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WACHOVIA

January 12, 2004

DELIVERED BY ELECTRONIC AND REGULAR MAIL

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attention: Docket No. R-1175
Electronic Address: regs.comments@federalreserve.gov

Federal Trade Commission/Office of the Secretary
Room 159-H
600 Pennsylvania Avenue, NW
Washington, DC 20580
Attention: Project No. P044804
Electronic Address: FACTdates@ftc.gov

Re: Interim final rules and proposed rules to establish effective dates for certain provisions of the Fair and Accurate Transactions Act of 2003 (FACT Act)

Dear Sir or Madam:

This letter is submitted on behalf of Wachovia Corporation and its subsidiary companies, including Wachovia Bank, National Association, and its operating subsidiary, Wachovia Mortgage Corporation; Wachovia Securities, LLC; HomeEq Servicing Corporation, a mortgage loan servicing company; and Wachovia Bank of Delaware, National Association (collectively referred to as "Wachovia").

Wachovia strongly supports the effective dates published for the joint interim final rules for the recently enacted Fair and Accurate Credit Transactions Act, referred to herein as the "FACT Act." Wachovia believes that the immediate implementation of the provisions referenced in the joint interim final rules reflects the intent of Congress to protect the national credit reporting system through pre-emptive authority. At the same time, the joint interim final rules preserve certain privacy and identity theft provisions of various state laws.

With respect to the joint notice of proposed rulemaking, Wachovia is aware that the Board of Governors of the Federal Reserve System ("the Board") and the Federal Trade

Commission (“FTC”) (collectively the “Agencies”) are bound by the requirements of section 3 of the FACT Act. However, many of the provisions of the FACT Act require additional clarification and will require the Agencies to provide detailed regulations to implement the requirements of the law. Although Wachovia believes that the March 1, 2004 date is appropriate for the provisions scheduled for that date, Wachovia is concerned about the ability of the financial services industry to implement regulations by the proposed December 1, 2004 effective date. Financial institutions will require sufficient time to study the proposed regulations, to offer comments and request clarification, and to implement programs, effect systems’ changes, create policies and train personnel before the proposed effective date of December 1, 2004. Many provisions of the new statute will require comprehensive changes to multiple systems, necessitating programming and testing time frames that may exceed the proposed December effective date. Wachovia is concerned that financial institutions may be unable to effect the changes required by the final regulations by December 1, 2004.

While the following is not a comprehensive analysis of issues related to interpretation and implementation, Wachovia would like to illustrate some of the difficulties that financial institutions face with respect to a December 1, 2004 effective date.

Section 114 of the FACT Act amends section 615 of the Fair Credit Reporting Act (“FCRA”) by adding new sections dealing with identification guidelines for identity theft. The new § 615(e)(1)(C) requires that a credit or debit card issuer who receives a request for new or additional cards within 30 days of receipt of an address change obtain additional verification of the identity of the requestor. Wachovia agrees that this procedure may limit certain incidents of identity theft and we support the goals of this section. In some cases, however, customer information systems do not provide for a field to record the actual date of an address change, and do not interface with systems that may be involved in the issuance of new or additional cards. The addition of a new field to customer information system files, and the interface with other systems relating to card issuance, involve complex redesign and programming, and Wachovia is concerned that such changes may not be able to be completed by December 1, 2004.

Section 615(e)(2)(B) has been added to the FCRA by section 114 of the FACT Act. This new section of the law requires that financial institutions and other creditors of credit or debit accounts that have been inactive for a period of two years to notify customers that the “dormant” account has been activated by a transaction. Many state laws require that financial institutions monitor dormant deposit and similar accounts for escheat purposes. Therefore, it is possible that financial institutions can effect some form of “activation” notice on deposit accounts within the required time frame. Similar automated controls are not usual for open-end credit accounts, however, which often are unused for long periods. The new law will require that financial institutions design new systems that will alert the financial institution to the “activation” of dormant credit accounts and will generate a notice to the customer. Wachovia is uncertain that such systems can be designed and installed by the December 1, 2004 effective date.

Section 151 of the FACT Act amends section 609 of the FCRA by adding a new subsection dealing with identity theft. Subsection (e)(1) requires that “a business entity that has provided credit to . . . or otherwise entered into a commercial transaction for consideration with, a person who has allegedly made unauthorized use of the means of identification of the victim” produce a copy of the application and business transaction records within 30 days of receipt of the notice of identity theft. Wachovia believes that the time limitations in this section of the Act are, for certain records, too short with which to comply. In some cases, credit applications, signature cards, copies of checks and related material are readily available and can be produced in readable format within the 30-day requirement. However, copies of actual receipts of transactions, such as signed credit or debit slips, and certain other documents such as signature cards and certain contracts are often stored in batches with an offsite vendor. While these records are available, it may be necessary to obtain detailed information from the customer or from customer records in order to search for and produce such documents.

We believe that financial institutions should be held to the 30-day requirement only for those records that are stored in readily available data systems under the control of the financial institution, and that it should not be a violation of the FACT Act, if the financial institution, acting in good faith, should require additional time to produce actual copies of sales and similar receipts. Wachovia suggests that the Agencies adopt a “reasonableness” standard which permits production of copies of actual records stored at other than the financial institution’s computer, but in no event, more than 60 days from receipt of sufficient information from the customer to identify the specific document being requested.

Section 214 of the FACT Act amends the FCRA by adding a new section 624 requiring notice of the opportunity to opt out prior to sharing information for solicitation purposes with an affiliate. Wachovia does not object to providing new opt-out notices in the format suggested by the FACT Act. However, Wachovia believes that the timing of such notice will be confusing to Wachovia’s customers and costly to Wachovia. Many financial institutions provide privacy notices required by the Gramm Leach Bliley Act (“GLBA”) during the first quarter of each year. The proposed regulation appears to require a financial institution to provide a new opt-out/privacy notice by December 1, 2004. Thus, customers will receive the 2004 GLBA privacy notice in early 2004 and will have to receive another privacy notice by December 1, 2004 in order for a financial institution to continue sharing information with its affiliates for solicitation purposes. GLBA would then require delivery of another privacy notice in 2005. As a result, customers would receive two different privacy notices in this calendar year, and another one in early 2005. Wachovia believes that a requirement to deliver new opt-out notices should be delayed until July 2005 so that privacy notices may be combined and delivered only once each year in a format that customers will understand.

Section 311 of the FACT Act amends the FCRA by adding a subsection (h) to section 615 relating to users of credit reports in certain credit transactions. The FACT Act requires that creditors provide customers who are granted credit on “material terms that are materially less favorable than the most favorable terms available to a substantial

portion of consumers . . . based in whole or in part on a consumer report” a notice containing the identity of the consumer reporting agency and related information. Wachovia believes that this provision of the FACT Act would impose substantial burdens on users of consumer reports unless the Agencies carefully and narrowly define the following terms: “material,” “materially less favorable,” “most favorable terms,” and “substantial portion of consumers.”

Existing credit granting systems are designed to view a credit score as only one of many factors that are considered in making a credit decision and offering credit terms. Customers whose factors suggest a similar risk profile typically will receive substantially similar credit terms. These credit terms should not be compared to terms offered to customers with a lower risk profile when determining if the Act’s notice requirement is triggered. Therefore, Wachovia urges the Agencies not to define the terms above so liberally as to cause a greater than intended number of loan applicants to receive the risk-based pricing notice.

Moreover, Wachovia submits that the requirement to provide the notice will require substantial programming changes to credit granting systems. In many situations, the scores provided from multiple credit reporting agencies may be considered, and, apparently under the Act, each agency would be identified. Even in those instances where decisions are “instantaneous,” or where the notice may be provided at the time of approval, current systems are not capable of providing the required notice with the detail apparently required under the statute. Wachovia suggests that the Agencies adopt a requirement that such notices be delivered to the customer in person, by mail or by electronic delivery, not later than the third business day after the date that the loan application is approved in its final form. Further, Wachovia anticipates that substantial programming, communication and training will be required to implement this provision of the FACT Act. A December 1, 2004 deadline simply does not provide enough time to create adequate systems and procedures to comply with section 311.

The matters discussed in this letter are not an exhaustive list of the issues related to the implementation of the FACT Act by the proposed date. To the extent that the Agencies believe that the proposed effective dates are necessary, Wachovia suggests that the Agencies make compliance optional for a limited period. Wachovia suggests that financial institutions not be deemed in violation of the law, or out of compliance with new regulations proposed to become effective on December 1, 2004, until a date not less than nine months after the date that final regulations become effective. This implementation delay will provide financial institutions adequate time to assure that procedures, systems and training are complete and in compliance with the new law and regulations.

Wachovia appreciates this opportunity to comment on these joint interim proposed regulations. Wachovia anticipates the publication of additional regulations to implement the FACT Act and the opportunity to comment on those proposals. If you have any questions, please call Jane Stafford, Senior Vice President and Director of Compliance at (704) 383-0927, Jeff Glaser, Vice President and Assistant General Counsel at (704) 374-4642, or me at your convenience.

Very truly yours,

Michael A. Watkins

cc: via electronic mail

Wachovia Corporation:

Mark Treanor, Senior Executive Vice President and General Counsel

Jane Stafford, Senior Vice President and Director of Compliance

Jeff Glaser, Vice President and Assistant General Counsel