

**UNITED STATES OF AMERICA  
DEPARTMENT OF THE TREASURY  
COMPTROLLER OF THE CURRENCY**

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<b>In the Matter of:</b>	)	
Wachovia Bank, National Association	)	AA-EC-08-13
Charlotte, North Carolina	)	

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**CONSENT ORDER FOR A CIVIL MONEY PENALTY**

The Comptroller of the Currency of the United States of America (“Comptroller”), through his National Bank Examiner, has examined the affairs of Wachovia Bank, National Association, Charlotte, North Carolina (“Bank”).

The Bank, by and through its duly elected and acting Board of Directors (“Board”), has executed a “Stipulation and Consent to the Issuance of a Consent Order for a Civil Money Penalty,” dated April 24, 2008, that is accepted by the Comptroller. By this Stipulation and Consent, which is incorporated by reference, the Bank has consented to the issuance of this Consent Order for a Civil Money Penalty (“Order”) by the Comptroller.

The Bank, by and through its Board, has also executed an Agreement By and Between the Bank and the Comptroller, dated April 24, 2008.

**ARTICLE I**

**COMPTROLLER’S FINDINGS**

The Comptroller finds, and the Bank neither admits nor denies, without any adjudication on the merits, the following:

- (1) From on or about June 1, 2003, until on or about December 31, 2006, the Bank maintained account relationships with certain payment processors for telemarketers, and direct telemarketers, including Payment Processing Center, LLC (“PPC”), FTN Promotions, Inc. dba

Suntasia, Inc. (“Suntasia”), Netchex Corp., Your Money Access LLC (“Netchex/YMA”), and related companies (collectively, “the payment processors and direct telemarketers”).

(2) As part of their business activities, the payment processors and direct telemarketers regularly deposited large numbers of remotely created checks (“RCCs”) in their accounts at the Bank.

(3) A substantial number of the RCCs deposited by the payment processors and direct telemarketers were returned to the Bank by or on behalf of consumers whose bank account information appeared on the RCCs for a number of reasons, including that consumers had not authorized the RCCs or that consumers did not receive adequate consideration in the transaction.

(4) Consumers were harmed in connection with the payment processors’ and direct telemarketers’ relationships with the Bank.

(5) In connection with its handling of the account activities of the payment processors and direct telemarketers, the Bank engaged in unsafe or unsound practices, including, but not limited to:

- (a) failure to conduct suitable due diligence on the accounts even though the Bank had reason to know that the payment processors and direct telemarketers were high-risk customers that posed significant legal, reputational and monetary risks to the Bank and monetary risk to consumers;
- (b) failure to recognize and properly address the risks posed by the activities of the payment processors and direct telemarketers;

- (c) failure to monitor the rates of return on the RCCs deposited into the accounts and to respond to allegations of consumer fraud from other banks and consumers; and
- (d) failure to follow the Bank's normal procedures for handling returned RCCs and implementation of a policy that had the effect of minimizing consumer complaints and scrutiny of the Bank's relationships with the payment processors and direct telemarketers.

(6) In connection with its handling of the account activities of the payment processors and direct telemarketers, the Bank engaged in unfair practices in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. Section 45(a)(1).

(7) The Bank's handling of the account activities of the payment processors and direct telemarketers was part of a pattern of misconduct that resulted in financial gain to the Bank in the form of fee income from the payment processors and direct telemarketers on returned RCCs, and a pattern or practice of disregard of the interests of consumers involved in transactions with the payment processors and direct telemarketers.

## ARTICLE II

### ORDER FOR A CIVIL MONEY PENALTY

(1) Without admitting or denying any wrongdoing, the Bank hereby consents to the payment of a civil money penalty in the amount of ten million dollars (\$10,000,000), which shall be paid upon execution of this Order.

- (a) If a check is the selected method of payment, the check shall be made payable to the Treasurer of the United States and shall be delivered to:

Comptroller of the Currency, P.O. Box 979012, St. Louis, Missouri  
63197-9000.

- (b) If a wire transfer is the selected method of payment, it must be sent to the Comptroller's account #2071-0001, ABA Routing # 021030004.
- (c) A photocopy of the payment document or confirmation of the wire transfer shall be sent immediately, by overnight delivery, to the Director of Enforcement and Compliance, Office of the Comptroller of the Currency, 250 E Street SW, Washington, DC 20219.

(2) This Order shall be enforceable to the same extent and in the same manner as an effective and outstanding order that has been issued and has become final pursuant to 12 U.S.C. §§ 1818(h) and (i) (as amended).

### ARTICLE III

#### CLOSING

(1) 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 Order shall in any way inhibit, estop, bar or otherwise prevent the Comptroller from so doing.

(2) This Order is intended to be, and shall be construed to be, a final order issued pursuant to 12 U.S.C. § 1818(i)(2), and expressly does not form, and may not be construed to form, a contract binding on the Comptroller or the United States.

(3) The terms of this Order, 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.

IT IS SO ORDERED, this 24<sup>th</sup> day of April 2008.

*/s/ Delora Ng Jee*

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Delora Ng Jee

Deputy Comptroller

Large Bank Supervision

**UNITED STATES OF AMERICA  
DEPARTMENT OF THE TREASURY  
COMPTROLLER OF THE CURRENCY**

<b>In the Matter of:</b>	)	
Wachovia Bank, National Association	)	AA-EC-08-13
Charlotte, North Carolina	)	

**STIPULATION AND CONSENT TO THE ISSUANCE  
OF A CONSENT ORDER FOR A CIVIL MONEY PENALTY**

The Comptroller of the Currency of the United States of America (“Comptroller”) intends to initiate a civil money penalty proceeding against Wachovia Bank, National Association, Charlotte, North Carolina (“Bank”) pursuant to 12 U.S.C. § 1818(i) for unsafe and unsound banking practices and violations of law relating to the Bank’s banking relationships with certain third party payment processors for telemarketers, and direct telemarketers.

The Bank, in the interest of compliance and cooperation, consents to the issuance of a Consent Order for a Civil Money Penalty, dated April 24, 2008 (“Order”);

In consideration of the above premises, the Comptroller, through his authorized representative, and the Bank, through its duly elected and acting Board of Directors, hereby stipulate and agree to the following:

**ARTICLE I**

**Jurisdiction**

(1) The Bank is a national banking association chartered and examined by the Comptroller pursuant to the National Bank Act of 1864, as amended, 12 U.S.C. § 1 *et seq.*

(2) The Comptroller is “the appropriate Federal banking agency” regarding the Bank pursuant to 12 U.S.C. §§ 1813(q) and 1818(i).

(3) The Bank is an “insured depository institution” within the meaning of 12 U.S.C. § 1818(i).

## ARTICLE II

### Agreement

(1) The Bank, without admitting or denying any wrongdoing, hereby consents and agrees to the issuance of the Order by the Comptroller.

(2) The Bank further agrees that said Order shall be deemed an “order issued with the consent of the depository institution” as defined in 12 U.S.C. § 1818(h)(2), and consents and agrees that said Order shall become effective upon its issuance and shall be fully enforceable by the Comptroller under the provisions of 12 U.S.C. § 1818(i). Notwithstanding the absence of mutuality of obligation, or of consideration, or of a contract, the Comptroller may enforce any of the commitments or obligations herein undertaken by the Bank under his supervisory powers, including 12 U.S.C. § 1818(i), and not as a matter of contract law. The Bank expressly acknowledges that neither the Bank nor the Comptroller has any intention to enter into a contract.

(3) The Bank also expressly acknowledges that no officer or employee of the Comptroller has statutory or other authority to bind the United States, the U.S. Treasury Department, the Comptroller, or any other federal bank regulatory agency or entity, or any officer or employee of any of those entities to a contract affecting the Comptroller’s exercise of his supervisory responsibilities.

### ARTICLE III

#### Waivers

- (1) The Bank, by signing this Stipulation and Consent, hereby waives:
  - (a) the issuance of a Notice of Charges pursuant to 12 U.S.C. § 1818(b);
  - (b) all rights to a hearing and a final agency decision pursuant to 12 U.S.C. § 1818(i), 12 C.F.R. Part 19
  - (c) all rights to seek any type of administrative or judicial review of the Order;
  - (d) any and all rights to challenge or contest the validity of the Order; and
  - (e) any and all claims for fees, costs or expenses against the Comptroller, or any of its agents or employees, related in any way to this enforcement matter or this Order, whether arising under common law or under the terms of any statute, including, but not limited to, the Equal Access to Justice Act, 5 U.S.C. § 504 and 28 U.S.C. § 2412.

### ARTICLE IV

#### Other Action

- (1) The Bank agrees that the provisions of this Stipulation and Consent shall not inhibit, estop, bar, or otherwise prevent the Comptroller from taking any other action affecting the Bank if, at any time, it deems it appropriate to do so to fulfill the responsibilities placed upon it by the several laws of the United States of America.



(2) The Bank understands that nothing herein shall preclude any proceedings brought by the Comptroller to enforce the terms of this Order, and that nothing herein constitutes, nor shall the Bank contend that it constitutes, a waiver of any right, power, or authority of any other representatives of the United States or agencies thereof, including the Department of Justice, to bring other actions deemed appropriate.

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

/s/ Delora Ng Jee  
Delora Ng Jee  
Deputy Comptroller  
Large Bank Supervision

04/24/2008  
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/  
G. Kennedy Thompson

04/24/08  
Date

/s/  
Mark C. Treanor

04/24/08  
Date

/s/  
Benjamin P. Jenkins III

04/24/08  
Date

/s/  
Stanhope A. Kelly

04/24/08  
Date

/s/  
Donald K. Truslow

04/24/08  
Date

/s/  
Thomas J. Wurtz

04/24/08  
Date