

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

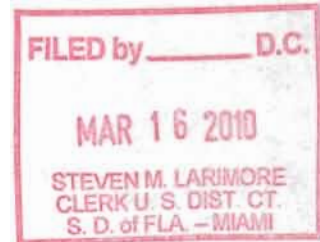
Case No. 10-20165-CR-LENARD

UNITED STATES OF AMERICA

vs.

WACHOVIA BANK, N.A.

Defendant.



DEFERRED PROSECUTION AGREEMENT

Defendant Wachovia Bank, N.A. (“Wachovia”), a federally chartered banking institution and a subsidiary of Wells Fargo & Company (“Wells Fargo”), by and through its attorneys, Sullivan & Cromwell LLP, and King & Spalding LLP, pursuant to authority granted by its Board of Directors, and the United States Attorney’s Office for the Southern District of Florida and the Asset Forfeiture and Money Laundering Section of the Criminal Division of the Department of Justice, (collectively, “the United States”), enter into this Deferred Prosecution Agreement (the “Agreement”).

Parties Bound By the Agreement

1. This Agreement and all provisions set forth herein bind Wachovia and any of its branches, representative offices, successors, and assigns. If Wachovia's business operations are sold to a party or parties unaffiliated with Wachovia as of the date hereof, whether by sale of stock, merger, consolidation, sale of a significant portion of its assets, or other form of business combination, or otherwise undergo a direct or indirect change of control within the term of this Agreement, such party or parties shall be bound by this Agreement and all provisions set forth herein. The parties understand that Wachovia is scheduled to merge with Wells Fargo Bank, N.A.

("Wells Fargo Bank") in March 2010. The parties understand and agree that Wells Fargo Bank is bound by the terms and provisions of this agreement. Wherever the term "Wachovia" appears in this Agreement, it refers not only to Wachovia but also to all of its branches, representative offices, successors, and assigns. It is further understood that this Agreement and all provisions set forth herein are binding on the United States, but specifically do not bind any other federal agencies, or any state or local authorities, although the United States will bring the cooperation of Wachovia and its compliance with its other obligations under this Agreement to the attention of federal, state, or local prosecuting offices or regulatory agencies if requested by Wachovia or its attorneys.

2. The entirety of the conduct set forth herein occurred at Wachovia before it was acquired by Wells Fargo.

The Charges

3. Wachovia shall waive indictment and agree to the filing of a one (1) count information in the United States District Court for the Southern District of Florida charging it with failing to maintain an effective anti-money laundering program, in violation of Title 31, United States Code, Sections 5318(h)(1) and 5322(a).

Acceptance of Responsibility

4. Wachovia accepts and acknowledges responsibility for its conduct and that of its employees as set forth in the Factual Statement attached hereto and incorporated by reference herein as Exhibit A ("Factual Statement"). If the United States, pursuant to Paragraph 12 of this Agreement, initiates a prosecution that is deferred by this Agreement against Wachovia, Wachovia agrees that it will neither contest the admissibility of the Factual Statement or any other documents provided by Wachovia to the United States, nor contradict in any such proceeding the facts contained

within the Factual Statement.

Forfeiture and Fine

5. The United States has determined that it could institute a criminal or civil forfeiture proceeding against certain funds that passed through certain accounts at Wachovia. Wachovia hereby acknowledges that more than \$110,000,000 was involved in transactions in accounts in violation of Title 18, United States Code, Sections 1956 and 1957, and, therefore, at least some or all of the funds deposited in such accounts are subject to forfeiture to the United States pursuant to Title 18, United States Code, Sections 981 and 982. Wachovia hereby agrees to settle and does settle any and all civil and criminal forfeiture claims presently held by the United States against those funds for the sum of \$110,000,000 (the "Forfeiture Amount"). Wachovia agrees that the funds paid to the United States by Wachovia pursuant to this Agreement shall be forfeited to the United States pursuant to 18 U.S.C. § 981, and Wachovia releases any and all claims it may have to such funds. As of December 23, 2009, Wells Fargo repaid any and all funds that it received through the Troubled Asset Relief Program ("TARP"). Accordingly, the funds used in the payment of the \$110,000,000 will not include any funds provided to Wells Fargo through TARP. Wachovia shall pay the Forfeiture Amount within five business days from the entry of this Agreement pursuant to payment instructions as directed by the United States in its sole discretion.

6. The parties agree that in addition to the above forfeiture, Wachovia shall pay a fine of \$50,000,000. Such fine shall be satisfied by a payment being made to the Department of the Treasury, pursuant to the order issued by the Office of the Comptroller of the Currency ("OCC") in the amount of \$50,000,000. As of December 23, 2009, Wells Fargo repaid any and all funds that it received through TARP. Accordingly, the funds used in the payment of the \$50,000,000 will not

include any funds provided to Wells Fargo through TARP. Wachovia shall pay the fine amount within five business days from the entry of this Agreement pursuant to payment instructions as directed by the OCC in its sole discretion.

7. The United States has considered a number of factors in determining the appropriate fine in this matter. The parties agree that a \$50,000,000 fine is appropriate in this case because: (i) of Wachovia's considerable remedial actions specified within the Factual Statement; (ii) the legal entity that will pay the fine is Wells Fargo Bank, while the failures occurred at Wachovia; and (iii) there is no evidence or allegation that Wells Fargo Bank's anti-money laundering program is deficient.

Deferral of Prosecution

8. In consideration of Wachovia's remedial actions to date and its willingness to: (a) acknowledge responsibility for its conduct as detailed in the Factual Statement; (b) continue its cooperation with the United States; (c) demonstrate its future good conduct and compliance in all material aspects with the Bank Secrecy Act and all of its implementing regulations, including, but not limited to, the remedial actions specified in Paragraph 10 below; and (d) settle any and all civil and criminal claims currently held by the United States, its agencies, and representatives against the funds referred to above for the sum of \$110,000,000, the United States agrees as follows:

i. The United States shall recommend to the Court, pursuant to Title 18, United States Code, Section 3161(h)(2), that prosecution of Wachovia on the Information filed pursuant to Paragraph 3 be deferred for a period of twelve (12) months. Wachovia shall consent to a motion, the contents to be agreed by the parties, to be filed by the United States with the Court promptly upon execution of this Agreement, pursuant to 18 U.S.C. § 3161(h)(2), in which the United States

will present this Agreement to the Court and move for a continuance of all further criminal proceedings, including trial, for a period of twelve (12) months, for speedy trial exclusion of all time covered by such a continuance, and for approval by the Court of this deferred prosecution. Wachovia further agrees to waive and does hereby expressly waive any and all rights to a speedy trial pursuant to the Sixth Amendment of the United States Constitution, Title 18, United States Code, Section 3161, Federal Rule of Criminal Procedure 48(b), and any applicable Local Rules of the United States District Court for the Southern District of Florida for the period that this Agreement is in effect; and

ii. The United States agrees that if Wachovia is in compliance in all material aspects with all of its obligations under this Agreement, the United States, within thirty (30) days of the expiration of the time period set forth in Paragraph 8 above, shall seek dismissal with prejudice of the Information filed against Wachovia pursuant to Paragraph 3 and this Agreement shall expire and be of no further force or effect.

Court Is Not Bound

9. Wachovia and the United States understand that the Agreement to defer prosecution of Wachovia must be approved by the Court, in accordance with 18 U.S.C. § 3161(h)(2). Should the Court decline to approve a deferred prosecution for any reason, both the United States and Wachovia are released from any obligation imposed upon them by this Agreement and this Agreement shall be null and void.

Cooperation

10. Wachovia agrees to implement certain remedial measures designed to fully comply with the Bank Secrecy Act, and abide by any orders and regulations of the OCC, and the Department

of the Treasury, Financial Crimes Enforcement Network (“FinCEN”), including those set forth in the OCC’s Consent Order, No. AA-EC-10-17.

11. Wachovia agrees that in accordance with applicable laws, it shall provide to the United States, on request, any relevant document, electronic data, or other object concerning matters relating to this investigation in Wachovia's possession, custody, and/or control. Whenever such data is in electronic format, Wachovia shall provide access to such data and assistance in operating computer and other equipment as necessary to retrieve the data. This obligation shall not include production of materials covered by the attorney-client privilege or the work product doctrine or any other applicable privilege. Wachovia shall in all material aspects completely, fully, and timely comply with all the record-keeping and reporting requirements imposed upon it by the Bank Secrecy Act, Title 31, United States Code, Sections 5311 through 5332 and the Bank Secrecy Act implementing regulations, as well as the remedial actions set forth in the OCC’s Consent Order, No. AA-EC-10-17.

Government Commitments

12. In return for the full and truthful cooperation of and compliance by Wachovia and its successors with the terms and conditions of this Agreement, the United States agrees that it shall not seek to prosecute Wachovia or any of its branches or representative offices, or successors, or assigns for any act arising from the facts contained in, connected to, or involving the conduct described in the Factual Statement, or disclosed by Wachovia or otherwise uncovered in the course of these investigations, unless, in the sole discretion of the United States, there is a willful and material breach of this Agreement. In the event of a breach resulting in the prosecution of Wachovia or a prosecution related to Wachovia’s failure to maintain an effective anti-money laundering program,

the United States may use any information provided by or on behalf of Wachovia to the United States or any investigative agency, whether prior to or subsequent to this Agreement, and/or any leads derived from such information, including the attached Factual Statement.

Waiver of Rights

13. Wachovia hereby further expressly agrees that any violations of the Bank Secrecy Act pursuant to 31 U.S.C. §§ 5318(h) and 5322(a) that were not time-barred by the applicable statute of limitations as of the date of this Agreement may, in the sole reasonable discretion of the United States, be charged against Wachovia within six (6) months of any breach of this Agreement notwithstanding the expiration of any applicable statute of limitations. Wachovia also expressly waives any challenge to the venue or jurisdiction of the United States District Court for the Southern District of Florida.

Breach of the Agreement

14. If the United States determines that Wachovia has committed a willful and material breach of any provision of this Agreement, the United States shall provide written notice to Wachovia's counsel of the alleged breach and provide Wachovia with a four-week period, or longer at the reasonable discretion of the United States, in which to make a presentation to the United States to demonstrate that no breach has occurred or, to the extent applicable, that the breach is not willful or material, or has been cured. The parties hereto expressly understand and agree that should Wachovia fail to make a presentation to the United States within such time period, it shall be presumed that Wachovia is in willful and material breach of this Agreement. The parties further understand and agree that the United States' exercise of reasonable discretion under this paragraph is not subject to review in any court or tribunal. In the event of a breach of this Agreement that

results in a prosecution, such prosecution may be premised upon any information provided by or on behalf of Wachovia to the United States or any investigative agencies, whether prior to or subsequent to this Agreement, and/or any leads derived from such information, including the attached Factual Statement, unless otherwise agreed to by the United States and Wachovia in writing at the time the information was provided to the United States.

Requirement to Obey the Law

15. If the United States determines during the term of this Agreement that Wachovia has committed any federal crime commenced after signing this Agreement, Wachovia shall, in the sole discretion of the United States, thereafter be subject to prosecution for any federal crimes of which the United States has knowledge, including but not limited to the conduct described in the Factual Statement. The discovery by the United States of any purely historical criminal conduct that did not take place during the term of this Agreement will not constitute a breach of this provision.

Public Statements

16. Wachovia expressly agrees that it shall not, through its attorneys, Board of Directors, agents, officers, or employees, make any public statement contradicting any statement of fact contained in the Factual Statement. Any such contradictory public statement by Wachovia, its successor in interest, its attorneys, Board of Directors, agents, officers, or employees shall constitute a breach of this Agreement, and Wachovia would thereafter be subject to prosecution pursuant to the terms of this Agreement. The decision of whether any statement by any such person contradicting a fact contained in the Factual Statement will be imputed to Wachovia for the purpose of determining whether Wachovia has breached this Agreement shall be in the sole discretion of the United States. Upon the United States' notification to Wachovia of a public statement by any such

person that in whole or in part contradicts a statement of fact contained in the Factual Statement, Wachovia may avoid breach of this Agreement by publicly repudiating such statement within two business days after notification by the United States. This paragraph is not intended to apply to any statement made by any individual in the course of any criminal, regulatory, or civil case initiated by a governmental or private party against such individual. In addition, consistent with Wachovia's obligation not to contradict any fact contained in the Factual Statement, Wachovia may take good faith positions in litigation involving any person or entity not a party to this Agreement. Nothing stated in this Agreement is intended to operate or shall operate as a waiver of Wachovia's rights under Federal Rule of Evidence 408.

Additional Terms

17. Wachovia and the United States agree that, upon acceptance by the Court, this Agreement and an Order deferring prosecution shall be publicly filed in the United States District Court for the Southern District of Florida.

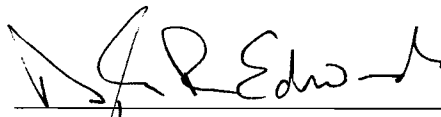
18. This Agreement sets forth all the terms of the Deferred Prosecution Agreement between Wachovia and the United States. No promises, agreements, or conditions shall be entered into and/or are binding upon Wachovia or the United States unless expressly set forth in writing, signed by the United States, Wachovia's attorneys, and a duly authorized representative of Wachovia. This Agreement supersedes any prior promises, agreements, or conditions between Wachovia and the United States.

Acknowledgment of Wachovia Bank, N.A.

I, Douglas Edwards, the duly authorized representative of Wachovia Bank, N.A., hereby expressly acknowledge the following: (1) that I have read this entire Agreement; (2) that I have had an opportunity to discuss this Agreement fully and freely with Wachovia's attorneys; (3) that Wachovia fully and completely understands each and every one of its terms; (4) that Wachovia is fully satisfied with the advice and representation provided to it by its attorneys; and (5) that Wachovia has signed this Agreement voluntarily.

March 16, 2010
DATE

WACHOVIA BANK, N.A.

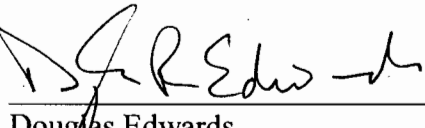


Douglas Edwards
Senior Vice President of Wachovia Bank, N.A.

Acknowledgment of Wells Fargo Bank, N.A.

I, Douglas Edwards, the duly authorized representative of Wells Fargo Bank, N.A., hereby expressly acknowledge the following: (1) that I have read this entire Agreement; (2) that I have had an opportunity to discuss this Agreement fully and freely with Wells Fargo Bank's attorneys; (3) that Wells Fargo Bank fully and completely understands each and every one of its terms; (4) that Wells Fargo Bank is fully satisfied with the advice and representation provided to it by its attorneys; and (5) that Wells Fargo Bank has signed this Agreement voluntarily.

March 16, 2010
DATE

WELLS FARGO BANK, N.A.


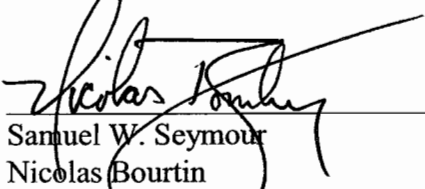
Douglas Edwards
Senior Vice President of Wells Fargo Bank, N.A.

Counsel for Wachovia Bank, N.A and Wells Fargo Bank, N.A.

The undersigned are outside counsel for Wachovia and Wells Fargo Bank. In connection with such representation, we acknowledge that: (1) we have discussed this Agreement with our clients; (2) we have fully explained each one of its terms to our clients; (3) we have fully answered each and every question put to us by our clients regarding the Agreement; and (4) we believe our clients completely understand all of the Agreement's terms.

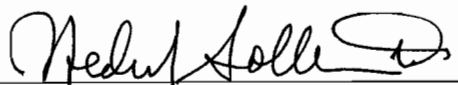
MARCH 16, 2010
DATE

SULLIVAN & CROMWELL LLP


By: Samuel W. Seymour
Nicolas Bourtin

MARCH 16, 2010
DATE

KING & SPALDING LLP



By: Christopher A. Wray
J. Sedwick Sollers III

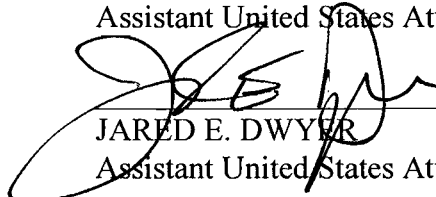
On Behalf of the Government



JEFFREY H. SLOMAN
United States Attorney
Southern District of Florida

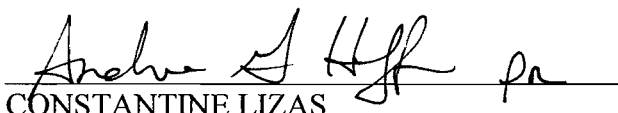
MARCH 16, 2010
DATE

By: 
ANDREA G. HOFFMAN
Assistant United States Attorney


JARED E. DWYER
Assistant United States Attorney

RICHARD WEBER, Chief
Asset Forfeiture and Money Laundering Section
U.S. Department of Justice, Criminal Division

MARCH 16, 2010
DATE

By: 
CONSTANTINE LIZAS
Trial Attorney


MATTHEW S. HASLINGER
Trial Attorney