

UNITED STATES OF AMERICA  
BEFORE THE  
BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM  
WASHINGTON, D.C.

Docket No. 19-028-B-SM

In the Matter of:

SUNTRUST BANK  
Atlanta, Georgia

A State Member Bank

**CONSENT ORDER**

WHEREAS, in recognition of the common goals of the Board of Governors of the Federal Reserve System (“Board of Governors”) and SunTrust Bank, Atlanta, Georgia (the “Bank” or “SunTrust”), a state-chartered member of the Federal Reserve System, to ensure compliance by the Bank with all applicable federal and state laws, rules, and regulations including, but not limited to, section 5(a)(1) of the Federal Trade Commission Act (“FTC Act”) (15 U.S.C. § 45(a)(1)), and effective management of the legal, reputational, and compliance risks of the Bank, the Board of Governors and the Bank have mutually agreed to enter into this Consent Order (the “Order”);

WHEREAS, the Board of Governors and the Federal Reserve Bank of Atlanta (“Reserve Bank”) have conducted inquiries assessing the Bank’s marketing, enrollment, and billing practices related to deposit account add-on and similar products provided to business customers that had deposit accounts or utilized SunTrust credit card and debit card processing services, including small business accountholders;

WHEREAS, this Order is issued with respect to the following:

## **Fraud Inspector, Other Add-On Products, Payroll, and Stop Payment Requests**

A. SunTrust offers to business accountholders on-line access to their deposit accounts through a platform called Online Cash Manager (“OCM”). OCM is a secure banking tool that business accountholders can use to access one or more accounts through the Bank’s website or mobile applications.

B. From March 2013 through and including April 2016 (“FI Relevant Period”), SunTrust offered Fraud Inspector (“FI”), a fraud reporting tool, to business accountholders using OCM as a separate product for an additional fee of \$10 per month accessible through the OCM platform. Business accountholders can use FI to submit online requests to reverse transactions that appear to be fraudulent rather than call the Bank to report those fraudulent transactions.

C. During the FI Relevant Period, in offering FI, SunTrust: (1) enrolled some accountholders without their consent; (2) failed to adequately disclose that accountholders had to affirmatively accept FI’s terms and conditions on-line before FI could be used, so that accountholders paid for benefits they could not access; (3) misrepresented the nature of FI by failing to disclose that FI did not provide passive fraud monitoring, but rather required accountholders to actively access the service to report fraudulent transactions; and (4) incorrectly informed some accountholders that they had a two- or three-month free trial period.

D. Following the receipt of complaints, SunTrust represents that in 2016, it provided the approximately 34,000 accountholders that were enrolled during the FI Relevant Period about \$3 million in monthly fee refunds.

E. In 2016, SunTrust conducted an internal review of other OCM add-on products, including a payroll product, to determine if these products presented concerns similar to FI.

F. From March 2013 through and including December 2016 (“Other Add-On Products Relevant Period”), in offering six other add-on products to OCM customers (“Other Add-On Products”), SunTrust assessed fees for products where enrolled customers had not accepted the terms and conditions, and thus could not use the products.

G. From March 2013 through and including December 2016 (“Payroll Relevant Period”), SunTrust assessed fees on business customers for a payroll product (“Payroll”) after the customers terminated their OCM enrollment, and could no longer access or use Payroll.

H. SunTrust represents that, from 2017 through 2019, it has provided approximately 19,530 business accountholders that enrolled in Other Add-On Products during the Other Add-On Products Relevant Period and Payroll during the Payroll Relevant Period about \$4.25 million in monthly fee refunds.

I. SunTrust also offers its business accountholders an online platform, called SunView Treasury Manager (“SunView”), to administer account access, view account information, and perform account activities. Between September 2016 through and including September 2017 (“Stop Payment Relevant Period”), SunTrust incorrectly assessed business accountholders entering stop payment requests through SunView the standard fee for manual stop payment requests rather than the discounted fee that applied to on-line requests.

J. SunTrust represents that, in 2018, it provided approximately 532 business accountholders that were billed an incorrect amount of stop payment fees during the Stop Payment Relevant Period about \$129,200 in fee refunds.

## **TransArmor Solution**

K. SunTrust, through a third party, offers merchant credit card and debit card processing services and other products, such as those related to protecting the terminal's security, to small business accountholders processing point of sale transactions.

L. From November 2014 through and including May 2016 ("TransArmor Relevant Period"), SunTrust automatically enrolled certain small business accountholders in a bundle of data protection and cybersecurity services for credit card and debit card processing terminals, called "TransArmor Solution," for a separate fee after providing these accountholders a short, fixed period to opt out of TransArmor Solution before fees were charged.

M. During the TransArmor Relevant Period, in automatically enrolling certain small business accountholders in TransArmor Solution, SunTrust: (1) failed to disclose clearly to its customers that affirmative action was required to access some of the benefits for which customers were being charged; and (2) provided misleading disclosures regarding the need to opt out of TransArmor Solution prior to fees being charged.

N. As of May 1, 2016, SunTrust no longer automatically enrolled accountholders in the TransArmor Solution.

O. SunTrust has represented that, in July 2019, it has refunded to approximately 5,600 of the accountholders enrolled in TransArmor Solution during the TransArmor Relevant Period about \$1.39 million in fees charged for TransArmor Solution in excess of the annual compliance fee that these accountholders would have been charged had these accountholders not been enrolled in TransArmor Solution.

The deficiencies specified in paragraphs A. through O. above resulted in unfair or deceptive acts or practices in or affecting commerce, within the meaning of section 5(a)(1) of the FTC Act (15 U.S.C. § 45(a)(1)), and unsafe or unsound banking practices.

WHEREAS, SunTrust has represented that it has provided restitution to a total of approximately 60,000 accountholders of approximately \$8.8 million injured by SunTrust's unfair or deceptive acts or practices described above in paragraphs A. through O.;

WHEREAS, the Board of Governors and the Reserve Bank must validate that SunTrust has provided full restitution, and if not, require additional restitution for the accountholders injured by SunTrust's unfair or deceptive acts or practices described above in paragraphs A. through O.;

WHEREAS, the practices described above in paragraphs A. through O. warrant an order by the Board of Governors against SunTrust to cease and desist and take affirmative action under sections 8(b)(1), (2), and (6) of the Federal Deposit Insurance Act, as amended ("FDI Act") (12 U.S.C. §§ 1818(b)(1), (2), and (6));

WHEREAS, SunTrust has consented to this Order;

WHEREAS, on November 8, 2019, the board of directors of SunTrust adopted a resolution authorizing William H. Rogers, Jr., in his capacity as Chairman and Chief Executive Officer of the Bank, to enter into this Order on behalf of the Bank and consent to compliance with each and every applicable provision of this Order by the Bank and to waive any and all rights that the Bank may have pursuant to section 8 of the FDI Act (12 U.S.C. § 1818), including, but not limited to: (i) the issuance of a notice of charges on any matters set forth in this Order; (ii) a hearing for the purpose of taking evidence on any matters set forth in this Order;

(iii) judicial review of this Order; (iv) challenge or contest, in any manner, the basis, issuance, validity, terms, effectiveness or enforceability of the Order or any provisions hereof;

NOW, THEREFORE, before the filing of any notices, or taking of any testimony or adjudication of or finding on any issues of fact or law herein, and without SunTrust admitting or denying any allegation made or implied by the Board of Governors in connection herewith, and solely for the purpose of settling this matter without a formal proceeding being filed and without the necessity for protracted or extended hearings or testimony, it is hereby ordered, pursuant to sections 8(b)(1), (2), and (6), of the FDI Act (12 U.S.C. §§ 1818(b)(1), (2), and (6)), that:

**No Misrepresentations or Omissions**

1. SunTrust shall continue to take all actions necessary to correct and prevent the re-occurrence of all violations of section 5(a)(1) of FTC Act (15 U.S.C. § 45(a)(1)) cited in paragraphs A. through O. of this Order.

2. SunTrust shall refrain from making, or allowing to be made, in connection with any product or service, any misleading or deceptive representation, statement, or omission, expressly or by implication, including but not limited to with respect to FI, Other-Add On Products, Payroll, stop payment requests, and TransArmor Solution n/k/a Clover Security Plus.

3. SunTrust shall make no representations to any insured depository institution, any business accountholders or other consumers, or any other person or entity that the Board of Governors, the Reserve Bank, or any employee, agent, or representative of the Board of Governors or the Reserve Bank have endorsed or approved any aspect of any product or service offered by the Bank.

## **UDAP Consumer Compliance Risk Management Program**

4. Within 60 days of this Order, SunTrust shall submit to the Reserve Bank an acceptable written plan to enhance the Unfair and Deceptive Acts and Practices (“UDAP”) consumer compliance risk management program to ensure that the marketing and processing of and billing for consumer products and services, such as for add-on products for business accountholders, comply with section 5(a)(1) of the FTC Act (15 U.S.C. § 45(a)(1)). The consumer compliance or similar committee of the board of directors shall have responsibility for overseeing the development and implementation of the plan required by this paragraph. The plan shall, at a minimum, address, consider, and include:

(a) measures to enhance the Bank’s marketing materials, disclosures, and similar documentation for consumer products and services, such as those related to add-on products targeted at business accountholders, to ensure that consumers receive material information in a manner that is accurate, clear, complete, and conspicuous, including for notice prior to enrollment of the specific post-enrollment steps required to activate any and all benefits associated with add-on products;

(b) measures to ensure that the UDAP consumer compliance risk management program is administered by compliance personnel with sufficient expertise in, and knowledge of section 5(a)(1) of the FTC Act (15 U.S.C. § 45(a)(1)), and to ensure that a sufficient amount of qualified personnel is provided to ensure full compliance with all requirements of this Order;

(c) measures to ensure on-going, periodic training of relevant SunTrust personnel that addresses compliance with section 5(a)(1) of the FTC Act (15 U.S.C. § 45(a)(1));

(d) measures to enhance the internal controls for compliance with section 5(a)(1) of the FTC Act (15 U.S.C. § 45(a)(1)), in the marketing and processing of and billing for consumer products and services, such as for add-on products for business accountholders; and

(e) measures to ensure that SunTrust takes the actions required by paragraphs 1 through 3 of this Order.

### **Validation of Restitution, Additional Restitution Requirements, and Other Relief**

5. Within 10 days of this Order, SunTrust shall deposit an amount of not less than \$5 million into a qualified settlement fund pursuant to section 1.468B-1, *et seq.*, of the Treasury Regulations, promulgated under section 468B of the Internal Revenue Code, or otherwise into a segregated deposit account at an insured depository institution acceptable to the Reserve Bank (“Reserve Account”) for the purpose of providing additional restitution, if necessary, as required by this Order. SunTrust shall make all additional restitution payments required by this Order regardless of whether the total of such payments exceeds the segregated amount required by this paragraph. No disbursements may be made out of the Reserve Account, except for the purpose of paying additional restitution as required by this Order.

6. SunTrust shall make restitution by reimbursing:

(a) to each accountholder that enrolled in FI during the FI Relevant Period, the fee paid for any month in the FI Relevant Period:

(i) during which the accountholder did not consent to enrollment;

(ii) during which the accountholder had not accepted the FI terms and conditions;

(iii) during which SunTrust misinformed the accountholder that FI would actively monitor the accountholder’s account for fraudulent transactions; or

(iv) that the accountholder was advised was part of a free trial period;

(b) to each accountholder that paid a separate fee for any of the Other Add-On Products during the Other Add-On Products Relevant Period, the fee for any month during which the accountholder had not accepted the terms and conditions of any Other Add-On Product for which the fee was being assessed;

(c) to each accountholder that terminated their OCM enrollment during the Payroll Relevant Period, the fee paid for Payroll after the accountholder could no longer access or use Payroll;

(d) to each accountholder of SunView that paid an incorrect fee for an on-line stop payment order during the Stop Payment Relevant Period, the total amount of incorrect fees paid for the on-line stop payment order less the total amount of the correct fees that should have been paid for the stop payment order; and

(e) to each accountholder that was: (1) automatically enrolled in TransArmor Solution during the TransArmor Relevant Period, and (2) did not affirmatively register for all of the benefits of the TransArmor Solution, the total amount of fees paid by the accountholder for TransArmor Solution; and

(f) to each accountholder that was: (1) automatically enrolled in TransArmor Solution during the TransArmor Relevant Period, and (2) affirmatively registered for all of the benefits of the TransArmor Solution, the total amount of fees paid by the accountholder for TransArmor Solution from the date of automatic enrollment to the date the accountholder registered for all of the benefits of the TransArmor Solution.

7. SunTrust shall make restitution in accordance with the following principles:

(a) restitution payable to the accountholders that are entitled to reimbursement of fees as required by paragraph 6 (“Eligible Accountholders”) shall be made by the following methods: (i) by check payment to Eligible Accountholders with a closed account that has no outstanding balance owed; (ii) by credit to the open account of Eligible Accountholders; (iii) by check payment to Eligible Accountholders with a closed account that has an outstanding balance owed if the Eligible Accountholder paid the amount of the relevant fee after it was charged; and (iv) by credit to Eligible Accountholders with a closed account that has an outstanding balance owed if the Eligible Accountholder never paid the amount of the relevant fee after it was charged;

(b) restitution shall apply to all Eligible Accountholders regardless of whether their accounts are closed, charged-off, sold, or otherwise transferred;

(c) written notice shall be provided (which may be consistent with each Eligible Accountholder’s account preference for receipt of notices) to each Eligible Accountholder regarding restitution required by paragraph 6 by stating, at a minimum, the amount and reason for the payment of restitution; and

(d) the rights of Eligible Accountholders shall not be limited in any way based on the receipt of restitution required by paragraph 6.

8. Within 30 days of this Order, SunTrust shall submit to the Reserve Bank for non-objection the following information (“Restitution Documentation”):

(a) the methodology SunTrust used to calculate and distribute restitution for each Eligible Accountholder, which, shall at a minimum, include: (i) the data fields involved in the calculation (including any previous refund to the particular Eligible Accountholder deducted from the total); (ii) a brief explanation or description of how SunTrust used those data to

calculate the amount of restitution to be paid; (iii) each Eligible Accountholder's name and account number; (iv) amount of fees assessed; (v) amount of fee refund; (vi) date of fee refund; and (vii) method of fee refund (*e.g.*, account credit or check);

(b) electronic account-level data and information necessary for the validation of whether SunTrust has identified all Eligible Accountholders and calculated the restitution provided to each Eligible Accountholder in a manner consistent with the requirements of paragraph 6;

(c) standard text of any electronic mail, letter, envelope, or other communication sent to Eligible Accountholders regarding restitution previously provided in a manner consistent with the requirements of paragraph 6 and a description of the timing and frequency of such communications;

(d) Description of any condition or restriction imposed by SunTrust on Eligible Accountholders based on the receipt of restitution provided in a manner consistent with the requirements of paragraph 6;

(e) the number of days after which restitution checks provided to Eligible Accountholders, in a manner consistent with the requirements of paragraphs 6, were voided;

(f) the total amount of restitution payments SunTrust provided to Eligible Accountholders by checks, in a manner consistent with the requirements of paragraph 6, that have not been cashed or deposited by Eligible Accountholders; and

(g) the process SunTrust used to locate Eligible Accountholders or their estates, if applicable, if a restitution check or credit that was provided, in a manner consistent with the requirements of paragraph 6, was returned for any reason;

9. If, after reviewing the Restitution Documentation and any other available information submitted by SunTrust, the Reserve Bank determines that the restitution provided by SunTrust does not satisfy the requirements of paragraphs 6 and 7, and provides SunTrust with a written explanation of any deficiency and any request for additional information (“Preliminary Deficiency Letter”), within 30 days of receipt of the Preliminary Deficiency Letter, SunTrust shall provide a written response to the Reserve Bank that includes any additional information that the Reserve Bank has requested.

10. If after consideration of SunTrust’s response to the Deficiency Letter, the Reserve Bank provides a written explanation (“Final Deficiency Letter”) to SunTrust regarding how to remediate any remaining deficiency to comply with the requirements of paragraphs 6 and 7, SunTrust shall promptly carry out any direction in the Final Deficiency Letter related to additional restitution, including any direction to:

(a) provide the final list of any Eligible Accountholders requiring restitution and the amount of such restitution that the Bank shall pay to each, subject to the requirements of paragraph 6;

(b) make restitution for Eligible Accountholders in accordance with the requirements of paragraphs 6 and 7 no later than 60 days from SunTrust’s receipt of the Final Deficiency Letter;

(c) specify the text and timing of any electronic mail, letter, or other communication required by paragraph 7(c) that SunTrust shall send to Eligible Accountholders;

(d) send checks and letters, respectively, consistent with the requirement of paragraph 7(c), by United States Post Service first-class mail, address correction service requested, to each Eligible Accountholder’s last known address reflected in the Bank’s records or

the most recent address provided by the National Change of Address System, or other similar system;

(e) require that the envelopes for the mailings identified required by paragraph 8(c) shall not contain materials other than those identified in paragraph 8(c);

(f) locate Eligible Accountholders or their estates, if applicable, if a notification letter and/or restitution check is returned for any reason through use of a standard address search using the National Change of Address System, or other similar system, and to promptly re-mail all returned letters and restitution checks to corrected addresses;

(g) for a restitution check sent by SunTrust as required by paragraph 7(b) that is returned or not negotiated, provide that the check is void no earlier than 90 days from the date of the restitution check and allow Eligible Accountholders to obtain a replacement restitution payment for a period of 270 days from the date of the initial restitution check;

(h) waive any prior condition or restriction imposed on Eligible Accountholders' rights based on receipt of the restitution previously provided in a manner consistent with paragraph 6;

(i) not impose any condition or restriction on Eligible Accountholders' rights based on receipt of the restitution as required by paragraph 6; and

(j) comply fully with the Final Deficiency Letter.

11. If the Reserve Bank determines that SunTrust has satisfied all of the restitution requirements in paragraphs 6 and 7 and the Reserve Bank provides any written non-objection to SunTrust, SunTrust shall:

(i) distribute the total amount of any restitution payments from the Reserve Account that had been made by checks issued pursuant to paragraph 10 that were voided and not

cash or deposited by Eligible Accountholders and the total amount of any interest or other payments earned on the Reserve Account to the United States Treasury; and

(ii) close the Reserve Account and remit to SunTrust any excess funds remaining therein.

### **Independent Third-Party Auditor**

12. Within 60 days of the date of this Order, SunTrust shall hire an independent auditor who is acceptable to the Reserve Bank, who shall verify that SunTrust made restitution as directed by the Reserve Bank. The independent auditor shall prepare a final written report (“Final Report”) evaluating the processes and procedures by which SunTrust made the restitution, including the amounts of all restitution credits and refunds required by this Order. The independent auditor proposal submitted to the Reserve Bank shall contain a date by which the independent auditor’s Final Report shall be submitted to the Reserve Bank for non-objection. Prior to delivery of the Final Report, the Reserve Bank may require the independent auditor to produce interim reports or other updates related to the restitution required by this Order. All reports by the independent auditor shall be submitted simultaneously to SunTrust and the Reserve Bank.

### **Approval, Implementation, and Progress Reports**

13. SunTrust shall submit the written plan, proposals, or documentation that are acceptable to the Reserve Bank within the applicable time periods set forth in this Order.

14. Unless otherwise provided above, within 10 days of approval by the Reserve Bank, SunTrust’s board of directors shall adopt the approved plan. Upon adoption, SunTrust shall promptly implement the approved plan and thereafter fully comply with it.

15. During the term of this Order, the approved plan shall not be amended or rescinded without the prior written approval of the Reserve Bank.

16. Within 45 days after the end of each calendar quarter following the date of this Order, SunTrust's board of directors or an authorized committee shall submit to the Reserve Bank written progress reports detailing the form and manner of all actions taken to secure compliance with the provisions of this Order and the results thereof. The Reserve Bank may, in writing, discontinue the requirement for progress reports or modify the reporting schedule.

### **Notices**

17. All communications regarding this Order shall be sent to:

- (a) Richard M. Ashton  
Deputy General Counsel  
Board of Governors of the Federal Reserve System  
20 & C Streets, N.W.  
Washington, D.C. 20551
- (b) Juan Sanchez  
Vice President  
Federal Reserve Bank of Atlanta  
1000 Peachtree Street, N.E.  
Atlanta, Georgia 30309
- (c) Ellen Fitzsimmons  
General Counsel  
SunTrust Bank  
303 Peachtree Street, N.E.  
Atlanta, Georgia 30308

### **Miscellaneous**

18. Notwithstanding any provision of this Order to the contrary, the Reserve Bank may, in its discretion, grant written extensions of time to SunTrust to comply with any provision of this Order.

19. The provisions of this Order shall be binding upon SunTrust, its institution-affiliated parties, in their capacities as such, and its successors and assigns.

20. Each provision of this Order shall remain effective and enforceable until stayed, modified, or terminated, or suspended in writing by the Reserve Bank.

21. The provisions of this Order shall not bar, estop, or otherwise prevent the Board of Governors, the Reserve Bank, or any other federal or state agency from taking any further or other action affecting SunTrust, or any of its current or former institution-affiliated parties or its successors or assigns, or any other of SunTrust's subsidiaries.

22. Nothing in this Order, expressed or implied, shall give to any person or entity, other than the parties hereto and their successors hereunder, any legal or equitable right, remedy, or claim under this Order.

By Order of the Board of Governors of the Federal Reserve System effective this 19th day of November, 2019.

SUNTRUST BANK

BOARD OF GOVERNORS  
OF THE FEDERAL RESERVE SYSTEM

\_\_\_\_\_  
/s/  
By: William H. Rogers, Jr.  
Chairman and  
Chief Executive Officer

\_\_\_\_\_  
/s/  
By: Ann E. Misback  
Secretary of the Board