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April 25, 2008

The Honorable John C. Dugan  
Comptroller of the Currency  
Office of the Comptroller of the Currency  
Administrator of National Banks  
Washington, DC 20219

Dear Comptroller Dugan:

The Agreement by and between Wachovia Bank, National Association and The Office of the Comptroller of the Currency (OCC) announced today (#2008-028, AA-EC-08-12) requires Wachovia to set aside \$125 million to reimburse those defrauded by a telemarketing scheme operated by some telemarketing and payment processing companies with relationships with the bank. I am writing to express my concern that the structure of this settlement, which requires victims to file claims in order to be reimbursed from this fund, could result in the reimbursement of only a fraction of those entitled to these funds, particularly because an elderly and medically-compromised population was the target of this fraud.

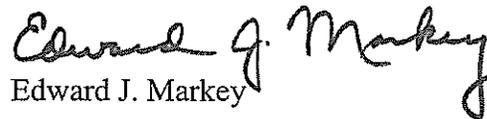
Accordingly, I request that the OCC explain why this settlement was not structured so that victims could be identified and proactively reimbursed, as has been the practice in previous settlements into which the OCC and other financial regulators have entered. I also am concerned that the settlement agreement stipulates that Wachovia is entitled to the return of any funds not claimed by victims. If the return rate is indeed low, an outcome that seems likely given the agreement's current structure, this aspect of the agreement would mandate the return of a large share of the restitution fund to Wachovia, which the OCC concluded as a result of its investigation of this matter "engaged in unsafe or unsound banking practices during the course of its relationships with the payment processors and telemarketers, and unfair practices within the meaning of the Federal Trade Commission Act." I therefore further request an explanation of why this reversion provision was included in the agreement.

The OCC has mailed checks to victims in previous cases, including *In the Matter of Providian National Bank*. The Securities and Exchange Commission (SEC) has also mandated that checks be mailed directly to victims in matters such as *In re MFS Administrative Proceeding*, SEC File No. 3-11393 (2008), rather than requiring the filing of claims. I understand that Wachovia itself has employed this procedure in the past (*Parsky v. Wachovia Bank*, No. 771 (Pa. Ct. C.P. Phila.)).

Mailing checks directly to victims, rather than requiring victims to file claims, would clearly result in a significantly higher rate of recovery for consumers, one of the ostensible goals of this settlement. Is the OCC or Wachovia unable to obtain the names and addresses of victims in this matter? If the OCC is, in fact, able to obtain victims' contact information, I urge you to amend today's settlement to require that victims are proactively reimbursed without the need to file claims.

Thank you for your prompt attention to this matter. If you have questions about this request, please have a member of your staff contact Mark Bayer on my staff at 202-225-2836.

Sincerely,

  
Edward J. Markey