

**#2008-159**  
**Amends #2008-028**  
**AA-EC-08-80**

AMENDED AGREEMENT BY AND BETWEEN  
Wachovia Bank, National Association  
Charlotte, North Carolina  
and  
The Office of the Comptroller of the Currency

Whereas, Wachovia Bank, National Association, Charlotte, North Carolina (“Bank”) and the Comptroller of the Currency of the United States of America (“Comptroller”) entered into an Agreement on April 24, 2008 (“Agreement”), and

Whereas, the Bank and the Comptroller wish to protect the interests of the Bank, depositors of the Bank, and consumers, and, toward that end, wish to amend the Agreement, and

Whereas, in consideration of the above premises, it is agreed, between the Bank, by and through its duly elected and acting Board of Directors (“Board”), and the Comptroller, through his authorized representative, that the Bank shall operate at all times in compliance with the articles of this Amended Agreement.

Article I

JURISDICTION

(1) This Amended Agreement shall be construed to be a “written agreement entered into with the agency” within the meaning of 12 U.S.C. § 1818(b)(1).

(2) This Amended Agreement shall be construed to be a “written agreement between such depository and such agency” within the meaning of 12 U.S.C. § 1818(e)(1) and 12 U.S.C. § 1818(i)(2).

(3) This Amended Agreement shall be construed to be a “written agreement” within the meaning of 12 U.S.C. § 1818(u)(1)(A).

(4) Unless notified otherwise by the Deputy Comptroller, all plans which the Bank has agreed to submit pursuant to Articles III and IV of this Amended Agreement shall be forwarded to:

Deputy Comptroller, Large Bank Supervision  
Office of the Comptroller of the Currency  
Washington, DC 20219

(5) Unless notified otherwise by the Deputy Comptroller, copies of the plans forwarded to the Deputy Comptroller pursuant to Paragraph (4) of this Article and all other reports, plans and proposed policies, procedures and standards which the Bank has agreed to submit pursuant to this Amended Agreement shall be forwarded to:

Examiner-in-Charge, Large Bank Supervision  
Office of the Comptroller of the Currency  
Two Wachovia Center, 16<sup>th</sup> Floor/NC0100  
301 South Tryon Street  
Charlotte, North Carolina 28282-0100

## Article II

### COMPLIANCE COMMITTEE AND QUARTERLY PROGRESS REPORTING

(1) In compliance with the Agreement, the Board appointed a Compliance Committee to be responsible for monitoring and coordinating the Bank's adherence to the provisions of the Agreement. The Compliance Committee shall continue to be responsible for monitoring and coordinating the Bank's adherence to this Amended Agreement. The Compliance Committee shall consist of at least four (4) individuals, of which two (2) shall be selected from the Board and of which (2) shall be members of the Bank's holding company board of directors and not be employees of the Bank.

(2) The Compliance Committee shall meet at least monthly.

(3) Within thirty (30) days of the appointment of the Compliance Committee and quarterly thereafter, the Compliance Committee shall submit a written report to the Board, setting forth in detail:

- (a) actions taken since the prior report (if any) to comply with each Article of this Agreement;
- (b) the results of those actions; and
- (c) a description of the actions needed and the anticipated time frame to achieve full compliance with each Article of this Agreement.

(4) Within ten (10) days of the receipt of the Compliance Committee's initial report and within ten (10) days of the end of each calendar quarter thereafter, the Board shall submit progress reports to the Examiner-in-Charge. These reports shall:

- (a) include the Compliance Committee's report to the Board for the applicable quarter, with any additional comments by the Board; and

- (b) describe any actions initiated by the Board or the Bank to comply with each Article of this Agreement.

### Article III

#### CONSUMER RESTITUTION

(1) The Bank has deposited into a segregated deposit account at the Bank an amount not less than one hundred twenty-five million dollars (\$125,000,000) to make restitution to consumers as required by this Article. Additional amounts shall be provided by the Bank as necessary to fully comply with this Article.

(2) Within sixty (60) days from the date of this Amended Agreement, the Bank shall make direct restitution to each “Eligible Consumer”. “Eligible Consumer” for purposes of this Amended Agreement, is defined as any individual or entity:

- (a) that had a remotely created check (“RCC”) generated by Payment Processing Center, LLC (“PPC”); FTN Promotions, Inc. dba Suntasia Inc., Guardian Marketing Services, Corp., Strategia Marketing, LLC, or any related companies (collectively, “Suntasia”) or Netchex Corp., Your Money Access, LLC, YMA Company, LLC or any related companies (collectively, “YMA/Netchex”) drawn on their account and deposited into an account at the Bank owned by PPC, Suntasia or YMA/Netchex; and
- (b) that has not been reimbursed for the amount of the PPC, Suntasia or YMA/Netchex-generated RCC by a return of the item to the Eligible Consumer by the Bank or otherwise.

(3) The Bank shall work in conjunction with the Receiver appointed in *United States v. Payment Processing Center, LLC*, Case No. 06-725, in the United States District Court, Eastern District of Pennsylvania, and the Receiver's Claims Administrator, Rust Consulting, Inc. ("Rust"), to develop a database containing the name, current address and amount of restitution due to each Eligible Consumer ("the Rust database"). The Bank may also employ Rust to assist the Bank with carrying out the requirements of this Article.

(4) When the Rust database is complete, the Bank shall direct Rust to mail restitution checks directly to each Eligible Consumer via first-class U.S. mail. The Bank shall notify the Deputy Comptroller when the checks are delivered to the U.S. Postal Service for mailing.

(5) After the restitution checks are mailed to each Eligible Consumer, the Bank shall work with Rust to identify and compile a list of all checks that are returned to Rust by the U.S. Postal Service as undeliverable mail.

(a) For restitution checks in an amount greater than two hundred dollars (\$200.00) that are returned to Rust as undeliverable mail, the Bank shall direct Rust to perform a one-time automated Lexis/Nexis search to determine whether the Eligible Consumer has a more current address. If a more current address is located, the Bank shall direct Rust to re-mail the check to the newly located address.

(b) For restitution checks in an amount greater than five hundred dollars (\$500.00) that are returned to Rust as undeliverable mail, if the automated Lexis/Nexis search fails to identify a more current address, the Bank shall

direct Rust to further perform a one-time manual Lexis/Nexis search to determine whether the Eligible Consumer has a more current address. If a more current address is located, the Bank shall direct Rust to re-mail the check to the newly located address.

(6) After the restitution checks are mailed, the Bank shall work with Rust to identify and compile a list of all restitution checks in an amount greater than two hundred dollars (\$200.00) that are delivered to Eligible Consumers by the Postal Service, but are not deposited or otherwise cashed. Forty-five (45) days after the date such checks are mailed, the Bank shall direct Rust to mail a postcard to the Eligible Consumers reminding them that the check is valid and should be deposited or cashed, and that the check will expire if not deposited or cashed within one hundred eighty (180) days from the date of the check.

(7) The Bank shall pay the expenses associated with the restitution program required by this Article.

(8) The Bank shall be entitled to the benefit of the funds collected by the Receiver from other sources to the extent permitted by the Court in *United States v. Payment Processing Center, LLC*, Case No. 06-725.

(9) The Bank shall be entitled to a return of the amount of any and all checks, or any other funds made available by the Bank to Rust, used to make restitution to Eligible Consumers, or to pay the expenses associated with the restitution program, that are returned to Rust or are not otherwise cashed or used within one hundred eighty (180) days from the date of the check.

(10) The Bank shall publicize the restitution program required by this Article

by placing prominent notice of the restitution program on the Bank's website. The notice required by this paragraph shall be placed on the Bank's website at least seven (7) days prior to the date the restitution checks are mailed, and shall remain posted for one hundred eighty-seven (187) days. The notice shall contain information to assist Eligible Consumers to verify that the restitution checks are valid and should be deposited or cashed as soon as possible, and shall also contain a toll free number where Eligible Consumers can call for additional information.

(11) The Bank shall include status updates on the number and dollar amount of restitution checks that are redeemed by Eligible Consumers in the reports required by Article II of this Amended Agreement.

#### Article IV

##### CONSUMER EDUCATION AND RESERVE

(1) Within fifteen (15) days, the Bank shall reserve or deposit into a segregated deposit account at the Bank the following:

- (a) three million nine hundred thousand dollars (\$3,900,000), which is equal to the total fees collected by the Bank on all deposit accounts owned by PPC, Suntasia and YMA/Netchex; and
- (b) an additional five million dollars (\$5,000,000).

(2) Within forty-five (45) days, the Bank shall develop a plan that sets forth how and when the reserve account will be used to fund consumer education programs and submit this plan to the Deputy Comptroller for prior supervisory non-objection. The funds may be used to fund only not-for profit or governmental consumer education

programs that are not related to the Bank, or any of its affiliates or subsidiaries and that are directed primarily at educating elderly consumers.

(3) Upon receiving a determination of supervisory non-objection, the Bank shall adopt and implement the plan. Within twenty-four (24) months of receipt of supervisory non-objection, the Bank shall, in conformance with the plan, disburse all funds reserved pursuant to Paragraph (1) of this Article.

## Article V

### POLICIES AND PROCEDURES FOR ACCEPTANCE OF REMOTELY CREATED CHECKS

(1) Within forty-five (45) days, the Board shall develop written policies, procedures or standards applicable to its banking relationships with customers who regularly deposit RCCs that address, at a minimum, the following:

- (a) the types of businesses not permitted to regularly deposit RCCs;
- (b) unacceptable market uses for RCCs;
- (c) acceptable rates of return for RCCs, including acceptable rates of return by reason for return; and
- (d) other requirements specified in OCC guidance pertaining to payment processors.

(2) “RCC”, for the purposes of this Agreement, is defined as a remotely created check as defined in Regulation CC, 12 C.F.R. 229.2(ff), which is a check that is not created by the paying bank and that does not bear a signature applied by the person on whose account the check is drawn.



(3) Within forty-five (45) days, the Board shall develop written policies, procedures or standards applicable to its banking relationships with Covered RCC Depositors to address, at a minimum, the following:

- (a) employee duties and responsibilities for monitoring banking relationships with Covered RCC Depositors, including frequency of reviews, and procedures for review, and reporting of and responding to problems discovered in the review;
- (b) periodic audits and onsite inspections of Covered RCC Depositors, including frequency of audits or inspections, audit report generation, and Covered RCC Depositors' response to issues identified via this process;
- (c) periodic review of Covered RCC Depositors' solicitations by Bank personnel, including review of telemarketing scripts, direct mailings and websites; and
- (d) evaluation of Covered RCC Depositors' compliance control mechanisms by Bank personnel, including periodic review of recordings of the entire telemarketing call, including both the sales and verification portions, in order to reasonably assure that Covered RCC Depositors and/or their clients abide by applicable consumer protection laws, rules and regulations, including the Federal Trade Commission's Telemarketing Sales Rule, 16 C.F.R. Part 310.

(4) "Covered RCC Depositor," for the purposes of this Agreement, is defined as:

- (a) a merchant that deposits RCCs and specializes primarily or exclusively in the direct marketing of services or products to end-user consumers whereby a sales person uses the telephone, internet, or direct mail to solicit prospective customers and contacts are typically unsolicited by the consumer;
- (b) a third party payment processor that regularly deposits RCCs on behalf of any merchant that specializes primarily or exclusively in the direct marketing of services or products to end-user consumers whereby a sales person uses the telephone, internet, or direct mail to solicit prospective customers and contacts are typically unsolicited by the consumer; and
- (c) any customer that regularly deposits RCCs and has experienced a monthly average return rate in excess of thresholds established pursuant to Article V, paragraph (1), subpart (c).
- (d) Excluded from (a) is the solicitation of sales through the mailing of a catalog which—
  - (i) contains a written description, or illustration of the goods or services offered for sale,
  - (ii) includes the business address of the seller,
  - (iii) includes multiple pages of written material or illustrations,
  - (iv) has been issued not less frequently than once a year; and
  - (v) the person making the solicitation does not solicit customers by telephone but only receives calls initiated by customers in response to the catalog.

(5) Upon completion, the policies, procedures or standards required by this Article shall be submitted to the Examiner-in-Charge for prior determination of supervisory non-objection. Upon receiving a determination of supervisory non-objection, the Bank shall adopt, implement, and adhere to the policies, procedures or standards.

## Article VI

### DUE DILIGENCE AND UNDERWRITING

(1) Within forty-five (45) days, the Board shall develop written due diligence policies, procedures or standards for Covered RCC Depositors that require, at a minimum, the following:

- (a) identification of controlling owners or investors of the Covered RCC Depositor. “Controlling owners or investors,” for the purposes of this Agreement, is defined as any individual or entity who, alone or acting in concert, own or control five (5) percent or more of stock or of partnership interest, or who have the power to control the Covered RCC Depositor;
- (b) identification of senior management of the Covered RCC Depositor;
- (c) in the case of Covered RCC Depositors who are third party payment processors, identification of a third party payment processor’s clients;
- (d) background checks on the individuals or entities identified pursuant to subsections (a), (b) and (c) to include queries of lists maintained by the Better Business Bureau, searches of consumer protection websites, and

searches to reveal prior civil, criminal and administrative regulatory actions, including orders, settlements, judgments, and convictions;

(e) identification of the product(s) or service(s) offered by Covered RCC Depositors and for Covered RCC depositors who are third party payment processors, identification of the product(s) or service(s) offered by their clients and periodic updating of client list;

(f) where an Covered RCC Depositor indicates it will offer a product or service that would result in recurring deposits of RCCs drawn on a consumer's account, the Bank must require the Covered RCC Depositor to obtain written or recorded consumer authorization of those recurring charges; and

(g) record-keeping requirements for the results of due diligence.

(2) With respect to Covered RCC Depositors, the Bank shall also adhere to all applicable Bank customer identification procedures and know your customer policies without exception.

(3) Within forty-five (45) days, the Board shall develop written underwriting policies, procedures or standards applicable to all Covered RCC Depositors that require, at a minimum, the following:

- (a) a signature card;
- (b) a signed deposit agreement, if applicable;
- (c) a signed corporate resolution, if applicable;
- (d) an onsite inspection report or verification of business;
- (e) financial statements and credit reports;

- (f) analysis of a Covered RCC Depositor's prior activity using recent monthly statements from the Covered RCC Depositor's current or most recent banking institution;
- (g) verification of trade and bank references; and
- (h) review and approval authorities.

(4) Upon completion, the policies, procedures or standards required by this Article shall be submitted to the Examiner-in-Charge for prior determination of supervisory non-objection. Upon receiving a determination of supervisory non-objection, the Bank shall adopt, implement, and adhere to the policies, procedures or standards.

## Article VII

### RISK MANAGEMENT

- (1) Within forty-five (45) days, the Board shall review and revise its risk management program to include, at a minimum, the following:
- (a) specific fraud detection methods for Covered RCC Depositors. Detection methods should include, at a minimum, exception reports detailing variances from previously established parameters including, but not limited to, volumes, average transaction size and return activity;
  - (b) procedures for regular monitoring of return rates;
  - (c) coordination of investigations of the same Covered RCC Depositor by various risk management areas of the Bank; and
  - (d) procedures for notification to the Bank's Treasury Services Risk Management when a Bank employee becomes aware that an existing

customer begins to regularly deposit RCCs without prior notice to the Bank.

(2) Within sixty (60) days, the Board shall develop a plan of action, including a timetable, for improving case management system functionality to include, at a minimum, the ability to aggregate related cases based on the identity of the initial beneficiary and/or depositor of the RCC if that initial beneficiary or depositor is a Bank customer.

(3) Within forty-five (45) days, the Board shall develop procedures or standards to address account closure recommendations, requiring, at a minimum, that any recommendation to close the account of a Covered RCC Depositor be made in writing and, that where the account is not closed, the recommendation be escalated to the Bank's Chief Risk Officer who must make a final determination in writing.

(4) Upon completion, the policies, procedures or standards required by this Article shall be submitted to the Examiner-in-Charge for prior determination of supervisory non-objection. Upon receiving a determination of supervisory non-objection, the Bank shall adopt, implement, and adhere to the policies, procedures or standards.

## Article VIII

### CONSUMER PROTECTION

(1) Within forty-five (45) days of the receipt of supervisory non-objection to the policies, procedures or standards developed pursuant to Articles V, VI and VII of this Agreement, the Board shall review the accounts of all Covered RCC Depositors to ensure compliance with those policies, procedures or standards and evaluate these relationships

considering specifically the potential risks posed to consumers and to the Bank. The written results of this review shall be forwarded to the Examiner-in-Charge.

(2) Within forty-five (45) days, the Bank shall identify all Covered RCC Depositor relationships that have any of the following features and evaluate the potential impact on consumers and the Bank of the feature:

- (a) tiered return-item pricing arrangements that provide discounted fees for increased return items;
- (b) an agreement to process without entry returns in a manner different from standard operating procedures; or
- (c) a non-standard agreement designed to limit the Bank's liability for any damages arising from the customer's activities at the Bank related to consumer transactions.

(3) With respect to Covered RCC Depositor accounts, all deviations from the Bank's standard operating procedures or from the policies, procedures or standards established pursuant to this Agreement shall require the prior written approval of the Bank's Chief Risk Officer.

(4) Within thirty (30) days, the Board shall review, revise and enhance the Bank's Elder Abuse Protection Program. In particular, the Program shall be revised to specifically and adequately address the risks posed by telemarketers and direct mail merchants to the elderly. Upon revision, a copy of the program shall be forwarded to the Examiner-in-Charge for review.

(5) Within sixty (60) days, the Board shall enhance training materials for existing employee training programs and incorporate the enhanced training material into

the annual compliance training for employees at all levels to identify and respond to suspected consumer fraud.

## Article IX

### RELATIONSHIPS WITH OTHER COVERED RCC DEPOSITORS

(1) Within ten (10) days the Board shall certify that the Bank has conducted a diligent search to identify all commercial depository relationships maintained at any time between May 2005 and the effective date of this Agreement with any third party payment processor that regularly deposited RCCs on behalf of telemarketers or with any telemarketers that regularly deposited RCCs not referenced in this Agreement, disclose a list of these commercial depository relationships to the OCC, and certify that the list includes all such relationships.

(2) If, at any time after the execution of this Agreement, the Bank discovers that it maintained a commercial depository relationship between May 2005 and the effective date of this Agreement with any third party payment processor that regularly deposited RCCs on behalf of telemarketers or with any telemarketer that regularly deposited RCCs not referenced in this Agreement, the Bank shall notify the Examiner-in-Charge of this relationship in writing within ten (10) days of the discovery.

(3) The Bank expressly acknowledges that, pursuant to this Agreement, the Comptroller has the authority to require the Bank to make restitution to consumers adversely affected by any Bank relationship identified pursuant to Paragraph (2) of this Article. The method(s) and amount(s) of any restitution shall be determined by the



Comptroller.

## Article X

### ADMINISTRATIVE APPEALS AND EXTENSIONS OF TIME

(1) If the Bank determines that an exception to any provision of this Agreement is in the best interests of the Bank or consumers, or requires an extension of any timeframe within this Agreement, the Board shall submit a written request to the Deputy Comptroller asking for relief.

(2) Any written requests submitted pursuant to this Article shall include a statement setting forth in detail the special circumstances that prevent the Bank from complying with any provision, that require the Deputy Comptroller to exempt the Bank from any provision, or that require an extension of any timeframe within this Agreement. All such requests shall be accompanied by relevant supporting documentation.

(3) The Deputy Comptroller's decision to grant or deny the request is final and not subject to further review or appeal.

## Article XI

### CLOSING

(1) Although the Bank, through its Board, is required to submit certain programs and reports to the Deputy Comptroller or the Examiner-in-Charge for review or prior determination of supervisory non-objection, the Board has the ultimate responsibility for proper and sound management of the Bank as well as compliance with all of the provisions contained in this Order.

(2) It is expressly and clearly understood that if, at any time, the Comptroller deems it appropriate in fulfilling the responsibilities placed upon him by the several laws of the United States of America to undertake any action affecting the Bank, nothing in this Agreement shall in any way inhibit, estop, bar, or otherwise prevent the Comptroller from so doing.

(3) Any time limitations imposed by this Agreement shall begin to run from the effective date of this Agreement unless otherwise specified. For the purposes of this Agreement, “days” shall mean calendar days.

(4) The provisions of this Agreement shall be effective upon execution by the parties hereto and its provisions shall continue in full force and effect unless or until such provisions are amended in writing by mutual consent of the parties to the Agreement or excepted, waived, or terminated in writing by the Comptroller.

(5) The Board shall ensure that the Bank has processes, personnel, and control systems to ensure implementation of and adherence to the policies, plans, programs, and procedures developed pursuant to this Agreement.

(6) In each instance in this Agreement in which the Board is required to ensure adherence to, and undertake to perform certain obligations of the Bank, it is intended to mean that the Board shall:

- (a) authorize and adopt such actions on behalf of the Bank as may be necessary for the Bank to perform its obligations and undertakings under the terms of this Agreement;
- (b) require the timely reporting by Bank management of such actions directed by the Board to be taken under the terms of this Agreement;

(c) follow-up on any non-compliance with such actions in a timely and appropriate manner; and

(d) require corrective action to be taken in a timely manner of any non-compliance with such actions.

(7) Nothing in this Agreement is, or is intended to constitute any finding or conclusion as to any action taken by the Bank. By entering into this Agreement, the Bank does not admit or deny any fact, finding, conclusion, issue of law, or violation of law; nor shall compliance with this Agreement constitute or be construed as an admission or denial by the Bank as to any fact, finding, conclusion, issue of law, or violation of law. The Agreement by the Bank to institute a practice pursuant to this Agreement does not constitute an admission or denial that the Bank's practice was otherwise prior to the date of the Agreement.

(8) This Agreement is intended to be, and shall be construed to be, a supervisory "written agreement entered into with the agency" as contemplated by 12 U.S.C. § 1818(b)(1), and expressly does not form, and may not be construed to form, a contract binding on the Office of the Comptroller of the Currency (OCC) or the United States. Notwithstanding the absence of mutuality of obligation, or of consideration, or of a contract, the OCC may enforce any of the commitments or obligations herein undertaken by the Bank under its supervisory powers, including 12 U.S.C. § 1818(b)(1), and not as a matter of contract law. The Bank expressly acknowledges that the Bank and the OCC do not have any intention to enter into a contract. The Bank also expressly acknowledges that no OCC officer or employee has statutory authority or other authority to bind the United States, the U.S. Treasury Department, the OCC, or any other federal

bank regulatory agency or entity, or any officer or employee of any of those entities to a contract affecting the OCC's exercise of its supervisory responsibilities. The terms of this Agreement, including this paragraph, are not subject to amendment or modification by any extraneous expression, prior agreements or prior arrangements between the parties, whether oral or written.

IN TESTIMONY WHEREOF, the undersigned, authorized by the Comptroller has hereunto set his hand on behalf of the Comptroller.

*Signed*

*December 8, 2008*

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Michael L. Brosnan  
Deputy Comptroller  
Large Bank Supervision

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Date

IN TESTIMONY WHEREOF, the undersigned, as the duly elected and acting Board of Directors of the Bank, have hereunto set their hands on behalf of the Bank.

/s/

12/4/2008

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Robert K. Steel

\_\_\_\_\_  
Date

/s/

12/4/2008

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Jane Sherburne

\_\_\_\_\_  
Date

/s/

12/5/2008

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Benjamin P. Jenkins III

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Date

/s/

12/4/2008

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Stanhope A. Kelly

\_\_\_\_\_  
Date

/s/

12/4/2008

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David K. Zwiener

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Date

/s/

12/4/2008

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Kenneth J. Phelan

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Date