

STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
DIVISION OF BANKING AND SECURITIES

IN THE MATTER OF:

WACHOVIA SECURITIES, LLC,
One North Jefferson Avenue
St. Louis, Missouri 63103

and

WACHOVIA CAPITAL MARKETS, LLC,
301 South College Street
TW-8, Mail Code NC0602
Charlotte, North Carolina 28288-0601,

Respondents.

**ADMINISTRATIVE CONSENT
ORDER**

ORDER NO. 10-07-S

WHEREAS, Wachovia Securities, LLC¹ ("Wachovia Securities"), is a broker-dealer with its home office at One North Jefferson Avenue, St. Louis, Missouri; and

WHEREAS, 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, Wachovia Securities is registered as a broker-dealer under Alaska Statutes ("AS") 45.55 with the State of Alaska, Department of Commerce, Community, and Economic Development, Division of Banking and Securities ("Division"); and

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 term liquidity) is the interest/dividend reset through auctions that occur in varying increments of
2 between 7 and 42 days. If an auction is successful, investors are able to exit the ARS market on a
3 short-term basis. If, however, an auction "fails," investors are required to hold all or some of their
4 ARS until the next successful auction in order to liquidate their funds. Beginning in February
5 2008, the ARS market experienced widespread failed auctions.

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

7 3. In connection with the sale of ARS, some investors state variously that they were
8 told by Wachovia Securities and its registered agents that ARS were:

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

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

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

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

11 6. Although Wachovia knew, or should have known, of the inherent risks and the
12 recent volatility of the ARS market, only minimal information regarding the ARS market was
13 provided to Wachovia Securities' retail ARS customers.

14 7. Wachovia and its registered securities agents were, or should have been, aware that
15 the ARS market was suffering from increasing failures and liquidity issues, and they should have
16 disclosed those facts to investors who were purchasing auction rates after such issues arose. Based
17 on these facts, Wachovia engaged in dishonest and unethical practices in the marketing and sale of
18 ARS. Pursuant to Alaska Sec. 45.55.025, these practices constitute grounds to revoke Wachovia
19 Securities' registration. These practices included, among other things, the following:

20 a. Wachovia told some ARS investors purchasing ARS after the market
21 disruptions began to occur that:

- 22 i. ARS were cash equivalents;
- 23 ii. ARS were completely safe; and/or
- 24 iii. ARS were liquid at any time.

1 b. Wachovia was or should have been aware that the market for ARS was
2 becoming illiquid, yet Wachovia Securities continued to market and sell ARS to investors.

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

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

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

15 10. As a result of the maximum rate waivers, certain MOHELA ARS issues reset to a
16 higher rate for a brief period after the waiver was implemented. However, due to a feature of those
17 issues that caps the average interest rate over any given one-year period, the interest rates reset to
18 0% after the expiration of the waiver period. The ramifications of this maximum rate waiver were
19 not explained to Wachovia Securities' customers who subsequently purchased MOHELA ARS.

20 11. Wachovia Securities engaged in dishonest and unethical practices by not adequately
21 explaining to individual investors who purchased ARS with maximum rate waivers, among other
22 things, the following:

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

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

3 Pursuant to AS 45.55.025, these practices constitute grounds to revoke Wachovia Securities'
4 registration.

5 **Failure To Supervise Agents Who Sold ARS**

6 12. Although ARS are complicated and complex products, Wachovia Securities did not
7 provide its sales or marketing staff with the training and information necessary to adequately
8 explain these products or the mechanics of the auction process to their customers. During the
9 course of investigations, on-the-record statements taken from Wachovia Securities' registered
10 agents demonstrated that these agents lacked a basic understanding of the functionality of the ARS
11 products and the auction rate market.

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

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

22 15. Wachovia Securities failed to reasonably supervise its employees, which is grounds
23 for revocation of its registration under AS 45.55.060(b)(1), by:

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

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

5 ii. failing to provide pertinent information concerning the complexity of
6 the ARS product; and

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

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

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

13 d. failing to ensure that its registered personnel were providing adequate
14 information regarding ARS to its customers.

15 II.

16 CONCLUSIONS OF LAW

17 16. The Division has jurisdiction over this matter pursuant to AS 45.55.

18 17. The Division finds Wachovia Securities failed to supervise its employees and
19 engaged in dishonest or unethical practices in the securities business, and that this conduct
20 constitutes grounds to revoke Wachovia Securities' registration under AS 45.55.025 and
21 45.55.060(b)(1).

22 18. The Division finds this order and the following relief appropriate, in the public
23 interest, and consistent with the purposes intended by the Alaska Securities Act.

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1 Wachovia Capital Markets, respectively, on or before February 13, 2008, into accounts maintained
2 at Wachovia Securities or Wachovia Capital Markets, respectively.

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

9 i. Accounts with the following owners:

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

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

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

1 12. unincorporated associations; and

2 13. governmental and quasi-government entities.

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

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

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

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

19 a. a general notification of all provisions of this Order;

20 b. the specific security purchased;

21 c. the quantity purchased;

22 d. the par value of the holding;

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1 e. a prominent statement disclosing that at this time the Relevant Class
2 member's ARS holdings may not be liquid and that there is a possibility that this offer may be the
3 only opportunity for the investor to liquidate the ARS holdings; and

4 f. a statement that the offer to repurchase the ARS holdings and provide other
5 relief specified in the Order is being made pursuant to a settlement with state securities 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, prior
8 to the date of this Order, if the initial purchase of the Eligible ARS was on or after January 1, 2003,
9 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 return
13 notice, or (2) Wachovia repurchased ARS from the investor.

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

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

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

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

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

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

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

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

16 15. If Wachovia defaults in any of its obligations set forth in this Order, the Division
17 may vacate this Order, at its sole discretion, upon 10-days notice to Wachovia and without
18 opportunity for administrative hearing or may refer this matter for enforcement as provided in
19 AS 45.55.

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

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

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

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

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

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STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
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21. Wachovia shall pay its own costs and attorneys' fees with respect to this matter.

SO ORDERED this 19th day of October, 2010.

State of Alaska
Department of Commerce, Community, and
Economic Development
Division of Banking and Securities

/s/ Lorie L. Hovanec
By: Lorie L. Hovanec, Director

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CONSENT TO ENTRY OF ADMINISTRATIVE ORDER BY WACHOVIA

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

Wachovia Securities admits the jurisdiction of the Division and Wachovia Capital Markets consents to the jurisdiction of the Division for purposes of this Order. Neither Wachovia Securities nor Wachovia Capital Markets admits or denies the Findings of Fact and Conclusions of Law contained in this Order; and each consents to entry of this Order by the Commissioner as settlement of the issues contained in this Order.

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

Douglas L. Kelly represents that he/she is Executive Vice President of Wachovia Securities, LLC, n/k/a Wells Fargo Advisors, LLC, and that, as such, has been authorized by Wachovia Securities, LLC, n/k/a Wells Fargo Advisors, LLC, to enter into this Order for and on behalf of Wachovia Securities, LLC, n/k/a Wells Fargo Advisors, LLC.

Barbara H. Wright represents that he/she is Senior Vice President of Wachovia Capital Markets, LLC, n/k/a Wells Fargo Securities, LLC, and that, as such, has been authorized by Wachovia Capital Markets, LLC, n/k/a Wells Fargo Securities, LLC, to enter into this Order for and on behalf of Wachovia Capital Markets, LLC, n/k/a Wells Fargo Securities, LLC.

Wachovia agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal, or local tax for any payment that Wachovia shall make pursuant to this Order.

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STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
DIVISION OF BANKING AND SECURITIES
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Dated this 12th day of October, 2010.

WACHOVIA SECURITIES, LLC
n/k/a WELLS FARGO ADVISORS, LLC

By: /s/ Douglas L. Kelly
Title: Executive Vice-President

SUBSCRIBED AND SWORN TO before me this 12th day of October, 2010.

/s/ April M. Johns
Notary Public for State of Missouri
My commission expires: 07/09/2011

Dated this 12th day of October, 2010.

WACHOVIA CAPITAL MARKETS, LLC
n/k/a WELLS FARGO SECURITIES, LLC

By: /s/ Barbara H. Wright
Title: Senior Vice President

SUBSCRIBED AND SWORN TO before me this 12th day of October, 2010.

/s/ Janette Sain Howell
Notary Public for State of North Carolina
My commission expires: July 15, 2012