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Comptroller of the Currency  
Administrator of National Banks

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Washington, DC 20219

May 2, 2008

The Honorable Edward Markey  
U. S. House of Representatives  
Washington, DC 20515

Dear Congressman Markey:

This responds to your letter dated April 25, 2008, expressing concern over the terms of the Agreement announced on that date between Wachovia Bank, National Association and the Office of the Comptroller of the Currency (OCC) (No. 2008-028, AA-EC-08-12), which requires Wachovia to fully reimburse all individuals harmed by the bank's relationships with several telemarketers and payment processing companies. I welcome the opportunity to provide more information about our action against Wachovia, including, in particular, important background information concerning the reimbursement process.

Under the Agreement, the bank will make restitution to all consumers who have not already been reimbursed. In addition to the restitution payments, the bank must also contribute \$8.9 million to consumer education programs directed at the elderly, and pay a \$10 million civil money penalty to the U.S. Treasury. The assessment of these additional payments is based on the OCC's finding that the bank engaged in unsafe or unsound banking practices, and unfair practices under the Federal Trade Commission Act.

The Agreement provides that the bank shall reimburse all consumers who have been harmed by the activities of certain telemarketers and payment processors who maintained relationships with Wachovia. The telemarketers and payment processors included in the Agreement are Payment Processing Center, LLC (PPC); FTN Promotions, dba Suntasia, Inc. (Suntasia), and Your Money Access/Netchex (YMA/Netchex). Initially, the Bank will set aside \$125 million for the reimbursements. The Bank will provide additional funds if needed.

To accomplish the reimbursement of consumers harmed by the bank's relationship with PPC, the Agreement adopts the claims procedure and reimbursement process previously approved by order of the federal court in *United States v. Payment Processing Center, LLC*, No. 06-725 (E.D. Pa.) (*U.S. v. PPC*). *U.S. v. PPC* was a case brought against PPC by the United States Attorney's Office in Philadelphia, with whom the OCC worked closely throughout its investigation of Wachovia. The court's order in *U.S. v. PPC* requires reimbursement to all eligible consumers through a very simple process. A notice will be sent to each consumer who has not been

reimbursed with a postage-paid postcard that the consumer, or his or her guardian or executor, can return to the Receiver after checking a box indicating that either the transaction was not authorized; the transaction was based on an authorization obtained through false or misleading representations; or that the consumer did not receive the product or service purchased. No additional proof or documentation is required. The Agreement incorporates this reimbursement procedure because it had already been reviewed and approved by a federal court for the individual consumers harmed by the bank's relationship with PPC, and because the payment process would be administered by court-appointed Receivers.

We envision that a similar process will be established to reimburse consumers harmed by the Bank's relationship with Suntasia in the lawsuit brought against it by the Federal Trade Commission, *Federal Trade Commission v. FTN Promotions, Inc.*, No. 8:07cv1279 (M.D. Fla. Tampa Div.). In the event the reimbursement process in this matter differs from the PPC case, we would undertake to modify the Agreement to parallel that process.

Under these circumstances, we did not believe it would be appropriate for the Agreement to establish separate claims and payment processes in competition with those already approved, or to be approved, by a federal court. Moreover, a claims process is included in the Agreement because many affected consumers have already received reimbursements; thus, the situation is distinguishable from previous OCC enforcement actions such as the *In re MFS Administrative Proceeding* and *Parsky v. Wachovia Bank* cases cited in your letter. In addition, the court-appointed Receivers are now in possession of all of the assets and property of PPC and Suntasia, including the databases containing each consumer's personal identification information, such as name, address, and the amount of funds withdrawn from their accounts. Neither the Bank nor the OCC currently has that information.

The Federal Trade Commission has also filed suit against YMA/Netchex, *Federal Trade Commission v. Your Money Access, LLC*, 07-5147 (E.D. Pa.), but no Receiver has been appointed in that case as it appears that those companies are insolvent. In the case of consumers harmed by YMA/Netchex, where Wachovia will be the only source of restitution to consumers, the Agreement requires that the bank develop a restitution plan and submit it to the OCC for approval within 45 days. The OCC will not approve the plan unless it protects the rights of aggrieved consumers.

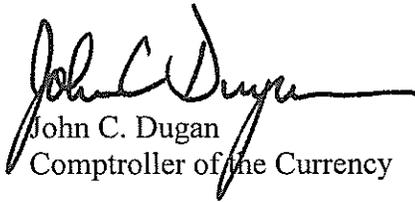
The Agreement requires the bank to set aside sufficient funds to reimburse each and every harmed consumer who has not yet been reimbursed directly by the telemarketers or payment processors. Without this Agreement, and the Bank's commitment to provide reimbursement, there would not likely have been adequate funds available to the Receivers to ensure that all harmed consumers are made whole. The set-aside of \$125 million reflects a careful approximation of the bank's potential maximum liability based on the total dollar amount of remotely created checks drawn on consumer accounts and deposited by the telemarketers and payment processors at accounts at the bank – it is not a penalty. In the event that actual losses to consumers exceed \$125 million, Wachovia will make restitution in that larger amount. In any case, it is important to note that these funds will revert to the bank only when, and if, they are determined to exceed the amount required for restitution following the payment of compensation to all eligible consumers. No funds claimed by harmed consumers will revert to the bank, but

the bank's liability under the Agreement is limited to the actual dollar amount of funds paid in restitution.

The Agreement also enables consumers to receive cash reimbursement payments far sooner than would be possible in the various other litigation currently pending against the bank, telemarketers, or the payment processors. Further, the cash payments are not contingent on the outcome of those various cases, and are not subject to reduction by the amount of class action plaintiffs' attorneys' fees and expenses.

Finally, the claims procedure and payment process to be administered by the Court-appointed Receivers is still subject to final review and approval by the federal courts. The plaintiffs in the class action lawsuit against the bank, *Faloney v. Wachovia Bank*, No. 07-1455 (E.D. Pa.), have been granted court permission to participate in *U.S. v. PPC*, for the sole purpose of commenting on the claims procedure and allocation plan prior to its implementation, so that their objections to the process can be heard and considered by the court. If the court determines to make changes in the claims procedure, we will certainly revisit this aspect of the Agreement.

Sincerely,



John C. Dugan  
Comptroller of the Currency

cc: The Honorable Barney Frank