

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

CITIGROUP, INC.,

Plaintiff(s)

against

WACHOVIA CORPORATION and
WELLS FARGO & COMPANY, et al.

SEE RIDGE ATTORNEY

Defendant(s)

Index No. *08602872*
Date purchased

Plaintiff(s) designate(s)
New York
County as the place of trial.

The basis of the venue is
CPLR 503(a) and (c)

Summons

Plaintiff(s) reside(s) at
399 Park Avenue
New York, NY 10022
County of New York

To the above named Defendant(s)

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated, *Oct. 4, 2008*

[Signature]
Gregory P. Joseph
Attorney(s) for Plaintiff

Office and Post Office Address

Gregory P. Joseph Law Offices LLC
485 Lexington Ave., 30th Fl.
New York, New York 10017-2630
(212) 407-1200

Defendant's address:

Wachovia Corporation
One Wachovia Center
Charlotte, North Carolina 28288

Wells Fargo & Company
420 Montgomery Street
San Francisco, California 94163

FILED
OCT 06 2008
COUNTY CLERK'S OFFICE
NEW YORK

party here ver 18 years of age and resides at

SS: The undersigned, being duly sworn, deposes and says; deponent is not a

That on at M., at

deponent served the within summons, on defendant,

INDIVIDUAL 1. by delivering a true copy of each to said defendant personally; deponent knew the person so served to be the person described as said defendant therein.

CORPORATION 2. a corporation, by delivering thereat a true copy of each to personally, deponent knew said corporation so served to be the corporation described in said summons as said defendant and knew said individual to be thereof.

SUITABLE AGE PERSON 3. by delivering thereat a true copy of each to a person of suitable age and discretion. Said premises is defendant's—actual place of business—dwelling place—usual place of abode—within the state.

AFFIXING TO DOOR, ETC. 4. by affixing a true copy of each to the door of said premises, which is defendant's—actual place of business—dwelling place—usual place of abode—within the state. Deponent was unable, with due diligence to find defendant or a person of suitable age and discretion thereat, having called there

MAILING TO RESIDENCE USE WITH 3 OR 4 5A. Within 20 days of such delivery or affixing, deponent enclosed a copy of same in a postpaid envelope properly addressed to defendant at defendant's last known residence, at and deposited said envelope in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State.

MAILING TO BUSINESS USE WITH 3 OR 4 5B. Within 20 days of such delivery or affixing, deponent enclosed a copy of same in a first class postpaid envelope properly addressed to defendant at defendant's actual place of business, at

in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State.

The envelope bore the legend "Personal and Confidential" and did not indicate on the outside thereof, by return address or otherwise, that the communication was from an attorney or concerned an action against the defendant.

- Male White Skin Black Hair White Hair 14-20 Yrs. Under 5' Under 100 Lbs.
- Female Black Skin Brown Hair Balding 21-35 Yrs. 5'0"-5'3" 100-130 Lbs.
- Yellow Skin Blonde Hair Mustache 36-50 Yrs. 5'4"-5'8" 131-160 Lbs.
- Brown Skin Gray Hair Beard 51-65 Yrs. 5'9"-6'0" 161-200 Lbs.
- Red Skin Red Hair Glasses Over 65 Yrs. Over 6' Over 200 Lbs.

Other identifying features:

Sworn to before me on

Print name beneath signature.

LICENSE NO.

Index No.

Plaintiff(s)

against

Defendant(s)

Summons
ACTION NOT BASED UPON A
CONSUMER CREDIT TRANSACTION

Attorney(s) for Plaintiff(s)

Office, Post Office Address and Tel. No.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

CITIGROUP INC.,

Plaintiff,

v.

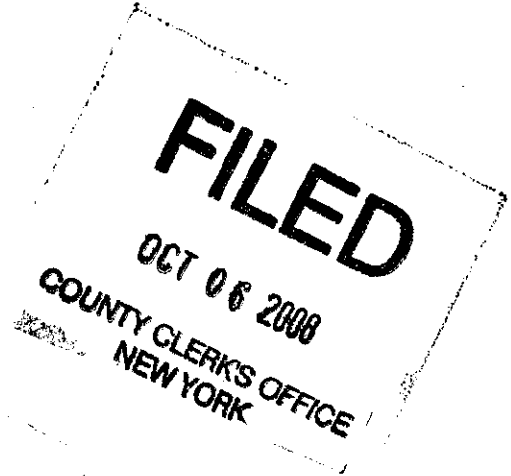
WACHOVIA CORPORATION, WELLS
FARGO & CO., ROBERT K. STEEL,
JOHN D. BAKER, II, PETER C.
BROWNING, JOHN T. CASTEEN, III,
JERRY GITT, WILLIAM H. GOODWIN,
JR., MARYELLEN C. HERRINGER,
ROBERT A. INGRAM, DONALD M.
JAMES, MACKAY J. MCDONALD,
JOSEPH NEUBAUER, TIMOTHY D.
PROCTOR, ERNEST S. RADY, VAN L.
RICHEY, RUTH G. SHAW, LANTY L.
SMITH, DONA DAVIS YOUNG, JOHN
S. CHEN, LLOYD H. DEAN, SUSAN E.
ENGEL, ENRIQUE HERNANDEZ, JR.,
RICHARD M. KOVACEVICH,
RICHARD D. MCCORMICK, CYNTHIA
H. MILLIGAN, NICHOLAS G. MOORE,
PHILIP J. QUIGLEY, DONALD B. RICE,
JUDITH M. RUNSTAD, STEPHEN W.
SANGER, JOHN G. STUMPF, SUSAN G.
SWENSON, MICHAEL W. WRIGHT, and
JOHN DOES 1-99

Defendants.

VERIFIED COMPLAINT

Index No.

9:21 pm



Plaintiff Citigroup Inc. ("Citigroup"), by its attorneys Gregory P. Joseph
Law Offices LLC, Michael S. Helfer and P.J. Mode, Jr., for its Complaint against
defendants Wachovia Corporation ("Wachovia"), Wells Fargo & Co. ("Wells Fargo"),
John D. Baker, II ("Baker"), Peter C. Browning ("Browning"), John L. Casteen, III
("Casteen"), Jerry Gitt ("Gitt"), William H. Goodwin, Jr. ("Goodwin"), Maryellen C.
Herringer ("Herringer"), Robert A. Ingram ("Ingram"), Donald M. James ("James"),

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

CITIGROUP INC.,

Plaintiff,

v.

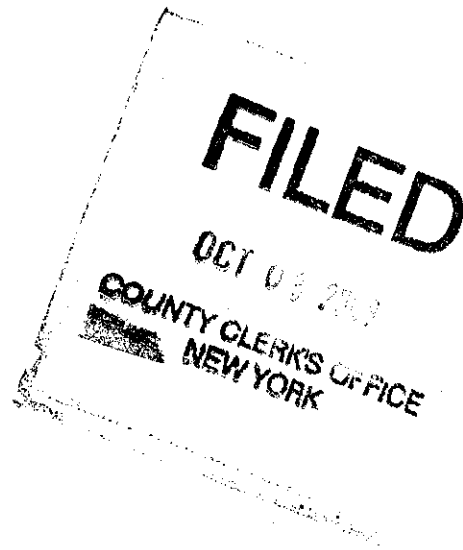
WACHOVIA CORPORATION, WELLS
FARGO & CO., ROBERT K. STEEL,
JOHN D. BAKER, II, PETER C.
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JERRY GITT, WILLIAM H. GOODWIN,
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Mackey J. McDonald ("McDonald"), Joseph Neubauer ("Neubauer"), Timothy D. Proctor ("Proctor"), Ernest S. Rady ("Rady"), Van L. Richey ("Richey"), Ruth G. Shaw ("Shaw"), Lanty L. Smith ("Smith"), Dona Davis Young ("Young"), John S. Chen ("Chen"), Lloyd H. Dean ("Dean"), Susan E. Engel ("Engel"), Enrique Hernandez, Jr. ("Hernandez"), Richard M. Kovacevich ("Kovacevich"), Richard D. McCormick ("McCormick"), Cynthia H. Milligan ("Milligan"), Nicholas G. Moore ("Moore"), Philip J. Quigley ("Quigley"), Donald B. Rice ("Rice"), Judith M. Runstad ("Runstad"), Stephen W. Sanger ("Sanger"), John G. Stumpf ("Stumpf"), Susan G. Swenson ("Swenson"), Michael W. Wright ("Wright"), and John Does 1-99 (the "Doe Defendants") alleges on personal knowledge as to the plaintiff's own conduct and on information and belief as to the defendants' conduct, as follows:

Nature of the Action

1. This is an action for bad faith breach of contract and tortious interference with contract.
2. In late September 2008, Wachovia Corporation ("Wachovia") was on the verge of collapse, burdened by bad loans and caught up in a liquidity crisis that threatened its very survival.
3. Well Fargo once had been a potential suitor for Wachovia in connection with a process for the rescue of Wachovia orchestrated by the Federal Deposit Insurance Corporation ("FDIC"), the Office of the Comptroller of the Currency ("OCC"), the Board of Governors of the Federal Reserve System (the "Federal Reserve"), and the Federal Reserve Bank of New York ("FRBNY"). By Sunday, September 28, 2008, Wells Fargo had determined not to participate in the process of rescuing Wachovia.

4. By approximately 4 a.m. on Monday, September 29, 2008, after intensive negotiations, and in order to avoid the imminent possibility that all of Wachovia's insured depository institution subsidiaries would be closed and put into FDIC receivership, Citigroup and Wachovia reached an agreement-in-principle. Pursuant to that agreement, Citigroup would acquire Wachovia's commercial banking subsidiaries and other businesses for approximately \$2.1 billion plus the assumption of approximately \$54 billion of secured and unsecured Wachovia debt at the holding company level, and the insured and uninsured deposits and other obligations to Wachovia's creditors.

5. In order to induce Citigroup and Wachovia to enter into the agreement-in-principle and to avoid the imminent possibility that all of Wachovia's insured depository institution subsidiaries would be closed and put into FDIC receivership, the FDIC agreed to provide open bank assistance to support the transaction, pursuant to Section 13 of the Federal Deposit Insurance Act ("FDIA"), 12 U.S.C. § 1823, after the FDIC, the Federal Reserve and the Secretary of the Treasury, in consultation with the President of the United States, invoked the "systemic risk" provision of the FDIA.

6. Had Citigroup not stepped up in this way, Wachovia would have failed the following day and the debt issued by its holding company would have collapsed, with potentially devastating implications for the stability and security of the financial markets.

7. At approximately 7:30 a.m., on September 29, 2008, before the parties themselves had issued press releases, the FDIC announced its support for the

transaction and sought to reassure Wachovia customers that their deposits were fully protected.

8. On September 29, 2008, Citigroup and Wachovia also entered into a binding agreement (the "Exclusivity Agreement"), pursuant to which Wachovia agreed not to negotiate or enter into any competing acquisition agreement during the exclusivity period, which extended until October 6, 2008. *See Exhibit A. The Exclusivity Agreement expressly contemplated that Citigroup and Wachovia would negotiate definitive deal documents during this period.*

9. In particular, pursuant to the Exclusivity Agreement, Wachovia is contractually forbidden, among other things, (i) to "enter into or participate in any discussions or negotiations with, furnish any information relating to Wachovia . . . [or] otherwise cooperate in any way with, or knowingly assist, participate in, facilitate or encourage any effort by, any third party that is seeking to make, or has made, an Acquisition Proposal"; or (ii) to "enter into any agreement in principle, letter of intent, term sheet, merger agreement, acquisition agreement, option agreement or other similar instrument relating to an Acquisition Proposal."

10. The Exclusivity Agreement defines "Acquisition Proposal" broadly to include "any acquisition or purchase, direct or indirect" of 15% or more of the consolidated assets or of any class of equity or voting securities of Wachovia; any merger, consolidation, business combination or similar transaction involving Wachovia; or any other transaction "the consummation of which could reasonably be expected to impede, interfere with, prevent or materially delay the [Citigroup/Wachovia] Transaction

or that could reasonably be expected to dilute materially the benefits to Citigroup of the Transaction.”

11. The Exclusivity Agreement further provides that the parties would be irreparably harmed by any breach of the Exclusivity Agreement, and that each party agrees “that the remedy of specific performance of [the Exclusivity Agreement] is appropriate in any action in court, in addition to any other remedy to which such party may be entitled.”

12. Early in the morning on Thursday, October 2, 2008, the principals of Citigroup and Wachovia met and reached high-level agreement on all remaining issues. At that meeting, Citigroup and Wachovia further agreed that these points would be quickly documented and that final documents would be executed before the close of business on the following day.

13. Following this meeting, teams of lawyers worked through the day and night on Thursday to finalize the definitive deal documents. Their work had nearly been completed by early Friday morning.

14. According to press reports, and unknown to Citigroup, at approximately 7:30 p.m. on Thursday, October 2, 2008, unnamed “federal regulators” advised Wachovia to expect an acquisition proposal from Wells Fargo.

15. Wachovia did not disclose to Citigroup that it expected to receive a competing offer from Wells Fargo, but instead Wachovia and its lawyers continued to participate in discussions with Citigroup to document their agreement until approximately 2 a.m. on Friday, October 3, 2008.

16. At approximately 2:15 a.m. on Friday, October 3, 2008, Wachovia's Chief Executive Officer, Robert Steel, advised Citigroup that Wachovia had entered into an acquisition agreement with Wells Fargo, at which point Wachovia refused to participate in further discussions with Citigroup.

17. At approximately 7:15 a.m. on October 3, 2008, Wachovia issued a press release announcing that Wachovia and Wells Fargo had "signed a definitive agreement for the merger of the two companies." This agreement and the negotiations that preceded it flagrantly violate the express language of the Exclusivity Agreement. *See Exhibit B.*

18. Among the differences, the illegitimate Wells Fargo deal—unlike the Citigroup agreement to acquire Wachovia's commercial banking subsidiaries and other businesses—triggered the golden parachutes of Wachovia CEO Robert Steel and its other senior executives, which would enable these executives to bestow upon themselves a \$225 million windfall.

19. During this period, numerous officers and directors of Wachovia and Wells Fargo, and numerous of their legal and other advisors, known and unknown, acted knowingly and deceptively in furtherance of a plan to violate and interfere with Citigroup's rights under the binding Exclusivity Agreement.

The Parties

20. Plaintiff Citigroup is a corporation organized under the laws of Delaware with its principal place of business at 399 Park Avenue, New York, New York.

21. On information and belief, Defendant Wachovia is a corporation

organized under the laws of North Carolina with its principal place of business at One Wachovia Center, Charlotte, North Carolina.

22. On information and belief, Defendant Wells Fargo is a corporation organized under the laws of Delaware with its principal place of business in at 420 Montgomery Street, San Francisco, California.

22A. On information and belief, Defendant Steel is a member of the Board of Directors of Wachovia and resides in Charlotte, North Carolina.

23. On information and belief, Defendant Baker is a member of the Board of Directors of Wachovia and resides in Jacksonville, Florida.

24. On information and belief, Defendant Browning is a member of the Board of Directors of Wachovia and resides in Charlotte, North Carolina.

25. On information and belief, Defendant Casteen is a member of the Board of Directors of Wachovia and resides in Charlottesville, Virginia.

26. On information and belief, Defendant Jerry Gitt is a member of the Board of Directors of Wachovia and resides in Palm Desert, California.

27. On information and belief, Defendant Goodwin is a member of the Board of Directors of Wachovia and resides in Richmond, Virginia.

28. On information and belief, Defendant Herringer is a member of the Board of Directors of Wachovia and resides in Piedmont, California.

29. On information and belief, Defendant Ingram is a member of the Board of Directors of Wachovia and resides in Durham, North Carolina.

30. On information and belief, Defendant James is a member of the Board of Directors of Wachovia and resides in Birmingham, Alabama.

31. On information and belief, Defendant McDonald is a member of the Board of Directors of Wachovia and resides in Greensboro, North Carolina.
32. On information and belief, Defendant Neubauer is a member of the Board of Directors of Wachovia and resides in Philadelphia, Pennsylvania.
33. On information and belief, Defendant Proctor is a member of the Board of Directors of Wachovia and resides in New York, New York.
34. On information and belief, Defendant Rady is a member of the Board of Directors of Wachovia and resides in La Jolla, California.
35. On information and belief, Defendant Richey is a member of the Board of Directors of Wachovia and resides in Birmingham, Alabama.
36. On information and belief, Defendant Shaw is a member of the Board of Directors of Wachovia and resides in Davidson, North Carolina.
37. On information and belief, Defendant Smith is the Chairman of the Board of Directors of Wachovia and resides in Raleigh, North Carolina.
38. On information and belief, Defendant Young is a member of the Board of Directors of Wachovia and resides in Hartford, Connecticut.
39. Defendants Steel, Baker, Browning, Casteen, Gitt, Goodwin, Herringer, Ingram, James, McDonald, Neubauer, Proctor, Rady, Richey, Shaw, Smith, and Young are collectively referred to as the "Wachovia Director Defendants."
40. On information and belief, Defendant Chen is a member of the Board of Directors of Wells Fargo and resides in Danville, California.
41. On information and belief, Defendant Dean is a member of the Board of Directors of Wells Fargo and resides in Half Moon Bay, California.

42. On information and belief, Defendant Engel is a member of the Board of Directors of Wells Fargo and resides in Minneapolis, Minnesota.
43. On information and belief, Defendant Hernandez is a member of the Board of Directors of Wells Fargo and resides in Pasadena, California.
44. On information and belief, Defendant Kovacevich is the Chairman of the Board of Directors of Wells Fargo and resides in San Francisco, California.
45. On information and belief, Defendant McCormick is a member of the Board of Directors of Wells Fargo and resides in Denver, Colorado.
46. On information and belief, Defendant Milligan is a member of the Board of Directors of Wells Fargo and resides in Lincoln, Nebraska.
47. On information and belief, Defendant Moore is a member of the Board of Directors of Wells Fargo and resides in Los Altos Hills, California.
48. On information and belief, Defendant Quigley is a member of the Board of Directors of Wells Fargo and resides in Burlingame, California.
49. On information and belief, Defendant Rice is a member of the Board of Directors of Wells Fargo and resides in Los Angeles, California.
50. On information and belief, Defendant Runstad is a member of the Board of Directors of Wells Fargo and resides in Seattle, Washington.
51. On information and belief, Defendant Sanger is a member of the Board of Directors of Wells Fargo and resides in Wayzata, Minnesota.
52. On information and belief, Defendant Stumpf is President and Chief Executive Officer of Wells Fargo as well as a member of the Board of Directors of Wells Fargo and resides in San Francisco, California.

53. On information and belief, Defendant Swenson is a member of the Board of Directors of Wells Fargo and resides in Irvine, California.

54. On information and belief, Defendant Wright is a member of the Board of Directors of Wells Fargo and resides in Wayzata, Minnesota.

55. Defendants Chen, Dean, Engel, Hernandez, Kovacevich, McCormick, Milligan, Moore, Quigley, Rice, Runstad, Sanger, Stumpf, Swenson, and Wright are collectively referred to as the "Wells Fargo Director Defendants."

56. On information and belief, the Doe Defendants are individuals and legal entities that participated in the flagrant violation of the Exclusivity Agreement and committed tortious interference with contract.

Jurisdiction

57. Pursuant to the Exclusivity Agreement, Defendant Wachovia has "irrevocably and unconditionally submit[ted] to the exclusive jurisdiction of any state or federal court sitting in New York City, Borough of Manhattan, over any suit, action or proceeding arising out of or relating to this letter agreement." Moreover, long-arm jurisdiction is appropriate over Defendant Wachovia under § 302 of the New York Civil Practice Law and Rules ("CPLR"), as this entity (i) transacts business in this State, and/or (ii) committed tortious acts within the State, and/or (iii) committed tortious acts outside of this State causing injury to plaintiff in this State, and (a) regularly does or solicits business or derives substantial revenue from services rendered within this State, or (b) expects or should reasonably expect the act to have consequences in the State and derives substantial revenue from interstate or international commerce.

58. Long-arm jurisdiction is appropriate over Defendant Wells Fargo

under § 302 of the CPLR, as this entity (i) transacts business in this State, and/or (ii) committed tortious acts within the State, and/or (iii) committed tortious acts outside of this State causing injury to plaintiff in this State, and (a) regularly does or solicits business or derives substantial revenue from services rendered within this State, or (b) expects or should reasonably expect the act to have consequences in the State and derives substantial revenue from interstate or international commerce.

59. Jurisdiction is appropriate as to each of the individual defendants as they either reside in this State or are subject to long-arm jurisdiction under § 302 of the CPLR.

Venue

60. Pursuant to CPLR § 503(a) and (c), venue is proper in New York County because plaintiff Citigroup’s principal office is located in this County.

61. In addition, pursuant to the Exclusivity Agreement, Defendant Wachovia “irrevocably and unconditionally waive[d] any objection to the laying of venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.”

**FIRST CAUSE OF ACTION
(Against Defendant Wachovia)
Breach of Contract**

62. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 61 above, as if fully set forth here.

63. On September 29, 2008, Defendant Wachovia entered into a binding contract with Citigroup, pursuant to which it unconditionally agreed not to

negotiate or enter into any competing acquisition agreement with any other entity during the exclusivity period, which extended until October 6, 2008.

64. By negotiating with and entering into an acquisition agreement with Defendant Wells Fargo, Wachovia breached the terms of its Exclusivity Agreement with Citigroup.

65. Wachovia's breach of its contractual obligations has caused substantial damages to Citigroup, and threatens to cause enormous additional damages in the future. The amount of such damages shall be determined at trial.

66. As Wachovia acknowledged in the Exclusivity Agreement, "in the event of any breach of this letter agreement, the parties would be irreparably harmed and could not be made whole by monetary damages. Each party accordingly agrees (i) not to assert by way of defense or otherwise that a remedy at law would be adequate and (ii) that the remedy of specific performance of this letter agreement is appropriate in any action in court, in addition to any other remedy to which such party may be entitled."

67. Citigroup is confident that the few remaining open issues between the parties can be resolved promptly in good faith negotiations and is prepared to go well beyond the halfway mark if necessary to consummate the transaction agreed to by the parties.

68. Absent immediate relief by the Court, Citigroup will be deprived of its bargained for opportunity to negotiate pursuant to the Exclusivity Agreement and will be irreparably harmed when deprived of the opportunity to acquire the Wachovia assets as provided for by the Exclusivity Agreement.

69. Citigroup is entitled to (i) specific performance of the terms of the Exclusivity Agreement, including an injunction requiring Wachovia to negotiate with Citigroup in good faith to resolve the few remaining open issues, (ii) an injunction preventing Wachovia from entering into or consummating any acquisition transaction with Wells Fargo, (iii) an injunction preventing Wachovia from further violating its obligations under the Exclusivity Agreement, and (iv) an injunction preventing Wachovia from engaging in further negotiations with Wells Fargo.

SECOND CAUSE OF ACTION
(Against Defendant Wells Fargo, the Wachovia Director Defendants, the Wells Fargo Director Defendants, and the John Doe Defendants)
Tortious Interference with Contract

70. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 69 above, as if fully set forth here.

71. The Exclusivity Agreement is a valid and binding contract between Citigroup and Wachovia.

72. On information and belief, defendant Wells Fargo, the Wachovia Director Defendants, the Wells Fargo Director Defendants and the Doe Defendants were fully aware at all times of the existence and terms of the Exclusivity Agreement, and were further fully aware that the Exclusivity Agreement precluded Wachovia from negotiating or entering into an acquisition agreement with any other party during the exclusivity period, which extends until October 6, 2008. Wells Fargo, the Wachovia Director Defendants, the Wells Fargo Director Defendants and the Doe Defendants were thus aware that the October 3, 2008 agreement, the negotiations that preceded it, and any steps taken to consummate it were violating Wachovia's contractual duties to Citigroup.

73. Defendant Wells Fargo, the Wachovia Director Defendants, the Wells Fargo Director Defendants, and the Doe Defendants intentionally and without justification procured Wachovia's breach of the Exclusivity Agreement.

74. Wachovia breached the Exclusivity Agreement by, among other things, negotiating and entering into its October 3, 2008 purported agreement with Wells Fargo and taking steps to consummate that agreement.

75. Citigroup has been damaged by Wachovia's breach of the Exclusivity Agreement in an amount to be determined at trial, but not less than \$20 billion.

76. Accordingly, the participation of Well Fargo, the Wachovia Director Defendants, the Wells Fargo Director Defendants, and the Doe Defendants in the wrongful scheme to violate Citigroup's rights constitutes tortious interference with Citigroup's Exclusivity Agreement with Wachovia.

WHEREFORE, plaintiff Citigroup respectfully requests judgment against the Defendants, as follows:

(a) Preliminary and permanent injunctive relief enjoining Defendants, their subsidiaries and affiliates, agents, and any other persons working on their behalf or in concert with them, from (i) negotiating, entering into, or consummating any transaction involving any acquisition of or merger with Wachovia; (ii) engaging in any other conduct in furtherance of any such transaction; or (iii) any other conduct prohibited by the Exclusivity Agreement;

(b) Specific performance of the terms of the Exclusivity Agreement requiring Wachovia to negotiate in good faith with Citigroup as follows: (i) Wachovia and

Citigroup shall reconvene in New York beginning no later than 12 p.m. on Sunday, October 5, 2008; and (ii) Wachovia and Citigroup shall continue such negotiations until at least 12 p.m. on Wednesday, October 8, 2008 (unless a definitive and binding agreement between Citigroup and Wachovia is executed prior to that time);

(c) A judgment invalidating the proposed agreement between Wells Fargo and Wachovia as contrary to EESA § 126(c);

(d) Compensatory damages in an amount to be determined at trial, but not less than \$20 billion;

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class of equity or voting securities of Wachovia or any of its subsidiaries whose assets, taken as a whole, constitute more than 15% of the consolidated assets of Wachovia, (iii) a merger, consolidation, share exchange, business combination, reorganization, recapitalization, liquidation, dissolution or other similar transaction involving Wachovia or any of its subsidiaries whose assets, individually or in the aggregate, constitute more than 15% of the consolidated assets of Wachovia or (iv) any other transaction the consummation of which could reasonably be expected to impede, interfere with, prevent or materially delay the Transaction or that could reasonably be expected to dilute materially the benefits to Citigroup of the Transaction.

The parties agree that in the event of any breach of this letter agreement, the parties would be irreparably harmed and could not be made whole by monetary damages. Each party accordingly agrees (i) not to assert by way of defense or otherwise that a remedy at law would be adequate and (ii) that the remedy of specific performance of this letter agreement is appropriate in any action in court, in addition to any other remedy to which such party may be entitled.

This agreement shall be governed by, and construed in accordance with, the laws of the State of New York. The parties hereby irrevocably and unconditionally submit to the exclusive jurisdiction of any state or federal court sitting in New York City, Borough of Manhattan, over any suit, action or proceeding arising out of or relating to this letter agreement. The parties hereby irrevocably and unconditionally waive any objection to the laying of venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. The parties hereby agree that a final judgment in any such suit, action or proceeding brought in any such court shall be conclusive and binding upon you and may be enforced in any other courts to whose jurisdiction the parties are or may be subject by suit upon such judgment.

This letter agreement may be executed in counterparts, either one of which need not contain the signature of more than one party, but both such counterparts taken together will constitute one and the same agreement.

If the foregoing accurately summarizes our understanding, we request that you approve this letter agreement and evidence such approval by causing a copy of this letter agreement to be executed and returned to the undersigned.

Very truly yours,

CITIGROUP INC.

By: *Gary Crittenden*
Name: GARY L. CRITTENDEN
Title: CFO

Agreed and accepted:

WACHOVIA CORPORATION

By: _____
Name:
Title:

Citigroup Inc.

September 29, 2008

Wachovia Corporation

Ladies and Gentlemen:

JS
October
6, 2008

Citigroup Inc. ("Citigroup") and Wachovia Corporation ("Wachovia") are party to that non-binding term sheet dated September 29, 2008 (the "Term Sheet") setting forth the terms and conditions of a proposed transaction between them (the "Transaction"). Citigroup and Wachovia will continue to proceed to negotiate definitive agreements (the "Definitive Documentation") relating to the Transaction in form and substance satisfactory to each of them with a view to executing such Definitive Documentation prior to ~~October 6, 2008~~ (the "Exclusivity Termination Date").

In consideration of the foregoing and other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, Wachovia hereby agrees that, during the period commencing on the date hereof and ending on Exclusivity Termination Date, Wachovia shall not, and shall not permit any of its subsidiaries or any of its or their respective officers, directors, employees, investment bankers, attorneys, accountants, consultants or other agents or advisors ("Representatives") to, directly or indirectly, (i) solicit, initiate or take any action to facilitate or encourage the submission of any Acquisition Proposal, (ii) enter into or participate in any discussions or negotiations with, furnish any information relating to Wachovia or any of its subsidiaries, assets or businesses or afford access to the business, properties, assets, books or records of Wachovia or any of its subsidiaries to, otherwise cooperate in any way with, or knowingly assist, participate in, facilitate or encourage any effort by, any third party that is seeking to make, or has made, an Acquisition Proposal, (iii) grant any waiver or release under any standstill or similar agreement with respect to any class of equity securities of Wachovia or (iv) enter into any agreement in principle, letter of intent, term sheet, merger agreement, acquisition agreement, option agreement or other similar instrument relating to an Acquisition Proposal. As of the date hereof, Wachovia will, and will cause its Representatives to, terminate any discussions or negotiations with respect to any Acquisition Proposal.

"Acquisition Proposal" means, other than the Transaction, any offer, proposal or inquiry relating to, or any third party indication of interest in, (i) any acquisition or purchase, direct or indirect, of 15% or more of the consolidated assets of Wachovia, or over 15% of any class of equity or voting securities of Wachovia or any of its subsidiaries whose assets, taken as a whole, constitute more than 15% of the consolidated assets of Wachovia, (ii) any tender offer (including a self-tender offer) or exchange offer that, if consummated, would result in such third party's beneficially owning 15% or more of any

class of equity or voting securities of Wachovia or any of its subsidiaries whose assets, taken as a whole, constitute more than 15% of the consolidated assets of Wachovia, (iii) a merger, consolidation, share exchange, business combination, reorganization, recapitalization, liquidation, dissolution or other similar transaction involving Wachovia or any of its subsidiaries whose assets, individually or in the aggregate, constitute more than 15% of the consolidated assets of Wachovia or (iv) any other transaction the consummation of which could reasonably be expected to impede, interfere with, prevent or materially delay the Transaction or that could reasonably be expected to dilute materially the benefits to Citigroup of the Transaction.

The parties agree that in the event of any breach of this letter agreement, the parties would be irreparably harmed and could not be made whole by monetary damages. Each party accordingly agrees (i) not to assert by way of defense or otherwise that a remedy at law would be adequate and (ii) that the remedy of specific performance of this letter agreement is appropriate in any action in court, in addition to any other remedy to which such party may be entitled.

This agreement shall be governed by, and construed in accordance with, the laws of the State of New York. The parties hereby irrevocably and unconditionally submit to the exclusive jurisdiction of any state or federal court sitting in New York City, Borough of Manhattan, over any suit, action or proceeding arising out of or relating to this letter agreement. The parties hereby irrevocably and unconditionally waive any objection to the laying of venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. The parties hereby agree that a final judgment in any such suit, action or proceeding brought in any such court shall be conclusive and binding upon you and may be enforced in any other courts to whose jurisdiction the parties are or may be subject by suit upon such judgment.

This letter agreement may be executed in counterparts, either one of which need not contain the signature of more than one party, but both such counterparts taken together will constitute one and the same agreement.

If the foregoing accurately summarizes our understanding, we request that you approve this letter agreement and evidence such approval by causing a copy of this letter agreement to be executed and returned to the undersigned.

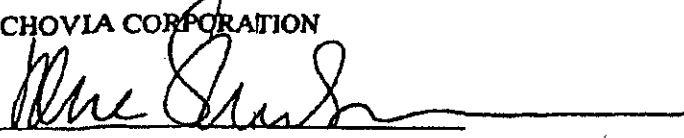
Very truly yours,

CITIGROUP INC.

By: _____
Name:
Title:

Agreed and accepted:

WACHOVIA CORPORATION

By:  _____
Name:
Title:

Wachovia Corporation

Media

Mary Eshet Christy Phillips-Brown
704-383-7777 704-383-8178

Investors

Alice Lehman Ellen Taylor
704-374-4139 212-214-1904

Wells Fargo & Company

Media

Janis Smith Larry Haeg
415-396-7711 612-667-5266

Investors

Jim Rowe Bob Strickland
415-396-8216 612-667-7919

**WELLS FARGO, WACHOVIA AGREE TO MERGE
CREATING PREMIER COAST-TO-COAST FINANCIAL SERVICES
FRANCHISE**

Without government assistance

SAN FRANCISCO and CHARLOTTE, October 3, 2008 - Wells Fargo & Company (NYSE:WFC) and Wachovia Corporation (NYSE:WB) said today they have signed a definitive agreement for the merger of the two companies including all of Wachovia's banking operations in a whole company transaction requiring no financial assistance from the Federal Deposit Insurance Corporation (FDIC) or any other government agency.

Under the agreement, Wells Fargo will acquire all outstanding shares of common stock of Wachovia in a stock-for-stock transaction. In the transaction, Wells Fargo will acquire all of Wachovia Corporation and all its businesses and obligations, including its preferred equity and indebtedness, and all its banking deposits.

Under terms of the agreement, which has been approved unanimously by the boards of both companies, Wachovia shareholders will receive 0.1991 shares of Wells Fargo common stock in exchange for each share of Wachovia common stock. The transaction, based on Wells Fargo's closing stock price of \$35.16 on October 2, 2008, is valued at \$7.00 per Wachovia common share for a total transaction value of approximately \$15.1 billion. Wachovia has almost 2.2 billion common shares outstanding. The agreement requires the approval of Wachovia shareholders and customary approvals of regulators.

Wells Fargo will record Wachovia's credit-impaired assets at fair value. The acquisition is expected to exceed Wells Fargo's internal rate of return goal and add to Wells Fargo's earnings per share in the first year of operations, excluding integration costs, write-downs, transaction charges, and credit reserve build. Wells Fargo expects to incur merger and integration charges of approximately \$10 billion. To maintain its strong capital position, Wells Fargo intends to issue up to \$20 billion of new Wells Fargo securities, primarily common stock.

"We at Wachovia have great admiration and respect for the people and businesses at Wells Fargo and we are extremely pleased to join forces with this outstanding company," said Robert K. Steel, President and CEO of Wachovia Corp. "Today's announcement creates one of the strongest financial firms in the world and is great for all Wachovia constituencies: our shareholders, customers, colleagues and communities. This deal enables us to keep Wachovia intact and preserve the value of an integrated

company, without government support. The market presence and composition of our businesses, along with our service-oriented cultures, are extraordinarily complementary and this combination creates great potential for sustained stability and growth."

"This agreement represents a compelling value for Wachovia shareholders," said Wells Fargo Chairman Dick Kovacevich. "It provides superior value compared to the previous offer to acquire only the banking operations of the company and because Wachovia shareholders will have a meaningful opportunity to participate in the growth and success of a combined Wachovia-Wells Fargo that will be one of the world's great financial services companies. We are combining the industry's number one ranking customer service culture of Wachovia with the industry's number one sales and cross-selling culture of Wells Fargo. The best in service and the best in sales, an unbeatable combination. Wachovia shareholders also will benefit from holding the stock of a strong financial institution, the U.S. bank with the highest credit ratings and with a long history of increasing dividends on its common stock. Wachovia's brokerage and asset management businesses, which would have been left behind in the prior proposal, are tightly interwoven with Wachovia's core banking business - and this agreement avoids the complexity and unavoidable loss of value in trying to separate them, which would have disrupted Wachovia's team members and customers. We also bring to this merger agreement our 157 years of experience in financial services and the unparalleled convenience we can offer Wachovia customers through one of the most extensive financial services distributions systems in North America. We have the highest regard

for the quality and commitment and caring of Wachovia team members. We believe their demonstrated commitment to outstanding customer service and their highest standards of community leadership are identical to our own values. And, of course, this agreement won't require even a penny from the FDIC."

The combined company will have a strong presence in Charlotte, which will be the headquarters for the combined company's East Coast retail and commercial and corporate banking business. St. Louis will remain the headquarters of Wachovia Securities. In addition, three members of the Wachovia Board will be invited to join the Wells Fargo & Company Board when the transaction is completed.

Kovacevich said "This agreement is an outstanding opportunity for Wachovia common and preferred shareholders and debt holders, team members and customers, for the Charlotte and St. Louis communities and indeed all of the communities that Wachovia serves, and for the U.S. government and our banking system. It makes compelling business and strategic sense and is simply an incredible fit that will result in an immensely strong, stable financial services company that will carry on Wachovia's proud tradition of being one of the very best financial institutions in the world."

"We know this has been a time of great uncertainty for Wachovia team members and many of its customers as their company has gone through a very painful and challenging time of unprecedented change in our industry," said Wells Fargo President

and CEO John Stumpf. "We want to assure them we'll do everything we can to make the integration of our operations as smooth as possible. An important measure of success for this integration will be our ability to retain as many of the talented Wachovia team members as possible so they can continue to provide outstanding service and financial advice to their customers and continue their careers with Wells Fargo."

The combined company will be one of North America's most extensive financial services distribution networks:

6/30/08

	<i>Wells Fargo</i>	<i>Wachovia</i>	<i>Combined</i>
Assets	\$609 billion	\$812 billion	\$1.42 trillion
Deposits	\$339 billion	\$448 billion	\$787 billion
Customers	28 million	20 million	48 million *
Assets under Mgt. (Mutual Funds)	\$151 billion	\$107 billion	\$258 billion
Stores	5,941	4,820	10,761
ATMs	6,950	5,277	12,227
Team Members	160,000	120,000	280,000

* unadjusted for customer overlap

Wells Fargo's Chief Financial Officer Howard Atkins said Wells Fargo used conservative assumptions in evaluating this opportunity. "As always, we only consider acquisitions that add to earnings per share no later than the third year after purchase and earn an internal rate of return of at least 15 percent," said Atkins. "This acquisition comfortably exceeds all our financial requirements. This is a unique opportunity to expand both our Community Banking and Wholesale Banking presence in current

markets and enter some new markets by acquiring another full service financial services retail banking company with a strong culture of customer service and community involvement very similar to ours."

Wells Fargo and Wachovia will create the nation's premier coast-to-coast community banking presence. The combined company will have community banks in 39 states and the District of Columbia. The acquisition will establish a Wells Fargo Community Banking presence for the first time in Alabama, Connecticut, Delaware, Florida, Georgia, Kansas, Maryland, Mississippi, New Jersey, New York, North Carolina, Pennsylvania, South Carolina, Tennessee, Virginia and Washington, D.C. Wells Fargo already has a Community Banking presence in Alaska, Arizona, Arkansas (pending), California, Colorado, Idaho, Illinois, Indiana, Iowa, Michigan, Minnesota, Montana, Nebraska, Nevada, New Mexico, North Dakota, Ohio, Oregon, South Dakota, Texas, Utah, Washington, Wisconsin, and Wyoming.

The combined company will be #1 in deposit market share ^a in 17 of its 39 Community Banking states: Alaska, Arizona, California, Colorado, Florida, Georgia, Idaho, Minnesota, Iowa, Montana, Nebraska, New Jersey, New Mexico, North Carolina, South Dakota, Texas, and Virginia. Ninety-three percent of its deposits will be in states in which it ranks #1, 2 or 3 and the combined company will rank #1 in ten of the nation's 20 largest Metropolitan Statistical Areas (MSAs) in deposit market share. ^a

^a excludes deposits greater than \$500 million in a single banking store

Wells Fargo also is the nation's:

- #1 small business lender,
- #1 agricultural lender,
- #1 commercial real estate broker,
- #2 largest mortgage originator,
- #2 largest mortgage servicer,
- #2 largest debit card issuer,
- #1 financial services provider to middle market businesses in the western U.S. and a national presence in commercial banking (29 states),
- largest bank-owned U.S. insurance brokerage

In connection with the agreement, Wachovia and Wells Fargo entered into a share exchange agreement under which Wachovia is issuing Wells Fargo preferred stock that votes as a single class with Wachovia's common stock representing 39.9 percent of Wachovia's voting power.

Wells Fargo was advised on the transaction by Wachtell, Lipton, Rosen & Katz and JPMorgan Securities, Inc. was the exclusive financial advisor to Wells Fargo. Wachovia was advised on the transaction by Sullivan & Cromwell LLP, Goldman Sachs & Co. and Perella Weinberg Partners.

Wells Fargo & Company is a diversified financial services company with \$609 billion in assets, providing banking, insurance, investments, mortgage and consumer finance through almost 6,000 stores and the internet (wellsfargo.com) across North America and elsewhere internationally. Wells Fargo Bank, N.A. is the only bank in the U.S., and one of only two banks worldwide, to have the highest possible credit rating from both

Moody's Investors Service, "Aaa," and Standard & Poor's Ratings Services, "AAA."

FORWARD-LOOKING STATEMENTS

This news release contains forward-looking statements about Wells Fargo and Wachovia and the proposed transaction between the companies. There are several factors - many beyond Wells Fargo's control - that could cause actual results to differ significantly from expectations described in the forward-looking statements. Among these factors are the receipt of necessary regulatory approvals and the approval of Wachovia shareholders. Forward-looking statements speak only as of the date they are made, and we do not undertake any obligation to update them to reflect changes that occur after that date.

For a discussion of factors that may cause actual results to differ from expectations, refer to each company's Quarterly Report on Form 10-Q for the quarter ended June 30, 2008, and Annual Report on Form 10-K for the year ended December 31, 2007, including information incorporated into each company's 10-K from their respective 2007 annual reports, filed with the Securities and Exchange Commission (SEC) and available on the SEC's website at www.sec.gov.

MORE INFORMATION ABOUT THE MERGER AND WHERE TO FIND IT

The proposed merger will be submitted to Wachovia Corporation shareholders for their consideration. Wells Fargo will file with the Securities and Exchange Commission ("SEC") a registration statement on Form S-4 that will include a proxy statement of Wachovia Corporation that also constitutes a prospectus of Wells Fargo. Wachovia Corporation will mail the proxy statement-prospectus to its shareholders. Wachovia shareholders and other investors are urged to read the final proxy statement-prospectus when it becomes available because it will describe the proposed merger and contain other important information. You may obtain copies of all documents filed with the SEC regarding the proposed merger, free of charge, at the SEC's website (www.sec.gov). You may also obtain free copies of these documents by contacting Wells Fargo or Wachovia, as follows:

Wells Fargo & Company, Attention Corporate Secretary, MAC N9305-173, Sixth and Marquette, Minneapolis, Minnesota 55479, (612) 667-0087.

Wachovia Corporation, Investor Relations, One Wachovia Center, 301 South College Street, Charlotte, North Carolina 28288, (704) 374-6782

Wells Fargo and Wachovia and their respective directors and executive officers may be deemed to be participants in the solicitation of proxies from Wachovia Corporation shareholders in connection with the proposed merger. Information about Wells Fargo's directors and executive officers and their ownership of Wells Fargo common stock is contained in the definitive proxy statement for Wells Fargo's 2008 annual meeting of

stockholders, as filed by Wells Fargo with the SEC on Schedule 14A on March 17, 2008. Information about Wachovia's directors and executive officers and their ownership of Wachovia common stock is contained in the definitive proxy statement for Wachovia's 2008 annual meeting of shareholders, as filed by Wachovia with the SEC on Schedule 14A on March 10, 2008. You may obtain a free copy of these documents by contacting Wells Fargo or Wachovia at the contact information provided above. The proxy statement-prospectus for the proposed merger will provide more information about participants in the solicitation of proxies from Wachovia Corporation shareholders.

CONFERENCE CALL UPDATE

Wells Fargo will host a conference call Friday, October 3, 2008, at 6:30 a.m. (Pacific Time) to review the acquisition. Investors can call 877-425-9480 (domestic) and (210) 689-8848 (international) with the access code 299254, or listen via live audio webcast. The live audio webcast and presentation visuals will be available on http://www.wellsfargo.com/invest_relations/presents. A replay of the conference call will be available through October 10, 2008 at (877) 660-6853 (domestic) and (201) 612-7415 (international). Enter account 286 and Conference ID 299254. The replay also will be available online.

CITIGROUP INC.,

Plaintiff,

- against -

WACHOVIA CORPORATION, WELLS
FARGO & CO., JOHN D. BAKER, II,
PETER C. BROWNING, JOHN T.
CASTEEN, III, JERRY GITT, WILLIAM
H. GOODWIN, JR., MARYELLEN C.
HERRINGER, ROBERT A. INGRAM,
DONALD M. JAMES, MACKKEY J.
MCDONALD, JOSEPH NEUBAUER,
TIMOTHY D. PROCTOR, ERNEST S.
RADY, VAN L. RICHEY, RUTH G.
SHAW, LANTY L. SMITH, DONA DAVIS
YOUNG, JOHN S. CHEN, LLOYD H.
DEAN, SUSAN E. ENGEL, ENRIQUE
HERNANDEZ, JR., RICHARD M.
KOVACEVICH, RICHARD D.
MCCORMICK, CYNTHIA H. MILLIGAN,
NICHOLAS G. MOORE, PHILIP J.
QUIGLEY, DONALD B. RICE, JUDITH
M. RUNSTAD, STEPHEN W. SANGER,
ROBERT K. STEEL, JOHN G. STUMPF,
SUSAN G. SWENSON, MICHAEL W.
WRIGHT, and JOHN DOES 1-99,

Defendant.

VERIFIED COMPLAINT

At Commercial Division Part ___ of the
Supreme Court of the State of New York,
County of New York, held at the
Courthouse located at 60 Centre Street on
the 4th day of October, 2008.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

CITIGROUP INC.,

Plaintiff,

v.

WACHOVIA CORPORATION, WELLS
FARGO & CO., JOHN D. BAKER, II,
PETER C. BROWNING, JOHN T.
CASTEEN, III, JERRY GITT, WILLIAM
H. GOODWIN, JR., MARYELLEN C.
HERRINGER, ROBERT A. INGRAM,
DONALD M. JAMES, MACKEY J.
MCDONALD, JOSEPH NEUBAUER,
TIMOTHY D. PROCTOR, ERNEST S.
RADY, VAN L. RICHEY, RUTH G.
SHAW, LANTY L. SMITH, DONA
DAVIS YOUNG, JOHN S. CHEN,
LLOYD H. DEAN, SUSAN E. ENGEL,
ENRIQUE HERNANDEZ, JR.,
RICHARD M. KOVACEVICH,
RICHARD D. MCCORMICK, CYNTHIA
H. MILLIGAN, NICHOLAS G. MOORE,
PHILIP J. QUIGLEY, DONALD B. RICE,
JUDITH M. RUNSTAD, STEPHEN W.
SANGER, ROBERT K. STEEL, JOHN G.
STUMPF, SUSAN G. SWENSON,
MICHAEL W. WRIGHT, and JOHN
DOES 1-99

Defendants.

**ORDER TO SHOW CAUSE,
TEMPORARY RESTRAINING
ORDER, PRELIMINARY
INJUNCTION, AND EXPEDITED
DISCOVERY**

Index No.

FILED
COUNTY CLERK
NEW YORK COUNTY

OCT 06 2008

**Unsigned Order to
Show Cause**

Upon the accompanying Verified Complaint and the exhibits annexed
thereto, and the accompanying memorandum of law, it is hereby

At Commercial Division Part 53 of the
Supreme Court of the State of New York,
County of New York, held at ~~the~~ *350 Columbus Blvd, N*
~~Courthouse located at 60 Centre Street~~ on
the 5th day of October, 2008.

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

CITIGROUP INC.,

Plaintiff,

v.

WACHOVIA CORPORATION, WELLS
FARGO & CO., JOHN D. BAKER, II,
PETER C. BROWNING, JOHN T.
CASTEEN, III, JERRY GITT, WILLIAM
H. GOODWIN, JR., MARYELLEN C.
HERRINGER, ROBERT A. INGRAM,
DONALD M. JAMES, MACKEY J.
MCDONALD, JOSEPH NEUBAUER,
TIMOTHY D. PROCTOR, ERNEST S.
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DOES 1-99

Defendants.

**ORDER TO SHOW CAUSE,
TEMPORARY RESTRAINING
ORDER, PRELIMINARY
INJUNCTION, AND EXPEDITED
DISCOVERY**

Index No.

Upon the accompanying Verified Complaint and the exhibits annexed
thereto, and the accompanying memorandum of law, it is hereby

ORDERED, that Defendants show cause before this Court at Commercial Division Part __ thereof, in Room __, 60 Centre Street, New York, New York, on the 10th day of October, 2008, at 11 a.m., or as soon thereafter as counsel may be heard, why an order should not be entered pursuant to Section 6300 *et seq.* of the Civil Practice Law and Rules of the State of New York ("CPLR") temporarily restraining and preliminarily enjoining Wachovia, its subsidiaries and affiliates, agents, and any persons working on their behalf or in concert with them, from (i) negotiating, entering into, or consummating any transaction involving any acquisition of, or merger with, Wachovia; (ii) engaging in any other conduct in furtherance of any such transaction; or (iii) any other conduct prohibited by the Exclusivity Agreement; and granting Citigroup, Inc. ("Citigroup") such other and further relief as the Court may deem just and proper; and it is further

~~ORDERED, that pending such hearing, in order to preserve the status quo ante, Wachovia shall not assert that the Exclusivity Period has expired; and Wachovia shall not take any action that would prevent the resumption of negotiations under the Exclusivity Agreement or the consummation of the Transaction as defined in the Exclusivity Agreement; and it further~~

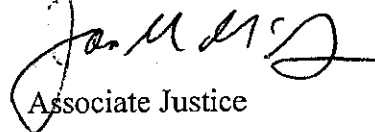
ORDERED, that service of this Order and the papers on which it is based be made on or before the 6th day of October 2008 by serving copies thereof on Defendants by hand delivery or by U.S. express mail overnight delivery to Defendants or their attorneys; and it is further

ORDERED that defendant serve any papers in opposition on Plaintiff's attorneys so as to be received on or before the close of business on the 8th day of October 2008.

Defendants-Appellants Wachovia Corporation (Wachovia) and Wells Fargo & Co. (Wells Fargo) seek an order vacating the order of Supreme Court (Charles Ramos, J.) providing that the exclusivity termination date under the exclusivity agreement between Wachovia and Citigroup, Inc. (Citigroup) is tolled pending the hearing of the motion of Citigroup. The order before me is not the product of a motion made on notice (*see Sholes v Meagher*, 100 NY2d 333) and thus is reviewable under CPLR 5704(a) (*see Tepper v Lonschein*, 253 AD2d 435). The application is granted, as I believe substantial questions have been raised regarding the authority of Justice Ramos to have issued the order while physically located outside the State of New York. In addition, it appears that whether the order has any effect on the rights of the parties is far from clear, as Wachovia is not ordered to do or refrain from doing anything by the terms of the order. Thus, it also is not clear that the order, to the extent it is construed to grant injunctive relief, could prevent any injury, irreparable or otherwise.

Accordingly, the application is granted to the extent that the order purporting to toll the exclusivity termination date is hereby vacated.

James M. McGuire



Associate Justice

Dated: New York, New York
October 5, 2008

ENTER:



J.S.C.

11/30/94

(*)

by consent of Libbank and ~~Wachovia~~ Wachovia 12:20 AM

Ordered, that ~~the~~ pending such hearing, in order to preserve the status quo, the ability of the Court to order appropriate relief at the hearing is not affected in any way by whether or not this Court's Order of October 4 was properly vacated.

ORDERED, that Defendants show cause before this Court at Commercial Division Part ___ thereof, in Room ___, 60 Centre Street, New York, New York, on the ~~10th~~ day of Oct, 2008, at 11 a.m. ~~4 p.m.~~, or as soon thereafter as counsel may be heard, why an order should not be entered pursuant to Section 6300 *et seq.* of the Civil Practice Law and Rules of the State of New York ("CPLR") temporarily restraining and preliminarily enjoining Wachovia, its subsidiaries and affiliates, agents, and any persons working on their behalf or in concert with them, from (i) negotiating, entering into, or consummating any transaction involving any acquisition of, or merger with, Wachovia; (ii) engaging in any other conduct in furtherance of any such transaction; or (iii) any other conduct prohibited by the Exclusivity Agreement; and granting Citigroup, Inc. ("Citigroup") such other and further relief as the Court may deem just and proper; and it is further

See next page.

~~ORDERED, that pending the hearing of this motion, Wachovia is restrained and prohibited from negotiating, entering into, or consummating any transaction involving any acquisition of, or merger with Wells Fargo; and it is further~~

~~ORDERED, that specific performance of the Exclusivity Agreement requiring Wachovia to negotiate in good faith with Citigroup is GRANTED as follows: (i) Wachovia and Citigroup shall reconvene in New York beginning no later than noon on Sunday, October 5, 2008; and (ii) they shall continue such negotiations until at least noon on Wednesday, October 8, 2008 (unless a definitive and binding agreement between Citigroup and Wachovia is executed prior to that time).~~

ORDERED, that pursuant to CPLR Section 3102, Plaintiff Citigroup may commence discovery at once, and may, in addition, upon five days' notice, through oral

