

**OFFICE OF THE MISSISSIPPI SECRETARY OF STATE
BUSINESS REGULATION AND ENFORCEMENT**

In the matter of:)
)
WACHOVIA SECURITIES, LLC;) Case No.S-09-0086
and)
)
WACHOVIA CAPITAL)
MARKETS, LLC,)
)
Serve Wachovia Securities, LLC at:)
)
One North Jefferson Avenue)
St. Louis, Missouri 63103)
)
Serve Wachovia Capital Markets,)
LLC at:)
)
301 S. College Street)
TW-8, Mail Code NC0602)
Charlotte, North Carolina 28288-)
0601)
)
Respondents)

ADMINISTRATIVE CONSENT ORDER

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

WHEREAS, a multi-state task force conducted and coordinated investigations into Wachovia's marketing and sale of auction rate securities to investors during the period of

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 January 1, 2006, through February 14, 2008; and

2 WHEREAS, after a books and records inspection by a multi-state task force on July 17,
3 2008, Wachovia Securities has cooperated fully with regulators conducting the investigations by
4 responding to inquiries, providing documentary evidence and other materials, and providing
5 regulators with access to information relating to the investigations; and

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

8 WHEREAS, Wachovia agrees to, among other things, reimburse certain purchasers of
9 auction rate securities, and to make certain payments at the direction of the Business Regulation
10 and Enforcement Division of the Mississippi Secretary of State's Office ("Division"); and

11 WHEREAS, Wachovia elects to permanently waive any right to a hearing and appeal
12 under Miss. Code Ann. Section 75-71-325 with respect to this Consent Order ("Order");

13 NOW, THEREFORE, the Division, as administrator of the Mississippi Securities Act
14 ("Act") hereby enters this Order.
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16 I.

17 FINDINGS OF FACT

18 1. Wachovia Securities admits the jurisdiction of the Division and Wachovia
19 Capital Markets consents to the jurisdiction of the Division for purposes of this Order. Neither
20 admits nor denies the Findings of Fact and Conclusions of Law contained in this Order, and each
21 consents to the entry of this Order by the Division.

22 2. Auction rate securities are long-term debt or equity instruments that include
23 auction preferred shares of closed-end funds, municipal auction rate bonds, and various asset-
24 backed auction rate bonds (collectively referred to herein as "ARS"). While ARS are all long-
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1 term instruments, one significant feature of ARS (which historically provided the potential for
2 short-term liquidity) is the interest/dividend reset through auctions that occur in varying
3 increments of between 7 and 42 days. If an auction is successful, investors are able to exit the
4 ARS market on a short-term basis. If, however, an auction "fails," investors are required to hold
5 all or some of their ARS until the next successful auction in order to liquidate their funds.

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

7 3. In early March 2008, Wachovia Securities' investors, unable to access their ARS
8 funds, began to submit complaints to the Division.

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

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

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

23 Although marketed and sold to investors as safe, liquid, cash-like investments, and although the

1 ARS market had, in fact, functioned for more than twenty years with virtually no auction
2 failures, ARS are actually long-term instruments subject to a complex auction process that, upon
3 failure, can lead to illiquidity and lower interest rates.

4 5. Wachovia Securities further fostered the misconception that ARS were cash-like
5 instruments by providing account portfolio summaries to certain of its customers that listed ARS
6 as "cash equivalents." In fact, ARS were not "cash equivalents" and full liquidity was only
7 available at an auction if the auction was successful.

8 6. Although Wachovia Securities sold ARS as conservative, safe, and liquid
9 investments to its investors until February 2008, Wachovia had information that several auctions
10 had failed in August 2007 and early 2008, before the mass failures in February 2008. During
11 this same period of time, Wachovia failed to inform its customers purchasing ARS after such
12 auctions began to fail that certain auctions would have failed had Wachovia or another broker-
13 dealer not entered support bids in those auctions.

14 7. Although Wachovia knew, or should have known, of the inherent risks and the
15 recent volatility of the ARS market, only minimal information regarding the ARS market was
16 provided to Wachovia Securities' retail ARS customers.

17 8. Wachovia and its registered securities agents were, or should have been, aware
18 that the ARS market was suffering from increasing failures and liquidity issues, and they should
19 have disclosed those facts to investors who were purchasing auction rates after such issues arose.
20 Based on these facts, Wachovia engaged in dishonest and unethical practices in the marketing
21 and sale of ARS. Pursuant to Miss. Code Ann. Section 75-71-321(a)(F), these practices
22 constitute grounds to revoke Wachovia's registration. These practices included, among other
23 things, the following:
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- 1 a. Wachovia told some ARS investors purchasing ARS after the market
2 disruptions began to occur that:
- 3 i. ARS were cash equivalents;
 - 4 ii. ARS were completely safe; and/or
 - 5 iii. ARS were liquid at any time.
- 6 b. Wachovia was or should have been aware that the market for ARS was
7 becoming illiquid, yet Wachovia Securities continued to market and sell ARS to investors.

8 **Temporary Maximum Rate Waiver on Certain ARS**

9 9. The interest rates on ARS are reset periodically through the auction process. In
10 the event that there is insufficient demand for a particular issue and an auction fails, the interest
11 rate resets to a "maximum rate" or "failure rate" as defined in the offering documents for that
12 particular issue. Typically, this maximum rate would be higher than prevailing market rates in
13 order to compensate ARS holders who are unable to sell their positions and offer an "incentive"
14 to induce buyers to return to the market although in some cases, particularly for student loan
15 auction rates, the maximum rate might be lower than the prevailing rate.

17 10. In December 2007, with the encouragement of its underwriters, the Missouri
18 Higher Education Loan Authority ("MOHELA") sought and secured approval to waive its
19 maximum rate for certain issues of ARS. Absent such waivers, the ARS issued by MOHELA
20 would not have been allowed to reset at interest rates high enough to clear auctions.

22 11. As a result of the maximum rate waivers, certain MOHELA ARS issues reset to a
23 higher rate for a brief period after the waiver was implemented. However, due to a feature of
24 those issues that caps the average interest rate over any given one-year period, the interest rates
25 reset to 0% after the expiration of the waiver period. The ramifications of this maximum rate

1 waiver were not explained to Wachovia Securities' customers who subsequently purchased
2 MOHELA ARS.

3 12. Wachovia Securities engaged in dishonest and unethical practices by not
4 adequately explaining to individual investors who purchased ARS with maximum rate waivers,
5 among other things, the following:

6 a. that the ARS interest rates could not be reset at a level that would prevent
7 a failed auction absent the maximum rate waiver; and

8 b. that the high interest rate allowed by the waiver would expire at the end of
9 the waiver period unless extended by the issuer.

10 Pursuant to Miss. Code Section 75-71-321(a)(F), these practices constitute grounds to revoke
11 Wachovia Securities' registration.

12 Failure To Supervise Agents Who Sold ARS

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14 13. Although ARS are complicated and complex products, Wachovia Securities did
15 not provide its sales or marketing staff with the training and information necessary to adequately
16 explain these products or the mechanics of the auction process to their customers. During the
17 course of investigations, on-the-record statements taken from Wachovia Securities' registered
18 agents demonstrated that these agents lacked a basic understanding of the functionality of the
19 ARS products and the auction rate market.

20 14. Many of Wachovia Securities' registered agents were not adequately educated in
21 the ARS products they were selling and did not know where to look for information to bolster
22 that knowledge. Wachovia Securities failed to provide timely and comprehensive sales and
23 marketing literature regarding ARS and the mechanics of the auction process. In addition,
24 Wachovia Securities failed to review account portfolio statements sent to its customers to ensure
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1 that they reflected accurate information regarding ARS.

2 15. Wachovia Securities' failure to provide sufficient training and information
3 concerning ARS and the market environment in which they were sold was not limited to one or
4 two agents, and is therefore indicative of Wachovia Securities' failure to ensure that its
5 registered personnel provided adequate information regarding ARS to its customers.

6 16. Wachovia Securities failed to reasonably supervise its employees, which is
7 grounds for revocation of its registration under Miss. Code Ann. Section 75-71-321(b)(A):

8 a. failing to provide adequate training to its registered agents regarding ARS
9 by, among other things:

10 i. failing to provide timely and comprehensive sales and marketing
11 literature regarding ARS and the mechanics of the auction process;

12 ii. failing to provide pertinent information concerning the complexity
13 of the ARS product; and

14 iii. failing to ensure that its agents were selling ARS to individual
15 investors for whom they were suitable; and

16 b. failing to review account portfolio statements sent to its customers to
17 ensure that they reflected accurate information regarding ARS;

18 c. failing to review ARS transactions in accounts of customers who needed
19 liquidity; and

20 d. failing to ensure that its registered personnel were providing adequate
21 information regarding ARS to its customers.
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24 **II.**

25 **CONCLUSIONS OF LAW**

1 (\$317,667.55) to the Mississippi Secretary of State's "Securities Enforcement Fund -3114" to be
2 expended for enforcement of the Mississippi Securities Act by the Division.

3 5. In the event another state securities regulator determines not to accept Wachovia's
4 state settlement offer, the total amount of the Mississippi payment shall not be affected, and shall
5 remain at Three Hundred Seventeen Thousand Six Hundred Sixty-Seven Dollars and Fifty-Five
6 Cents (\$317,667.55).

7 6. Wachovia Securities and Wachovia Capital Markets, respectively, as agents for
8 one or more affiliated companies and not as principal, shall offer to purchase at par ARS that are
9 subject to auctions that are not successful and are not subject to current calls or redemptions
10 ("Eligible ARS") from all investors in the Relevant Class. For purposes of this Order the
11 Relevant Class shall be defined as all investors who purchased ARS from either Wachovia
12 Securities or Wachovia Capital Markets, respectively, on or before February 13, 2008 into
13 accounts maintained at Wachovia Securities or Wachovia Capital Markets, respectively.
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15 a. Wachovia Securities and Wachovia Capital Markets, as agents for one or
16 more affiliated companies and not as principal, shall make an offer to buy the Eligible
17 ARS from Individuals Investors, as defined below, who are in the Relevant Class. This
18 buy back shall commence no later than November 10, 2008 and conclude no later than
19 November 28, 2008. For purposes of this Order, Individual Investors shall include
20 natural persons, individual retirement accounts and the following entities or accounts:
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22 i. Accounts with the following owners:

- 23 1. non-profit charitable organizations; and
- 24 2. religious corporations.

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

1. trusts;
2. corporate trusts;
3. corporations;
4. employee pension plans/ERISA and Taft Hartley Act plans;
5. educational institutions;
6. incorporated non-profit organizations;
7. limited liability companies;
8. limited partnerships;
9. non-public companies;
10. partnerships;
11. personal holding companies;
12. unincorporated associations; and
13. governmental and quasi-government entities.

b. Wachovia Securities and Wachovia Capital Markets as agent for one or more affiliated companies and not as principal, shall commence a buy back of the Eligible ARS from all other investors in the Relevant Class not otherwise covered by subparagraph a, above, no later than June 10, 2009 and conclude no later than June 30, 2009.

7. No later than November 28, 2008, Wachovia shall pay any investor in the Relevant Class who sold ARS below par between February 13, 2008 and August 15, 2008 and whom Wachovia can reasonably identify, the difference between par and the price at which the investor sold the ARS.

1 8. Wachovia shall notify all investors in the Relevant Class of the provisions of this
2 Order as provided in paragraphs 9 and 10.

3 9. As part of Wachovia's general obligation to notify all investors in the Relevant
4 Class pursuant to paragraph 8, above, Wachovia shall mail the Required Notification, defined
5 below, by November 10, 2008, to all investors in the Relevant Class that held ARS positions in a
6 Wachovia account as of August 31, 2008. For purposes of the Order, "Required Notification"
7 shall mean a notice that includes general statements and information specific to each investor,
8 including:

- 9 a. a general notification of all provisions of this Order;
10 b. the specific security purchased;
11 c. the quantity purchased;
12 d. the par value of the holding;
13 e. a prominent statement disclosing that at this time the Relevant Class
14 member's ARS

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

17 f. a statement that the offer to repurchase the ARS holdings, and other relief
18 specified in the Order, is being made pursuant to a settlement with state securities regulators.
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20 10. By November 10, 2008, Wachovia shall mail the Required Notification to all
21 investors in the Relevant Class that transferred ARS positions to a firm other than Wachovia,
22 prior to the date of this Order, if the initial purchase of the Eligible ARS was on or after January
23 1, 2003 unless the ARS has been redeemed in full by the issuer.
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25 11. Wachovia shall demonstrate that all investors in the Relevant Class received the
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1 Required Notification if Wachovia demonstrates that: 1) Wachovia mailed the Required
2 Notification via First Class mail at the customer's last known address and did not receive a return
3 notice, or 2) Wachovia repurchased ARS from the investor.

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

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

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

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

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

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

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

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

6 15. If Wachovia defaults in any of its obligations set forth in this Order, the Division
7 may vacate this Order, at its sole discretion, upon 10 days notice to Wachovia and without
8 opportunity for administrative hearing or may refer this matter for enforcement as provided in
9 Miss. Code Ann. Section 75-71-715.

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

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

19 18. For any person or entity not a party to this Order, this Order does not limit or create
20 any private rights or remedies against Wachovia including, without limitation, the use of any e-
21 mails or other documents of Wachovia or of others for the marketing and sale of auction rate
22 securities to investors, limit or create liability of Wachovia, or limit or create defenses of Wachovia
23 to any claims.
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1 19. This Order shall not disqualify Wachovia or any of its affiliates or current or
2 former employees from any business that they otherwise are qualified or licensed to perform
3 under applicable state law and this Order is not intended to form the basis for any
4 disqualification.

5 20. Nothing herein shall preclude Mississippi, its departments, agencies, boards,
6 commissions, authorities, political subdivisions and corporations, other than the Division and only
7 to the extent set forth in paragraph 1 above, (collectively, "State Entities") and the officers, agents or
8 employees of State Entities from asserting any claims, causes of action, or applications for
9 compensatory, nominal and/or punitive damages, administrative, civil, criminal, or injunctive relief
10 against Wachovia in connection with the marketing and sale of auction rate securities at Wachovia.
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12 21. Wachovia shall pay its own costs and attorneys' fees with respect to this matter.

13 Dated this 31st day of March, 2009.

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15 BY ORDER OF C. DELBERT HOSEMANN, JR.
16 MISSISSIPPI SECRETARY OF STATE

17
18 BY: Patricia Melvin
19 PATRICIA MELVIN
20 Senior Attorney
21 Business Regulation and Enforcement

22 Patricia Melvin, MSB # 2865
23 State of Mississippi
24 Secretary of State's Office
25 Post Office Box 136
26 Jackson, MS 39205-0136
Tel. 601.359.1650
Fax. 601.359.1499

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2 CONSENT TO ENTRY OF ADMINISTRATIVE ORDER BY WACHOVIA

3 Wachovia hereby acknowledges that it has been served with a copy of this Consent Order, has read
4 the foregoing Order, is aware of its right to a hearing and appeal in this matter, and has waived the same.

5 Wachovia Securities admits the jurisdiction of the Business Regulation and Enforcement Division of
6 the Mississippi Secretary of State's Office ("Division") and Wachovia Capital Markets consents to the
7 jurisdiction of the Division for purposes of this Order. Neither Wachovia Securities nor Wachovia Capital
8 Markets admits or denies the Findings of Fact and Conclusions of Law contained in this Order; and each
9 consents to 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 it to enter
11 into this Order and that it has entered into this Order voluntarily.

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

15 _____ represents that he/she is _____ of Wachovia Capital
16 Markets, LLC and that, as such, has been authorized by Wachovia Capital Markets, LLC to enter into this
17 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 with
19 regard to any state, federal or local tax for any administrative monetary penalty that Wachovia shall pay
20 pursuant to this Order.

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22 Dated this 24 day of February, 2009.

23 Wachovia Securities, LLC

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25 By: 

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2 CONSENT TO ENTRY OF ADMINISTRATIVE ORDER BY WACHOVIA

3 Wachovia hereby acknowledges that it has been served with a copy of this Consent Order, has read
4 the foregoing Order, is aware of its right to a hearing and appeal in this matter, and has waived the same.

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8 Markets admits or denies the Findings of Fact and Conclusions of Law contained in this Order; and each
9 consents to 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 it to enter
11 into this Order and that it has entered into this Order voluntarily.

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

15 Barbara H. Wright represents that he/she is SVP of Wachovia Capital
16 Markets, LLC and that, as such, has been authorized by Wachovia Capital Markets, LLC to enter into this
17 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 with
19 regard to any state, federal or local tax for any administrative monetary penalty that Wachovia shall pay
20 pursuant to this Order.

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22 Dated this ____ day of _____, 2009.

23 Wachovia Securities, LLC

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Title: _____

Wachovia Capital Markets, LLC

By: [Signature]

Title: SRP

SUBSCRIBED AND SWORN TO before me this 23rd day of February, 2009.

[Signature]
Notary Public

My commission expires:

June 10, 2011



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Title: General Counsel

Wachovia Capital Markets, LLC

By: _____

Title: _____

SUBSCRIBED AND SWORN TO before me this 24 day of February, 2008.

Jennifer R Dupuy
Notary Public

My commission expires:

