impose the early withdrawal penalty on the entire account balance in the event of a partial early withdrawal. See your separately provided notice of penalty for early withdrawal for additional information.

## **Address or Name Changes**

You are responsible for notifying us of any change in your name, address, email address, or other information we use to communicate with you. Unless we agree otherwise, notice of such a change must be made in writing. Informing us of your address or name change on a check reorder form is not sufficient. We will attempt to communicate with you only by use of the most recent information you have provided to us, unless our internal security procedures require otherwise, in which case we reserve the right to send a notification to the former address whenever a primary address changes. If provided elsewhere, we may impose a service fee if we attempt to locate you.

## **Resolving Account Disputes**

We may place an administrative hold on the funds in your account (refuse payment or withdrawal of the funds) if it becomes subject to a claim (1) adverse to your own interest or others claiming an interest as survivors or beneficiaries of your account; or (2) arising by operation of law, including as may be evidenced by our receipt of a valid court order, investigative demand, subpoena, garnishment, execution, or retraining notice. The hold may be placed for such period of time as we believe reasonably necessary to allow a legal proceeding to determine the merits of the claim or until we receive evidence satisfactory to us that the dispute has been resolved. We will not be liable for any items that are dishonored as a consequence of placing a hold on funds in your account for these reasons.

## **Waiver of Notices**

To the extent permitted by law, you waive any notice of non-payment, dishonor or protest regarding any items credited to or charged against your account. For example, if you deposit an item and it is returned unpaid or we receive a notice of nonpayment, we do not have to notify you unless required by federal Regulation CC or other law.

## **ACH and Wire Transfers**

This agreement is subject to Article 4A of the Uniform Commercial Code - Fund Transfers as adopted in New York state. If you originate a fund transfer and you identify by name and number a beneficiary financial institution, an intermediary financial institution or a beneficiary, we and every receiving or beneficiary financial institution may rely on the identifying number to make payment. We may rely on the number even if it identifies a financial institution, person or account other than the one named. You agree to be bound by automated clearing house association rules. These rules provide, among other things, that payments made to you, or originated by you, are provisional until final settlement is made through a Federal Reserve Bank or payment is otherwise made as provided in Article 4A- 403(a) of the Uniform Commercial Code. If we do not receive such payment, we are entitled to a refund from you in the amount credited to your account and the party originating such payment will not be considered to have paid the amount so credited. Credit entries may be made by ACH. If we receive a payment order to credit an account you have with us by wire or ACH, we are not required to give you any notice of the payment order or credit.

## **International ACH Transactions**

Financial institutions are required by law to scrutinize or verify any international ACH transaction (IAT) that they receive against the Specially Designated Nationals (SDN) list of the Office of Foreign Assets Control (OFAC). This action may, from time to time, cause us to temporarily suspend processing of an IAT and potentially affect the settlement and/or availability of such payments that you make or that are made to you.

## **Unlawful Internet Gambling Notice**

Restricted transactions as defined in Federal Reserve Regulation GG are prohibited from being processed through the account or relationship. Restricted transactions generally include, but are not limited to, those in which credit, electronic fund transfers, checks, or drafts are knowingly accepted by gambling businesses in connection with the participation by others in unlawful Internet gambling.

# Electronic Fund Transfers

## Your Rights and Responsibilities

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Indicated below are types of Electronic Fund Transfers we are capable of handling, some of which may not apply to your account. Please read this disclosure carefully because it tells you your rights and obligations for the transactions listed. You should keep this notice for future reference.

*Electronic Funds Transfers Initiated By Third Parties.* You may authorize a third party to initiate electronic fund transfers between your account and the third party's account. These transfers to make or receive payment may be one-time occurrences or may recur as directed by you. These transfers may use the Automated Clearing House (ACH) or other payments network. Your authorization to the third party to make these transfers can occur in a number of ways. For example, your authorization to convert a check to an electronic fund transfer or to electronically pay a returned check charge can occur when a merchant provides you with notice and you go forward with the transaction (typically, at the point of purchase, a merchant will post a sign and print the notice on a receipt). In all cases, these third party transfers will require you to provide the third party with your account number and bank information. This information can be found on your check. Thus, you should only provide your bank and account information (whether over the phone, the Internet, or via some other method) to trusted third parties whom you have authorized to initiate these electronic fund transfers. Examples of these transfers include, but are not limited to:

- **Preauthorized credits.** You may make arrangements for certain direct deposits to be accepted into your account(s).
- **Preauthorized payments.** You may make arrangements to pay certain recurring bills from your account(s).
- **Electronic check conversion.** You may authorize a merchant or other payee to make a one-time electronic payment from your checking account using information from your check to pay for purchases or pay bills.
- **Electronic returned check charge.** You may authorize a merchant or other payee to initiate an electronic funds transfer to collect a charge in the event a check is returned for insufficient funds.

*ATM Transfers - types of transfers and dollar limitations.* You may access your account(s) by ATM using your ATM card and personal identification number or debit card and personal identification number, to:

- make deposits to checking or savings account(s) with an ATM or debit card at ATMs we own and operate
- get cash withdrawals from checking or savings account(s) with an ATM or debit card
  - ▲ you may withdraw no more than \$500.00 per day. The daily ATM withdrawal may be increased upon your written request and our approval, which is in our sole discretion. If we approve your request, you will assume any and all liability for any losses, damages or unauthorized transactions resulting from the difference between the original limit amount and the increased limit amount, to the fullest extent permitted by law.
- transfer funds between checking and savings account(s) with an ATM or debit card
- get information about:
  - ▲ the account balance of your checking or savings account(s) with an ATM or debit card

*Types of Debit Card Point-of-Sale Transactions.* You may access your checking account(s) to purchase goods (in person, online, or by phone), pay for services (in person, online, or by phone), get cash from a merchant, if the merchant permits, or from a participating financial institution, and perform another transaction that a merchant will accept.

*Point-of-Sale Transactions - frequency and dollar limitations.* Using your card:

- you may make no more than 10 transactions per day
- you may not exceed \$2,500.00 in transactions per day

*Online Banking Computer Transfers - types of transfers.* You may access your account(s) by computer by internet access to [www.mcbankny.com](http://www.mcbankny.com) and using your password and access ID, to:

- transfer funds between checking and savings
- online bill payments
- Person to Person
- get information about:
  - s detail and account balance of checking or savings account(s)

*Currency Conversion and International Transactions.* When you use your Debit Card at a merchant that settles in currency other than US dollars, the charge will be converted into the US dollar amount. The currency conversion rate used to determine the transaction amount in US dollars is either a rate selected by Visa from the range of rates available in wholesale currency markets for the applicable central processing date, which rate may vary from the rate Visa itself receives, or the government-mandated rate in effect for the applicable central processing date. The conversion rate in effect on the processing date may differ from the rate in effect on the transaction date or posting date.

Visa USA charges us a 1% International Service Assessment on all international transactions regardless of whether there is a currency

conversion. As a result, we charge you a 1% international transaction fee on all international transactions regardless of whether there is a currency conversion. An international transaction is a transaction where the issuer of the card used is not located in the country where the transaction is accepted. This means an international transaction can occur even though the transaction is made when you are not in a foreign country. For example, a transaction made online with a foreign merchant is an international transaction even though made while you are physically in the United States.

*Advisory Against Illegal Use.* You agree not to use your card(s) for illegal gambling or other illegal purpose. Display of a payment card logo by, for example, an online merchant does not necessarily mean that transactions are lawful in the jurisdiction in which you may be located or where the transaction is accepted. *Non-Visa Debit Transaction Processing.* We have enabled non-Visa debit transaction processing. This means you may use your Visa-branded debit card on a PIN-Debit Network\* (a non-Visa network) without using a PIN.

The provisions of your agreement with us relating only to Visa transactions are not applicable to non-Visa transactions. For example, the additional limits on liability (sometimes referred to as Visa's zero-liability program) and the streamlined error resolution procedures offered on Visa debit card transactions are not applicable to transactions processed on a PIN-Debit Network.

\*Visa Rules generally define PIN-Debit Network as a non-Visa debit network that typically authenticates transactions by use of a personal identification number (PIN) but that is not generally known for having a card program.

## Documentation

- **Preauthorized credits.** If you have arranged to have direct deposits made to your account at least once every 60 days from the same person or company, you can call us at (212) 365-6700 to find out whether or not the deposit has been made or you may verify this via Online Banking.
- **Periodic statements.** You will get a monthly account statement from us for your checking accounts.  
You will get a monthly account statement from us for your savings accounts, unless there are no transfers in a particular month. In any case, you will get a statement at least quarterly.

## Preauthorized Payments

- **Right to stop payment and procedure for doing so.** If you have arranged with a third party to make regular withdrawals out of your account, you can stop any of these withdrawals. Here is how:  
Call or write us at the telephone number or address listed in this disclosure in time for us to receive your request 3 business days or more before the withdrawal is scheduled to be made. If you call, we may also require you to put your request in writing and get it to us within 14 days after you call.
- **Notice of varying amounts.** If these regular withdrawals may vary in amount, the person you are going to pay will tell you, 10 days before each withdrawal, when it will be made and how much it will be. You may choose (by agreement with the payee) instead to get this notice only when the withdrawal would differ by more than a certain amount from the previous withdrawal, or when the amount would fall outside certain limits that you set.
- **Liability for failure to stop withdrawal of preauthorized transfer.** If you order us to stop one of these withdrawals, 3 business days or more before the withdrawal is scheduled, and we do not do so, we will be liable for your losses or damages.

## Financial Institution Liability

*Liability for failure to make transfers.* Even if we do not complete a transfer to or from your account on time or in the correct amount according to our agreement with you, we will not be liable:

- (1) If, through no fault of ours, you do not have enough money in your account to complete the transfer or the account is closed.
- (2) If the withdrawal would exceed the credit limit on your overdraft line with us.
- (3) If the EFT facility where you are making a withdrawal does not have enough cash.
- (4) If the EFT facility or system was not working properly and you knew about the breakdown when you started the EFT transaction.
- (5) If you have not properly followed instructions on how to make a transfer or if your computer or software or telephone fails or malfunctions.
- (6) If you have not given us complete, correct and current instructions so that we can make a transfer.
- (7) If you do not authorize a transfer soon enough for your payment to be made and properly credited by the payee by the time it is due.
- (8) If we make a timely transfer but the payee nevertheless does not credit your payment promptly after receipt.
- (9) If we have reason to believe that a transfer has not been properly authenticated or is fraudulent.
- (10) If circumstances beyond our control or that of any component of the EFT facility system (such as fire, loss of power, or flood) prevent the EFT transaction, despite reasonable precautions that have been taken.
- (11) If the funds in your account are subject to legal process or other encumbrance restricting the transfer.
- (12) For any indirect, incidental, special, or consequential damages if our failure was not intentional.
- (13) There may be other exceptions stated in our agreements with you.

Certain jurisdictions restrict our ability to limit our liability. Our liability will be subject to such restriction but only to the extent necessary.

## Confidentiality

We will disclose information to third parties about your account or the transfers you make:

- (1) where it is necessary for completing transfers; or
- (2) in order to verify the existence and condition of your account for a third party, such as a credit bureau or merchant; or
- (3) in order to comply with government agency or court orders; or
- (4) as explained in our separate Privacy Policy and Privacy Notice.

## Unauthorized Transfers

(a) *Consumer liability.*

- **Generally.** Tell us AT ONCE if you believe your card and/or code has been lost or stolen, or if you believe that an electronic fund transfer has been made without your permission using information from your check. Telephoning is the best way of keeping your possible losses down. You could lose all the money in your account (plus your maximum overdraft line of credit). If you tell us within 2 business days after you learn of the loss or theft of your card and/or code, you can lose no more than \$50 if someone used your card and/or code without your permission.

If you do NOT tell us within 2 business days after you learn of the loss or theft of your card and/or code, and we can prove we could have stopped someone from using your card and/or code without your permission if you had told us, you could lose as much as \$500.

Also, if your statement shows transfers that you did not make, including those made by card, code or other means, tell us at once. If you do not tell us within 60 days after the statement was mailed to you, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had told us in time.

If a good reason (such as a long trip or a hospital stay) kept you from telling us, we will extend the time periods.

- **Additional Limit on Liability for Debit Card.** Unless you have been grossly negligent or have engaged in fraud, you will not be liable for any unauthorized transactions using your lost or stolen Debit Card. This additional limit on liability does not apply to ATM transactions outside of the U.S., to ATM transactions not sent over Visa or Plus networks, or to transactions using your Personal Identification Number which are not processed by VISA®. Visa is a registered trademark of Visa International Service Association.

(b) *Contact in event of unauthorized transfer.* If you believe your card and/or code has been lost or stolen, call 1-800-852-7632 or write us at: Metropolitan Commercial Bank, 99 Park Avenue, New York, NY 10016, Attn: Card Management Dept. You should also call the number or write to the address listed in this disclosure if you believe a transfer has been made using the information from your check without your permission.

## Error Resolution Notice

In Case of Errors or Questions About Your Electronic Transfers, Call or Write us at the telephone number or address listed in this disclosure, as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than 60 days after we sent the FIRST statement on which the problem or error appeared.

- (1) Tell us your name and account number (if any).
- (2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
- (3) Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will determine whether an error occurred within 10 business days (5 business days for Debit Card point-of-sale transactions processed by Visa and 20 business days if the transfer involved a new account) after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days (90 days if the transfer involved a new account, a point-of-sale transaction, or a foreign-initiated transfer) to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days (5 business days for Debit Card point-of-sale transactions processed by Visa and 20 business days if the transfer involved a new account) for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account. Your account is considered a new account for the first 30 days after the first deposit is made, unless each of you already has an established account with us before this account is opened.

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation.

You may ask for copies of the documents that we used in our investigation.

Metropolitan Commercial Bank  
99 Park Avenue  
New York, New York 10016

Business Days: Monday through Friday (excluding Federal Holidays)

Phone: (800) 852-7632

## **Notice of ATM/Night Deposit Facility User Precautions**

As with all financial transactions, please exercise discretion when using an automated teller machine (ATM) or night deposit facility. For your own safety, be careful. The following suggestions may be helpful.

1. Prepare for your transactions at home (for instance, by filling out a deposit slip) to minimize your time at the ATM or night deposit facility.
2. Mark each transaction in your account record, but not while at the ATM or night deposit facility. Always save your ATM receipts. Don't leave them at the ATM or night deposit facility because they may contain important account information.
3. Compare your records with the account statements you receive.
4. Don't lend your ATM card to anyone.
5. Remember, do not leave your card at the ATM. Do not leave any documents at a night deposit facility.
6. If you lose your ATM card or if it is stolen, promptly notify us. You should consult the other disclosures you have received about electronic fund transfers for additional information about what to do if your card is lost or stolen.
7. Protect the secrecy of your Personal Identification Number (PIN). Protect your ATM card as though it were cash. Don't tell anyone your PIN. Don't give anyone information regarding your ATM card or PIN over the telephone. Never enter your PIN in any ATM that does not look genuine, has been modified, has a suspicious device attached, or is operating in a suspicious manner. Don't write your PIN where it can be discovered. For example, don't keep a note of your PIN in your wallet or purse.
8. Prevent others from seeing you enter your PIN by using your body to shield their view.
9. Don't accept assistance from anyone you don't know when using an ATM or night deposit facility.
10. When you make a transaction, be alert to your surroundings. Look out for suspicious activity near the ATM or night deposit facility, particularly if it is after sunset. At night, be sure that the facility (including the parking area and walkways) is well lighted. Consider having someone accompany you when you use the facility, especially after sunset. Defer your transaction if circumstances cause you to be apprehensive for your safety. You might consider using another ATM or night deposit facility.
11. If you notice anything suspicious or if any other problem arises after you have begun an ATM transaction, you may want to cancel the transaction, pocket your card and leave. You might consider using another ATM or coming back later.
12. Please be sure to close any entry door completely upon entering and exiting the ATM or night depository facility. Do not permit any unknown persons to enter the facility after regular banking hours.
13. Don't display your cash; place withdrawn cash securely upon your person before exiting the ATM. Count the cash later when you are in the safety of your own car, home, or other secure surrounding.
14. At a drive-up facility, make sure all the car doors are locked and all of the windows are rolled up, except the driver's window. Keep the engine running and remain alert to your surroundings.
15. We want the ATM and night deposit facility to be safe and convenient for you. The activity of the automated teller machine facility may be recorded by a surveillance camera or cameras. Please tell us if you know of any problem with a facility. For instance, let us know if a light is not working or there is any damage to a facility. Please use the nearest available public telephone to call the police if emergency assistance is needed. Direct complaints concerning ATM facility security to us at the phone number listed in this brochure or the New York State Department of Financial Services at 1-888-697-2861.

# **Your Ability To Withdraw Funds**

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This policy statement applies to all deposit accounts.

Our policy is to make funds from your check deposits available to you on the second business day after the day we receive your deposit, with the first \$825 available on the first business day after the day of your deposit. Withdrawals by cash or by issuance of cashier's or teller's check will be available on the third business day after the day of your deposit. Cash deposited in person to one of our employees and electronic direct deposits will be available on the day we receive the deposit. Wire transfers and some specified check deposits will also be available before the second business day, as detailed below. Once the funds are available, you can withdraw them in cash and we will use the funds to pay checks that are presented against your account for payment.

Please remember that even after we have made funds available to you, and you have withdrawn the funds, you are still responsible for checks you deposit that are returned to us unpaid and for any other problems involving your deposit.

## **Determining the Availability of a Deposit**

For determining the availability of your deposits, every day is a business day, except Saturdays, Sundays, and federal holidays. If you make a deposit before 6:00 P.M. on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit after 6:00 P.M. or on a day we are not open, we will consider that the deposit was made on the next business day we are open. Your ability to make a deposit in person is subject to branch hours of operation. If you make a deposit to a Metropolitan Commercial Bank ATM before 2:30 P.M. on a business day that we are open, we will consider that day to be the day of your deposit. However, if you make a deposit to a Metropolitan Commercial Bank ATM after 2:30 P.M. on a business day that we are open, we will consider that the deposit was made on the next business day we are open. Deposits made remotely, either using remote deposit capture, or using mobile deposits using online banking using a mobile device will be available as described in the applicable terms and conditions applicable to those services.

## **Same-Day Availability**

Cash deposited in person to one of our employees and funds from electronic direct deposits and same day ACH deposits to your account will be available on the day we receive the deposit. Not all ACH transfers are "same-day" transfers, and therefore not all ACH transfers will be immediately available.

## **Next-Day Availability**

Funds from the following deposits are available on the first business day after the day of your deposit:

U.S. Treasury checks that are payable to you. Wire transfers.

Checks drawn on us.

If you make the deposit in person to one of our employees, funds from the following deposits are also available on the first business day after the day of your deposit:

State and local government checks that are payable to you if you use a special deposit slip available from our tellers. Cashier's, certified, and teller's checks that are payable to you if you use a special deposit slip available from our tellers.

Federal Reserve Bank checks, Federal Home Loan Bank checks, and U.S. postal money orders, if these items are payable to you.

If you do not make your deposit in person to one of our employees (for example, if you mail the deposit), funds from these deposits will be available on the second business day after the day we receive your deposit.

## **Other Check Deposits Subject to Second-Day Availability**

The first \$825 from a deposit of other checks will be available on the first business day after the day of your deposit.

For example, if you deposit a check of \$1000 on a Monday, \$825 of the deposit is available on Tuesday. The remaining \$175 is available to write checks against on Wednesday, for cash withdrawal, the remainder of the funds will be available on Thursday.

In order to obtain the cash amount of a check drawn on another financial institution, the check will be deposited in accordance with this "Your Ability to Withdraw Funds" section, and a corresponding amount of available funds must be withdrawn from the available balance in your account. You will not be able to obtain the full amount of the check immediately in cash unless you have the corresponding amount of available funds prior to the deposit.

## **Longer Delays May Apply**

### **Safeguard exceptions**

The funds you deposit by check may be delayed for a longer period under the following circumstances: We believe a check you deposit will not be paid. You deposit checks totaling more than \$6,725 on any one day (other than checks subject to next-day availability). You redeposit a check that has been returned unpaid.

You have overdrawn your account repeatedly in the last six months.

There is an emergency, such as failure of computer or communications equipment.

We will notify you if we delay your ability to withdraw funds for any of these reasons, and we will tell you when the funds will be available. They will generally be available no later than the seventh business day after the day of your deposit.

### **Special Rules For New Accounts**

If you are a new customer, the following special rules will apply during the first 30 days your account is open.

Funds from electronic direct deposits to your account will be available on the day we receive the deposit. Funds from deposits of cash, wire transfers, and the first \$6,725 of a day's total deposits of cashier's, certified, teller's, traveler's, and federal, state and local government checks will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over \$6,725 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first \$6,725 will not be available until the second business day after the day of your deposit.

will be available on the first business day after the day of your deposit if the deposit meets certain conditions. For example, the checks must be payable to you (and you may have to use a special deposit slip). The excess over \$6,725 will be available on the ninth business day after the day of your deposit. If your deposit of these checks (other than a U.S. Treasury check) is not made in person to one of our employees, the first \$6,725 will not be available until the second business day after the day of your deposit. Funds from all other check deposits will be available on the eighth business day after the day of your deposit.

## Substitute Checks And Your Rights

As our customer we think it's important for you to know about substitute checks. The following Substitute Check Disclosure provides information about substitute checks and your rights.

### What is a substitute check?

To make check processing faster, federal law permits banks to replace original checks with "substitute checks." These checks are similar in size to original checks with a slightly reduced image of the front and back of the original check. The front of a substitute check states: "This is a legal copy of your check. You can use it the same way you would use the original check." You may use a substitute check as proof of payment just like the original check.

This notice describes rights you have when you receive substitute checks from us. The rights in this notice do not apply to original checks or to electronic debits to your account. However, you have rights under other law with respect to those transactions.

### What are my rights regarding substitute checks?

In certain cases, federal law provides a special procedure that allows you to request a refund for losses you suffer if a substitute check is posted to your account (for example, if you think that we withdrew the wrong amount from your account or that we withdrew money from your account more than once for the same check). The losses you may attempt to recover under this procedure may include the amount that was withdrawn from your account and fees that were charged as a result of the withdrawal (for example, returned check fees).

The amount of your refund under this procedure is limited to the amount of your loss or the amount of the substitute check, whichever is less. You also are entitled to interest on the amount of your refund if your account is an interest-bearing account. If your loss exceeds the amount of the substitute check, you may be able to recover additional amounts under other law.

If you use this procedure, you may receive up to \$2,500 of your refund (plus interest if your account earns interest) within 10 business days after we received your claim and the remainder of your refund (plus interest if your account earns interest) not later than 45 calendar days after we received your claim.

We may reverse the refund (including any interest on the refund) if we later are able to demonstrate that the substitute check was correctly posted to your account.

### How do I make a claim for a refund?

If you believe that you have suffered a loss relating to a substitute check that you received and that was posted to your account, please contact us at:

Metropolitan Commercial Bank  
99 Park Avenue  
New York, NY 10016  
(800) 852-7632

You must contact us within 40 calendar days of the date that we mailed (or otherwise delivered by a means to which you agreed) the substitute check in question or the account statement showing that the substitute check was posted to your account, whichever is later. We will extend this time period if you were not able to make a timely claim because of extraordinary circumstances.

### Your claim must include -

- A description of why you have suffered a loss (for example, you think the amount withdrawn was incorrect);
- An estimate of the amount of your loss;
- An explanation of why the substitute check you received is insufficient to confirm that you suffered a loss; and
- A copy of the substitute check or the following information to help us identify the substitute check: the check number, the amount of the check, and the date of the check.

# Truth-In-Savings Disclosure

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## Money Market Account

**Rate Information.** Your interest rate and annual percentage yield may change. The interest rate and annual percentage yield is tiered based on the daily balance in your account, refer to the Deposit Rates sheet or rate webpage for more information on the balance tiers and corresponding interest rate annual percentage yield.

**Frequency of rate changes.** We may change the interest rate on your account at any time.

**Determination of rate.** At our discretion, we may change the interest rate on your account.

**Compounding and crediting frequency.** Interest will be compounded and credited to your account every month.

**Effect of closing an account.** If you close your account before interest is credited, you will not receive the accrued interest.

**Minimum balance to open the account.** \$2,500

**Minimum balance to avoid imposition of fees.** \$2,500

**Minimum balance to obtain the annual percentage yield disclosed.** No minimum balance is required to obtain the annual percentage yield (APY)

**Daily balance computation method.** We use the daily balance method to calculate the interest on your account. This method applies a daily periodic rate to the principal in the account each day.

**Accrual of interest on noncash deposits.** Interest begins to accrue on the business day you deposit noncash items (for example, checks).

**Monthly Service Charge.** \$10

**Additional Features** – For special rate pricing, you must meet the following criteria: maintain a balance of \$50,000 or more in a money market account and open a personal checking account or an employee checking account with a minimum balance of \$7,500.

## High Yield Savings Account

**Rate Information.** Your interest rate and annual percentage yield may change. The interest rate and annual percentage yield is tiered based on the daily balance in your account, refer to the Deposit Rates sheet or rate webpage for more information on the balance tiers and corresponding interest rate annual percentage yield.

**Frequency of rate changes.** We may change the interest rate on your account at any time.

**Determination of rate.** At our discretion, we may change the interest rate on your account.

**Compounding and crediting frequency.** Interest will be compounded and credited to your account every month.

**Effect of closing an account.** If you close your account before interest is credited, you will not receive the accrued interest.

**Minimum balance to open the account.** \$1000.

**Minimum balance to avoid imposition of fees.** \$0.

**Minimum balance to obtain the annual percentage yield disclosed.** \$1,000

**Daily balance computation method.** We use the daily balance method to calculate the interest on your account. This method applies a daily periodic rate to the principal in the account each day.

**Accrual of interest on noncash deposits.** Interest begins to accrue on the business day you deposit noncash items (for example, checks).

**Monthly Service Charge.** \$0

## Statement Savings Account

**Rate Information.** Your interest rate and annual percentage yield may change. The interest rate and annual percentage yield is tiered based on the daily balance in your account, refer to the Deposit Rates sheet or rate webpage for more information on the balance tiers and corresponding interest rate annual percentage yield.

**Frequency of rate changes.** We may change the interest rate on your account at any time.

**Determination of rate.** At our discretion, we may change the interest rate on your account.

**Compounding and crediting frequency.** Interest will be compounded and credited to your account every month.

**Effect of closing an account.** If you close your account before interest is credited, you will not receive the accrued interest.

**Minimum balance to open the account.** \$100.

**Minimum balance to avoid imposition of fees.** \$300.

**Minimum balance to obtain the annual percentage yield disclosed.** No minimum balance is required to obtain the annual percentage yield (APY)

**Daily balance computation method.** We use the daily balance method to calculate the interest on your account. This method applies a daily periodic rate to the principal in the account each day.

**Accrual of interest on noncash deposits.** Interest begins to accrue on the business day you deposit noncash items (for example, checks).

**Monthly Service Charge.** \$5

## Personal Checking Account

*Minimum balance to open the account. \$25*  
*Minimum balance to avoid imposition of fees. \$250*  
*Monthly Service Charge. \$7.50*

## Basic Banking Account

*Minimum balance to open the account.* \$25

*Minimum balance to maintain account.* \$0

*Transaction limitations.* You may make an unlimited number of deposits without incurring any additional charge. Account Holders are allowed at least twelve withdrawals per month at no additional charge. Withdrawals can include checks, ATM withdrawals and purchases using a debit card attached to the account.

*Monthly Service Charge:* \$3

*Additional Features.* A withdrawal shall be deemed to be made when it is recorded on our books, which is not necessarily the date that you initiated the transaction.

## NOW Account

*Rate Information.* Your interest rate and annual percentage yield may change. The interest rate and annual percentage yield is tiered based on the daily balance in your account, refer to the Deposit Rates sheet or rate webpage for more information on the balance tiers and corresponding interest rate annual percentage yield.

*Frequency of rate changes.* We may change the interest rate on your account at any time.

*Determination of rate.* At our discretion, we may change the interest rate on your account.

*Compounding and crediting frequency.* Interest will be compounded every day. Interest will be credited to your account every month.

*Effect of closing an account.* If you close your account before interest is credited, you will not receive the accrued interest.

*Minimum balance to open the account.* \$100.

*Minimum balance to avoid imposition of fees.* \$1,000

*Minimum balance to obtain the annual percentage yield disclosed.* No minimum balance is required to obtain the annual percentage yield (APY)

*Daily balance computation method.* We use the daily balance method to calculate the interest on your account. This method applies a daily periodic rate to the principal in the account each day.

*Accrual of interest on noncash deposits.* Interest begins to accrue on the business day you deposit noncash items (for example, checks).

*Monthly Service Charge.* \$10

*Other fees.* Please refer to our current, applicable Personal Fee Schedule

## Certificate of Deposit

*Terminology.* Certificate of deposit is also referred to as “time account” or “time deposit”.

*Rate and Time Information.* Refer to your account's Certificate of Deposit Receipt for the annual percentage yield, interest rate, maturity date, and other information about your Certificate of Deposit account. You will be paid this rate until maturity.

*Compounding frequency.* Refer to Certificate of Deposit Receipt for compounding frequency. .

*Crediting frequency.* Interest will be credited to your account at maturity unless we have agreed to another arrangement, in writing, in advance.

*Minimum balance to open the account.* \$1,000.

*Minimum balance to avoid imposition of fees.* \$0.

*Minimum balance to obtain the annual percentage yield disclosed.* No minimum balance is required to obtain the annual percentage yield (APY).

*Daily balance computation method.* We use the daily balance method to calculate the interest on your account. This method applies a daily periodic rate to the principal in the account each day.

*Accrual of interest on noncash deposits.* Interest begins to accrue on the business day you deposit noncash items (for example, checks).

*Transaction limitations.* You may not make any deposits into your account before maturity.

You may make withdrawals of principal from your account before maturity only if we agree at the time you request the withdrawal. Principal withdrawn before maturity is included in the amount subject to early withdrawal penalty.

You cannot withdraw interest from your account before maturity.

*Early withdrawal penalties.* A penalty will be imposed for withdrawals before maturity.

- If your account has an original maturity of no less than seven days, but not more than 31 days:

The fee we will impose will equal the greatest of:

- (1) all of the interest earned on the amount withdrawn from the most recent date of deposit, date of maturity, or date on which notice was given; or
- (2) all interest that could have been earned on the amount withdrawn during a period equal to one-half the maturity period or required notice period; or

(3) seven days' interest on the amount withdrawn.

- If your account has an original maturity of one year or less, but more than 31 days:  
The fee we will impose will equal 90 days interest on the amount withdrawn subject to penalty.
- If your account has an original maturity of more than one year:  
The fee we will impose will equal 180 days interest on the amount withdrawn subject to penalty.

In certain circumstances such as the death or incompetence of an owner of this account, the law permits, or in some cases requires, the waiver of the early withdrawal penalty. Other exceptions may also apply, for example, if this is part of an IRA or other tax-deferred savings plan.

*Automatically renewable time account.* This account will automatically renew at maturity. You may prevent renewal if we receive written notice from you before maturity of your intention not to renew or you withdraw the funds in the account at maturity (or within the grace period mentioned below, if any). We can prevent renewal if we mail notice to you at least 30 calendar days before maturity.

Each renewal term will be the same as the original term, beginning on the maturity date. The interest rate will be the same we offer on new time deposits on the maturity date which have the same term, minimum balance (if any) and other features as the original time deposit.

You will have ten calendar days after maturity to withdraw the funds without a penalty, also known as the grace period. Should you decide within the grace period to withdraw funds or not to renew the deposit no interest will be paid during the grace period.

### Some exceptions to above Terms and Conditions

Minimum deposit requirements, compounding, crediting frequency, balance computation method and minimum balance to open an account may vary for special promotional products and offerings. Any such promotional product or offering will be provided with a separate detailed disclosure of their applicable terms and conditions.

### Common Features

**Overdraft Fee Transaction Categories** - The categories of transactions for which an overdraft fee may be imposed are those by any of the following means: check, in-person withdrawal, or other electronic means other than ATM or one-time debit card transaction.

Please refer to our current, applicable Terms & Charges disclosure for additional information about charges.

Check printing.....(fee depends on style and quantity of check ordered)

We reserve the right to require not less than 7 days' notice in writing before each withdrawal from an interest-bearing account, other than a time deposit or demand deposit, or from any other savings deposit as defined by Regulation D. (The law requires us to reserve this right, but it is not our general policy to use it.) Withdrawals from a time account prior to maturity or prior to any notice period may be restricted and may be subject to penalty. See your notice of penalty for early withdrawal.

## Force Majeure

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The Bank shall not be liable for any loss or damage to you caused by the Bank's failure to provide any service requested by you resulting from an act of God, fire, catastrophe, electrical, mechanical or computer failure, telecommunications failure or failure of any agent or correspondent or any other cause beyond the Bank's control, provided it exercises such diligence as the circumstances may require.



*Corporate Headquarters*  
99 Park Avenue  
Twelfth Floor  
New York, NY 10016  
212 659-0600

For a list of our Banking Centers, refer to your banker or visit our website at [www.mcbankny.com](http://www.mcbankny.com)

If you are not satisfied with the services provided to you by Metropolitan Commercial Bank, you may file a complaint with the NYSDFS using the department's toll-free consumer hotline number: (800) 342-3736.

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