

STATE OF WEST VIRGINIA
SECURITIES COMMISSION

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3 In the matter of:)
4 WACHOVIA SECURITIES, LLC;) Order No.: 98-44964
5 and)
6 WACHOVIA CAPITAL MARKETS,)
7 LLC,)
8 Serve Wachovia Securities, LLC at:) **ADMINISTRATIVE CONSENT ORDER**
9 One North Jefferson Avenue)
10 St. Louis, Missouri 63103)
11 Serve Wachovia Capital Markets,)
12 LLC at:)
13 301 S. College Street)
14 TW-8, Mail Code NC0602)
15 Charlotte, North Carolina 28288-)
16 0601)
17 Respondents.)

18 WHEREAS, Wachovia Securities, LLC¹ ("Wachovia Securities"), is a broker-dealer
19 registered in the state of West Virginia with its home office at One North Jefferson Avenue, St.
20 Louis, Missouri, and Wachovia Capital Markets, LLC ("Wachovia Capital Markets", collectively
21 with Wachovia Securities, "Wachovia"²), is a broker-dealer with its home office at 301 South
22 College Street, Charlotte, North Carolina; and

23 WHEREAS, a multi-state task force conducted and coordinated investigations into
24 Wachovia's marketing and sale of auction rate securities to investors during the period of
25 January 1, 2006, through February 14, 2008; and

26 WHEREAS, after a books and records inspection by a multi-state task force on July 17,

¹ In October 2007, Wachovia Corporation acquired the Missouri-based broker dealer A. G. Edwards & Sons, Inc. ("AG Edwards") which was subsequently combined with Wachovia Securities, LLC.

² Factual allegations in this Order may apply to Wachovia Securities and/or Wachovia Capital Markets, but do not necessarily refer to both entities.

1 2008, Wachovia Securities has cooperated fully with regulators conducting the investigations by
2 responding to inquiries, providing documentary evidence and other materials, and providing
3 regulators with access to information relating to the investigations; and

4 WHEREAS, Wachovia has advised regulators of its agreement to resolve the
5 investigations relating to its marketing and sale of auction rate securities to investors; and

6 WHEREAS, Wachovia agrees to, among other things, reimburse certain purchasers of
7 auction rate securities, and to make certain payments at the direction of the West Virginia
8 Securities Commission; and

9 WHEREAS, Wachovia elects to permanently waive any right to a hearing and appeal
10 under West Virginia Code § 32-4-411 with respect to this Consent Order (the "Order");

11 NOW, THEREFORE, the West Virginia Securities Commissioner, as administrator of the
12 West Virginia Uniform Securities Act hereby enters this Order.

13 I.

14 **FINDINGS OF FACT**

15 1. Wachovia Securities admits the jurisdiction of the West Virginia Securities
16 Commission and Wachovia Capital Markets consents to the jurisdiction of the West Virginia
17 Securities Commission for purposes of this Order. Neither admits nor denies the Findings of
18 Fact and Conclusions of Law contained in this Order, and each consents to the entry of this
19 Order by the West Virginia Securities Commissioner.

20 2. Auction rate securities are long-term debt or equity instruments that include
21 auction preferred shares of closed-end funds, municipal auction rate bonds, and various asset-
22 backed auction rate bonds (collectively referred to herein as "ARS"). While ARS are all long-
23 term instruments, one significant feature of ARS (which historically provided the potential for
24 short-term liquidity) is the interest/dividend reset through auctions that occur in varying
25 increments of between 7 and 42 days. If an auction is successful, investors are able to exit the

1 ARS market on a short-term basis. If, however, an auction “fails,” investors are required to hold
2 all or some of their ARS until the next successful auction in order to liquidate their funds.

3 Beginning in February 2008, the ARS market experienced widespread failed auctions.

4 3. In early March 2008, Wachovia Securities’ investors, unable to access their ARS
5 funds, began to submit complaints to State Securities Agencies. Since early March, 2008, the
6 West Virginia Securities Commission has received over one investor complaint concerning the
7 sale of ARS by Wachovia Securities.

8 **Marketing and Sales of ARS to Investors**

9 4. In connection with the sale of ARS, some State investors state variously that they
10 were told by Wachovia Securities and its registered agents that ARS were:

- 11 a. just like cash;
- 12 b. same as cash;
- 13 c. safe as cash;
- 14 d. same as money markets;
- 15 e. safe as money markets;
- 16 f. cash equivalents;
- 17 g. short-term adjustable rate securities;
- 18 h. cash alternatives;
- 19 i. completely safe;
- 20 j. liquid at any time; and/or
- 21 k. always liquid at an auction.

22 Although marketed and sold to investors as safe, liquid, cash-like investments, and although the
23 ARS market had, in fact, functioned for more than twenty years with virtually no auction failures,
24 ARS are actually long-term instruments subject to a complex auction process that, upon failure,
25 can lead to illiquidity and lower interest rates.

- 1 i. failing to provide timely and comprehensive sales and marketing
2 literature regarding ARS and the mechanics of the auction process;
- 3 ii. failing to provide pertinent information concerning the complexity
4 of the ARS product; and
- 5 iii. failing to ensure that its agents were selling ARS to individual
6 investors for whom they were suitable; and
- 7 b. failing to review account portfolio statements sent to its customers to
8 ensure that they reflected accurate information regarding ARS;
- 9 c. failing to review ARS transactions in accounts of customers who needed
10 liquidity; and
- 11 d. failing to ensure that its registered personnel were providing adequate
12 information regarding ARS to its customers.

13 **II.**

14 **CONCLUSIONS OF LAW**

15 17. The West Virginia Securities Commission has jurisdiction over this matter
16 pursuant to West Virginia Code § 32-2-201, *et. seq.*

17 18. The West Virginia Securities Commission finds Wachovia Securities failed to
18 supervise its employees and engaged in dishonest or unethical practices in the securities
19 business, and that this conduct constitutes grounds to revoke Wachovia Securities' registration
20 under West Virginia Code § 32-2-204 (a) (J) and West Virginia Code § 32-2-204 (b) (33).

21 19. The West Virginia Securities Commission finds this order and the following relief
22 appropriate, in the public interest, and consistent with the purposes intended by the West
23 Virginia Uniform Securities Act.

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III.

ORDER

On the basis of the Findings of Fact, Conclusions of Law, and Wachovia's consent to the entry of this Order,

IT IS HEREBY ORDERED:

1. This Order concludes the investigation by the West Virginia Securities Commission and any other action that the West Virginia Securities Commission could commence under applicable West Virginia law on behalf of West Virginia as it relates to Wachovia, and its marketing and sale of auction rate securities to investors.

2. This Order is entered into solely for the purpose of resolving the referenced multi-state investigation, and is not intended to be used for any other purpose.

3. Wachovia will CEASE AND DESIST from violating the West Virginia Securities Commission and will comply with the West Virginia Uniform Securities Act.

4. Within ten days after the entry of this Order, Wachovia shall pay the sum of \$170,766.82 to the West Virginia Securities Commission for reimbursement of direct and indirect costs and expenses of the Securities Commission and, thereafter as an administrative assessment the balance of which shall be deposited in the general revenue fund of the State of West Virginia.

5. In the event another state securities regulator determines not to accept Wachovia's state settlement offer, the total amount of the West Virginia's payment shall not be affected, and shall remain at \$170,766.82.

6. Wachovia Securities and Wachovia Capital Markets, respectively, as agents for one or more affiliated companies and not as principal, shall offer to purchase at par ARS that are subject to auctions that are not successful and are not subject to current calls or redemptions ("Eligible ARS") from all investors in the Relevant Class. For purposes of this

1 Order the Relevant Class shall be defined as all investors who purchased ARS from either
2 Wachovia Securities or Wachovia Capital Markets, respectively, on or before February 13, 2008
3 into accounts maintained at Wachovia Securities or Wachovia Capital Markets, respectively.

4 a. Wachovia Securities and Wachovia Capital Markets, as agents for one or
5 more affiliated companies and not as principal, shall make an offer to buy the Eligible
6 ARS from Individuals Investors, as defined below, who are in the Relevant Class. This
7 buy back shall commence no later than November 10, 2008 and conclude no later than
8 November 28, 2008. For purposes of this Order, Individual Investors shall include
9 natural persons, individual retirement accounts and the following entities or accounts:

10 i. Accounts with the following owners:

- 11 1. non-profit charitable organizations; and
- 12 2. religious corporations.

13 ii. Accounts with the following owners and with account values or
14 household values up to \$10 million:

- 15 1. trusts;
- 16 2. corporate trusts;
- 17 3. corporations;
- 18 4. employee pension plans/ERISA and Taft Hartley Act plans;
- 19 5. educational institutions;
- 20 6. incorporated non-profit organizations;
- 21 7. limited liability companies;
- 22 8. limited partnerships;
- 23 9. non-public companies;
- 24 10. partnerships;
- 25 11. personal holding companies;

1 holdings may not be liquid and that there is a possibility that this offer may be the only
2 opportunity for the investor to liquidate the ARS holdings; and

3 f. a statement that the offer to repurchase the ARS holdings, and other relief
4 specified in the Order, is being made pursuant to a settlement with state securities
5 regulators.

6 10. By November 10, 2008, Wachovia shall mail the Required Notification to all
7 investors in the Relevant Class that transferred ARS positions to a firm other than Wachovia,
8 prior to the date of this Order, if the initial purchase of the Eligible ARS was on or after January
9 1, 2003 unless the ARS has been redeemed in full by the issuer.

10 11. Wachovia shall demonstrate that all investors in the Relevant Class received the
11 Required Notification if Wachovia demonstrates that: 1) Wachovia mailed the Required
12 Notification via First Class mail at the customer's last known address and did not receive a
13 return notice, or 2) Wachovia repurchased ARS from the investor.

14 12. Wachovia Securities shall establish and maintain a dedicated telephone
15 assistance line, with appropriate staff, to respond to questions from investors concerning the
16 terms of this Order and Wachovia's no net cost loan (nonrecourse, no release) program.
17 Wachovia Securities shall maintain this dedicated telephone assistance line through June 30,
18 2009.

19 13. With respect to any claim for consequential damages, to the extent such claims
20 are not resolved informally by Wachovia, Wachovia shall arbitrate the claim of any Relevant
21 Class member who elects to arbitrate, pursuant to the following provisions:

22 a. the arbitrations will be conducted by a public arbitrator (as defined by
23 section 12100(u) of the NASD Code of Arbitration Procedures for Customer Disputes,
24 eff. April 16, 2007), under the auspices of FINRA;

25 b. the above-referenced public arbitrator will be available for the exclusive
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1 purpose of arbitrating any Relevant Class member's consequential damages claim;

2 c. Wachovia shall pay all applicable forum and filing fees;

3 d. any Relevant Class member who chooses to pursue such a claim shall
4 bear the burden of proving that they suffered consequential damages and that such
5 damages were caused by investors' inability to access funds consisting of investors'
6 ARS purchases through Wachovia; and

7 e. Wachovia shall be able to defend itself against such claims; provided,
8 however, that Wachovia shall not contest liability related to the sale of ARS; and
9 provided further that Wachovia shall not be able to use as part of its defense an
10 investor's decision not to borrow money from Wachovia.

11 14. By November 28, 2008, Wachovia Securities and Wachovia Capital Markets,
12 respectively and separately, shall refund refinancing fees received by it to municipal auction rate
13 issuers that issued such securities in the initial primary market between August 1, 2007 and
14 February 13, 2008, and refinanced those securities through Wachovia after February 13, 2008.

15 15. If Wachovia defaults in any of its obligations set forth in this Order, the West
16 Virginia Securities Commission may vacate this Order, at its sole discretion, upon 10 days
17 notice to Wachovia and without opportunity for administrative hearing or may refer this matter
18 for enforcement as provided in West Virginia Code § 32-4-408.

19 16. This Order is not intended to indicate that Wachovia or any of its affiliates or
20 current or former employees shall be subject to any disqualifications contained in the federal
21 securities law, the rules and regulations thereunder, the rules and regulations of self regulatory
22 organizations or various states' securities laws including any disqualifications from relying upon
23 the registration exemptions or safe harbor provisions. In addition, this Order is not intended to
24 form the basis for any such disqualifications.

25 17. This Order may not be read to indicate that Wachovia or any of its affiliates or
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1 current or former employees engaged in fraud or violated any federal or state laws, the rules
2 and regulations thereunder, or the rules and regulations of self regulatory organizations.

3 18. For any person or entity not a party to this Order, this Order does not limit or create
4 any private rights or remedies against Wachovia including, without limitation, the use of any e-mails
5 or other documents of Wachovia or of others for the marketing and sale of auction rate securities to
6 investors, limit or create liability of Wachovia, or limit or create defenses of Wachovia to any claims.

7 19. This Order shall not disqualify Wachovia or any of its affiliates or current or
8 former employees from any business that they otherwise are qualified or licensed to perform
9 under applicable state law and this Order is not intended to form the basis for any
10 disqualification.

11 20. Nothing herein shall preclude the State of West Virginia, its departments, agencies,
12 boards, commissions, authorities, political subdivisions and corporations, other than the West
13 Virginia Securities Commission and only to the extent set forth in paragraph 1 above, (collectively,
14 "State Entities") and the officers, agents or employees of State Entities from asserting any claims,
15 causes of action, or applications for compensatory, nominal and/or punitive damages,
16 administrative, civil, criminal, or injunctive relief against Wachovia in connection with the marketing
17 and sale of auction rate securities at Wachovia.

18 21. Wachovia shall pay its own costs and attorneys' fees with respect to this matter.

19
20 Dated this 10th day of September, 2009.

21 BY ORDER OF THE WEST VIRGINIA
22 SECURITIES COMMISSION
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CONSENT TO ENTRY OF ADMINISTRATIVE ORDER BY WACHOVIA

1 Wachovia hereby acknowledges that it has been served with a copy of this Consent Order,
2 has read the foregoing Order, is aware of its right to a hearing and appeal in this matter, and has
3 waived the same.
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5 Wachovia Securities admits the jurisdiction of the West Virginia Securities Commission and
6 Wachovia Capital Markets consents to the jurisdiction of the West Virginia Securities Commission
7 for purposes of this Order. Neither Wachovia Securities nor Wachovia Capital Markets admits or
8 denies the Findings of Fact and Conclusions of Law contained in this Order; and each consents to
9 entry of this Order by the Commissioner as settlement of the issues contained in this Order.

10 Wachovia states that no promise of any kind or nature whatsoever was made to it to induce
11 it to enter into this Order and that it has entered into this Order voluntarily.

12 _____ represents that he/she is _____ of
13 Wachovia Securities, LLC and that, as such, has been authorized by Wachovia Securities, LLC to
14 enter into this Order for and on behalf of Wachovia Securities, LLC.

15 _____ represents that he/she is _____ of
16 Wachovia Capital Markets, LLC and that, as such, has been authorized by Wachovia Capital
17 Markets, LLC to enter into this Order for and on behalf of Wachovia Capital Markets, LLC.

18 Wachovia agrees that it shall not claim, assert, or apply for a tax deduction or tax credit
19 with regard to any state, federal or local tax for any administrative monetary penalty that
20 Wachovia shall pay pursuant to this Order.

21 Dated this 10th day of September, 2009.

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23 Wachovia Securities, LLC

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Title:

Wachovia Capital Markets, LLC

By: _____

Title:

SUBSCRIBED AND SWORN TO before me this _____ day of September, 2009.

Notary Public

My commission expires:
