

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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U.S. DISTRICT COURT
S.D.N.Y.

-----X
WACHOVIA CORPORATION,

Plaintiff,

– *against* –

CITIGROUP, INC,

Defendant.
-----X

Civ Act. No.

COMPLAINT

Plaintiff Wachovia Corporation (“Wachovia”) by and through its undersigned counsel, states for its Complaint, with knowledge of its own acts and upon information and belief as to all other matters, as follows:

SUMMARY OF THE ACTION

1. This is an action for a declaratory judgment that a transaction Wachovia entered into with Wells Fargo Corp. (“Wells Fargo”) on or around October 3, 2008 is valid, proper, and not prohibited by a letter agreement between Wachovia and Citigroup, Inc. (“Citigroup”) dated September 29, 2008.

THE PARTIES

2. Wachovia Corporation is a North Carolina corporation with its principal place of business in Charlotte, North Carolina.

3. Citigroup, Inc. is a Delaware corporation with its principal place of business in New York, New York.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over this action under 28 U.S.C. §§ 1331 and 1332 because the action is between citizens of different states and the matter in controversy exceeds \$75,000 and because the action arises under the Emergency Economic Stabilization Act (the “EESA”) signed into federal law on October 3, 2008.

5. The acts and transactions constituting the violations alleged herein occurred in the Southern District of New York and elsewhere. The Defendant transacts business within this District. Accordingly, this Court has personal jurisdiction over the Defendant, and venue is proper under 15 U.S.C. § 22 and 28 U.S.C. § 1391(b).

FACTUAL BACKGROUND

6. During the early morning hours of Monday, September 29, 2008, acting with the understanding that a seizure of its banking assets later that day by the Federal Deposit Insurance Corporation (“FDIC”) would occur unless Wachovia accepted a proposal from Citigroup to acquire a substantial portion of Wachovia’s banking operations, Wachovia entered into a non-binding “agreement-in-principle” that contemplated the acquisition by Citigroup of these operations for approximately \$2.1 billion, or \$1 per Wachovia share (the “Citigroup Transaction”).

7. Acting pursuant to its authority under Section 13 of the Federal Deposit Insurance Act (“FDIA”), 12 U.S.C. § 1832, the FDIC invoked the “systemic risk” provision of the FDIA, and committed to use taxpayer money to limit Citigroup’s losses on Wachovia’s \$312 billion loan portfolio to \$42 billion if the transaction was consummated.

8. The FDIC informed Wachovia and Citigroup that, unless the deal was reduced to a final definitive agreement on or before Monday, October 6, 2008, the FDIC would place

Wachovia's banking assets into receivership, as it did with Washington Mutual Bank just the week before. Accordingly, on September 29, 2008, under pressure from the FDIC, Citigroup and Wachovia executed an "agreement-in-principle" setting forth the terms and conditions of the Citigroup Transaction (the "Non-Binding Term Sheet").

9. Also on September 29, 2008, Citigroup entered into a Letter Agreement with Wachovia which purports, among other things, to prevent Wachovia from considering or entering into another agreement that would result in the acquisition of more than 15% of the equity or assets of Wachovia, even if such proposal is superior to the Citigroup Transaction, prior to October 6, 2008 (the "Letter Agreement"). The Letter Agreement, which has already been wrongfully disclosed to the press by Citigroup, is attached hereto as Exhibit A and incorporated by reference herein. By its terms, the Letter Agreement expires at 12:00 a.m. on Monday, October 6, 2008.

10. Between September 29 and October 2, 2008, Wachovia worked tirelessly around the clock to reach a final and binding agreement with Citigroup. The inherent nature of Wachovia's fully integrated organization caused the negotiations over how to split apart the organization to be exceedingly complex. The likelihood of finalizing a definitive agreement with Citigroup was uncertain and numerous issues remained undecided.

11. As negotiations with Citigroup continued during the evening of October 2, 2008, Wells Fargo made an unsolicited proposal to enter into a stock-for-stock merger with Wachovia (the "Wells Fargo Proposal"). Wachovia had had no contact with Wells Fargo between the execution of the Letter Agreement with Citigroup and the Wells Fargo Proposal. The unsolicited Wells Fargo Proposal was far superior to the Citigroup Transaction, contemplating an acquisition of all of Wachovia, without any taxpayer assistance from the FDIC, for consideration totaling

\$15 billion, or approximately \$7 per Wachovia share. During the night of October 2-3, the Wachovia board, consistent with its fiduciary duties under North Carolina law to the Wachovia shareholders, considered and approved the Wells Fargo Proposal. In the early morning of October 3, Wachovia and Wells Fargo entered into a definitive merger agreement (the “Wells Fargo Transaction”), which was announced prior to the opening of the markets that day.

12. Citigroup has, without basis, publicly announced that Wells Fargo has interfered with its Letter Agreement with Wachovia, provided the Letter Agreement to the press in violation of a confidentiality agreement with Wachovia, and asserted that the Wells Fargo Transaction is improper, unenforceable and prohibited by the Letter Agreement.

13. Citigroup’s efforts to interfere with, undermine, and create uncertainty concerning the Wells Fargo Transaction severely damages Wachovia. The announcement of the Wells Fargo Transaction caused an increase of approximately \$10 billion in the common and preferred stock of market capitalization of Wachovia. Unless the issues and threats raised by Citigroup are resolved promptly, Wachovia’s shareholders, creditors, and employees are at risk as are the interests of the public generally.

14. Citigroup is not prohibited by the Wells Fargo Transaction from offering a better proposal than that offered by Wells Fargo. However, instead of competing with Wells Fargo, Citigroup seeks to bar competition by interfering with the ability of Wachovia and Wells Fargo to complete a transaction far superior to Wachovia, and the American taxpayer, than anything Citigroup is prepared to offer.

DECLARATORY JUDGMENT CLAIM

(Declaration that the Wells Fargo Transaction is Valid, Proper, and Not Prohibited by the Letter Agreement)

15. Wachovia incorporates herein by reference and realleges the allegations of each of the preceding paragraphs.

16. Section 126(c) of the Emergency Economic Stabilization Act of 2008 (“EESA”) provides that:

UNENFORCEABILITY OF CERTAIN AGREEMENTS – No provision contained in any existing or future standstill, confidentiality, or other agreement that, directly or indirectly –

(A) affects, restricts, or limits the ability of any person to offer or acquire,

(B) prohibits any person from offering to acquire or acquiring, or

(C) prohibits any person from using any previously disclosed information in connection with any such offer to acquire or acquisition of,

all or part of any insured depository institution, including any liabilities, assets, or interest therein, in connection with any transaction in which the [FDIC] exercises its authority under section 11 or 13, shall be enforceable against or impose any liability on such person, as such enforcement or liability shall be contrary to public policy.

17. Moreover, one of the purposes of the EESA is to protect the interests of the “taxpayers of the United States” as well as shareholders and creditors of the affected companies.

18. In addition, as alleged above, Citigroup contends the Letter Agreement restricts the Wachovia Board of Directors from considering, negotiating, or accepting proposals for merger or acquisition even if such proposals are far more advantageous to Wachovia’s shareholders, and the taxpayers of the United States, than the Citigroup Transaction.

19. The Wells Fargo Proposal is far more advantageous to the Wachovia shareholders, and to the taxpayers of the United States, than the Citigroup Transaction.

20. The Letter Agreement was existing at the time of enactment of the EESA and purports to prevent or limit other offers to acquire Wachovia (including the Wells Fargo Transaction), even where such offers are more beneficial to Wachovia and to taxpayers. As such, the Letter Agreement is “contrary to public policy” and not enforceable under the EESA.

21. In addition, if (as Citigroup contends) the Letter Agreement restricts the Wachovia Board of Directors from considering, negotiating or approving the Wells Fargo Proposal—or any other transaction that is superior to the Citigroup Transaction—in accordance with the directors’ fiduciary obligations, then the Letter Agreement would be invalid and unenforceable under state law because it purports to bar Wachovia’s Board from informing Wachovia’s shareholders of the superior Wells Fargo offer and from accepting that offer.

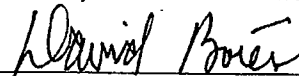
WHEREFORE, Wachovia requests that this Court:

- (a) Enter an order declaring that the Wells Fargo Transaction is valid, proper and not prohibited by the Letter Agreement; and
- (b) Award Wachovia such other relief, damages, attorneys’ fees, and costs as may be just and proper.

Dated: October 4, 2008

Respectfully submitted,

BOIES, SCHILLER & FLEXNER, LLP



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Armonk, New York 10504
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New York, New York 10022
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Fax: (212) 446-2350

EXHIBIT A

Citigroup Inc.

September 29, 2008

Wachovia Corporation

Ladies and Gentlemen:

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

Agreed and accepted:

WACHOVIA CORPORATION

By: _____
Name:
Title:

Citigroup Inc.

September 29, 2008

Wachovia Corporation

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JS
October
6, 2008

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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.

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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

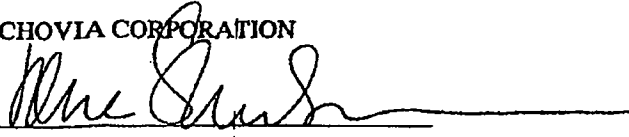
By:  _____
Name:
Title:

Exhibit B

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

