

1 Division of Securities
Utah Department of Commerce
2 160 East 300 South
Box 146760
3 Salt Lake City, UT 84114-6760
Telephone: (801) 530-6600
4 FAX: (801) 530-6980

5
6 BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
7 OF THE STATE OF UTAH

8
9 IN THE MATTER OF:

10 **WACHOVIA SECURITIES, LLC,**
11 **CRD#19616; and**
12 **WACHOVIA CAPITAL MARKETS, LLC,**
CRD#126292

13
14 Serve Wachovia Securities, LLC at:

15 One North Jefferson Avenue
St. Louis, Missouri 63103

16 Serve Wachovia Capital Markets, LLC at:

17 301 S. College Street
18 TW-8, Mail Code NC0602
Charlotte, North Carolina 28288-0601

19 Respondents.
20

**STIPULATION AND CONSENT
ORDER**

Docket No. SD-09-0043

Docket No. SD-09-0044

21 The Utah Division of Securities ("Division"), by and through its Director of Compliance,
22 Dave R. Hermansen, and Wachovia Securities LLC¹ ("Wachovia Securities") and Wachovia
23 Capital Markets, LLC ("Wachovia Capital Markets", collectively with Wachovia Securities,
24

25
26 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.

1 “Wachovia”²) hereby stipulate and agree as follows:

2 WHEREAS, Wachovia Securities, CRD#19616, is a broker-dealer registered in the state of Utah
3 with its home office at One North Jefferson Avenue, St. Louis, Missouri, and Wachovia Capital Markets,
4 CRD#126292, is a broker-dealer with its home office at 301 South College Street, Charlotte, North
5 Carolina; and

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

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

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

15 WHEREAS, Wachovia agrees to, among other things, reimburse certain purchasers of auction
16 rate securities, and to make certain payments at the direction of the Utah Securities Division (“Division”);
17 and

18 WHEREAS, Wachovia elects to permanently waive any right to a hearing and appeal under the
19 Utah Administrative Procedures Act, Title 63G, Chapter 4 of the Utah Code, with respect to this Consent
20 Order (the “Order”);

21 NOW, THEREFORE, the Division, as administrator of the Utah Uniform Securities Act (“Act”)
22 hereby enters this Order.

23 **I.**

24
25 _____
26 ² Factual allegations in this Order may apply to Wachovia Securities and/or Wachovia Capital Markets, but do not necessarily refer to both entities.

FINDINGS OF FACT

1
2 1. Wachovia Securities admits the jurisdiction of the Division and Wachovia Capital
3 Markets consents to the jurisdiction of the Division for purposes of this Order. Neither admits nor denies
4 the Findings of Fact and Conclusions of Law contained in this Order, and each consents to the entry of
5 this Order by the Division.

6 2. Auction rate securities are long-term debt or equity instruments that include auction
7 preferred shares of closed-end funds, municipal auction rate bonds, and various asset-backed auction rate
8 bonds (collectively referred to herein as "ARS"). While ARS are all long-term instruments, one
9 significant feature of ARS (which historically provided the potential for short-term liquidity) is the
10 interest/dividend reset through auctions that occur in varying increments of between 7 and 42 days. If an
11 auction is successful, investors are able to exit the ARS market on a short-term basis. If, however, an
12 auction "fails," investors are required to hold all or some of their ARS until the next successful auction in
13 order to liquidate their funds. Beginning in February 2008, the ARS market experienced widespread
14 failed auctions.

15 3. In early March 2008, Wachovia Securities' investors, unable to access their ARS funds,
16 began to submit complaints to various state regulatory agencies.

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

18 4. Based upon the findings of the multi-state task force in connection with the sale of ARS,
19 some investors were told by Wachovia Securities and its registered agents that ARS were:

- 20 a. just like cash;
- 21 b. same as cash;
- 22 c. safe as cash;
- 23 d. same as money markets;
- 24 e. safe as money markets;
- 25 f. cash equivalents;

- g. short-term adjustable rate securities;
- h. cash alternatives;
- i. completely safe;
- j. liquid at any time; and/or
- k. always liquid at an auction.

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

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

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

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

8. Wachovia and its registered securities agents were, or should have been, aware that the ARS market was suffering from increasing failures and liquidity issues, and they should have disclosed those facts to investors who were purchasing auction rates after such issues arose. Based on these facts,

1 Wachovia engaged in dishonest and unethical practices in the marketing and sale of ARS. Pursuant to
2 Section 61-1-6(2)(a)(ii)(G) of the Act, these practices constitute grounds to revoke Wachovia's
3 registration. These practices included, among other things, the following:

- 4 a. Wachovia told some ARS investors purchasing ARS after the market disruptions
5 began to occur that:
- 6 i. ARS were cash equivalents;
 - 7 ii. ARS were completely safe; and/or
 - 8 iii. ARS were liquid at any time.
- 9 b. Wachovia was or should have been aware that the market for ARS was becoming
10 illiquid, yet Wachovia Securities continued to market and sell ARS to investors.

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

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

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

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

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

- 6 a. that the ARS interest rates could not be reset at a level that would prevent a failed
7 auction absent the maximum rate waiver; and
- 8 b. that the high interest rate allowed by the waiver would expire at the end of the
9 waiver period unless extended by the issuer.

10 Pursuant to Section 61-1-6(2)(a)(ii)(G) of the Act, these practices constitute grounds to revoke Wachovia
11 Securities' registration.

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

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

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

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

4 16. Wachovia Securities failed to reasonably supervise its employees, which is grounds for
5 revocation of its registration under Section 61-1-6(2)(a)(ii)(J) of the Act:

- 6 a. failing to provide adequate training to its registered agents regarding ARS
7 by, among other things:
- 8 i. failing to provide timely and comprehensive sales and marketing
9 literature regarding ARS and the mechanics of the auction process;
 - 10 ii. failing to provide pertinent information concerning the complexity of the
11 ARS product; and
 - 12 iii. failing to ensure that its agents were selling ARS to individual investors
13 for whom they were suitable; and
- 14 b. failing to review account portfolio statements sent to its customers to ensure
15 that they reflected accurate information regarding ARS;
- 16 c. failing to review ARS transactions in accounts of customers who needed
17 liquidity; and
- 18 d. failing to ensure that its registered personnel were providing adequate
19 information regarding ARS to its customers.

20 **II.**

21 **CONCLUSIONS OF LAW**

22 17. The Division has jurisdiction over this matter pursuant to Section 61-1-6 of the Act.

23 18. The Division finds Wachovia Securities engaged in dishonest or unethical practices in the
24 securities business and failed to supervise its employees, and that this conduct constitutes grounds to
25 revoke Wachovia Securities' registration under Sections 61-1-6(2)(a)(ii)(G) and (J) of the Act.

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

3 a. Wachovia Securities and Wachovia Capital Markets, as agents for one or more
4 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;
- 25 12. unincorporated associations; and

13. governmental and quasi-government entities.

1
2 b. Wachovia Securities and Wachovia Capital Markets as agent for one or more
3 affiliated companies and not as principal, shall commence a buy back of the Eligible ARS from
4 all other investors in the Relevant Class not otherwise covered by subparagraph a, above, no later
5 than June 10, 2009 and conclude no later than June 30, 2009.

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

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

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

- 16 a. a general notification of all provisions of this Order;
17 b. the specific security purchased;
18 c. the quantity purchased;
19 d. the par value of the holding;
20 e. a prominent statement disclosing that at this time the Relevant Class member's ARS
21 holdings may not be liquid and that there is a possibility that this offer may be the
22 only opportunity for the investor to liquidate the ARS holdings; and
23 f. a statement that the offer to repurchase the ARS holdings, and other relief specified
24 in the Order, is being made pursuant to a settlement with state securities regulators.

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

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

8 13. To the extent that Wachovia is made aware that an investor in the Relevant Class did not
9 receive the Required Notification, the offer period shall remain open for such investor until at least 5pm
10 (Eastern Time) on September 15, 2009.

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

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

18 a. the arbitrations will be conducted by a public arbitrator (as defined by section
19 12100(u) of the NASD Code of Arbitration Procedures for Customer Disputes, eff. April 16,
20 2007), under the auspices of FINRA;

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

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

24 d. any Relevant Class member who chooses to pursue such a claim shall bear the
25 burden of proving that they suffered consequential damages and that such damages were caused
26

1 by investors' inability to access funds consisting of investors' ARS purchases through Wachovia;
2 and

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

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

11 17. If Wachovia defaults in any of its obligations set forth in this Order, the Division may
12 vacate this Order, at its sole discretion, upon 10 days notice to Wachovia and without opportunity for
13 administrative hearing or may refer this matter for enforcement as provided in Section 61-1-6 of the Act.

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

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

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

CONSENT TO ENTRY OF STIPULATION AND CONSENT ORDER BY WACHOVIA

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

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

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

10 _____ represents that he/she is _____ of Wachovia
11 Securities, LLC n/k/a Wells Fargo Advisors, LLC and that, as such, has been authorized by Wachovia
12 Securities, LLC n/k/a Wells Fargo Advisors, LLC to enter into this Order for and on behalf of Wachovia
13 Securities, LLC n/k/a Wells Fargo Advisors, LLC.

14 *Barbara Haight* represents that he/she is *SVP* _____ of Wachovia Capital
15 Markets, LLC n/k/a Wells Fargo Securities, LLC and that, as such, has been authorized by Wachovia Capital
16 Markets, LLC n/k/a Wells Fargo Securities, LLC to enter into this Order for and on behalf of Wachovia
17 Capital Markets, LLC n/k/a Wells Fargo Securities, 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.

21 Dated this *4th* day of *Sept*, 2009.

23 Wachovia Securities, LLC
24 n/k/a Wells Fargo Advisors, LLC

CONSENT TO ENTRY OF STIPULATION AND CONSENT ORDER BY WACHOVIA

1 Wachovia hereby acknowledges that it has been served with a copy of this Consent Order, has read
2 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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5 to the jurisdiction of the Division for purposes of this Order. Neither Wachovia Securities nor Wachovia
6 Capital Markets admits or denies the Findings of Fact and Conclusions of Law contained in this Order; and
7 each consents to entry of this Order by the Division as settlement of the issues contained in this Order.

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

10 Douglas L. Kelly represents that he/she is Exec. V.P. of Wachovia
11 Securities, LLC n/k/a Wells Fargo Advisors, LLC and that, as such, has been authorized by Wachovia
12 Securities, LLC n/k/a Wells Fargo Advisors, LLC to enter into this Order for and on behalf of Wachovia
13 Securities, LLC n/k/a Wells Fargo Advisors, LLC.

~~14 _____ represents that he/she is _____ of Wachovia Capital
15 Markets, LLC n/k/a Wells Fargo Securities, LLC and that, as such, has been authorized by Wachovia Capital
16 Markets, LLC n/k/a Wells Fargo Securities, LLC to enter into this Order for and on behalf of Wachovia
17 Capital Markets, LLC n/k/a Wells Fargo Securities, 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.

21 Dated this 4th day of Sept., 2009.

22
23 Wachovia Securities, LLC
24 n/k/a Wells Fargo Advisors, LLC

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By: _____

Title: _____

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 200_.

Notary Public

My commission expires:

Wachovia Capital Markets, LLC
n/k/a Wells Fargo Securities, LLC

By:  _____

Title: SRP

SUBSCRIBED AND SWORN TO before me this 4th day of September, 2009.



Notary Public

My commission expires:

10-22-2013

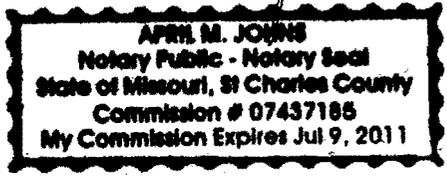
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By: *D. Kelly*

Title: *Executive U. P.*

SUBSCRIBED AND SWORN TO before me this *17th* day of *September*, 200*9*

[Signature]
Notary Public



My commission expires:
7/9/2011

Wachovia Capital Markets, LLC
n/k/a Wells Fargo Securities, LLC

By: _____

Title: _____

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 200 .

Notary Public

My commission expires:

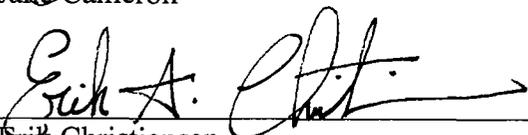
1 **BY THE UTAH SECURITIES COMMISSION:**

2 The foregoing Stipulation and Consent Order is hereby accepted, confirmed, and
3 entered by the Utah Securities Commission.

4
5 DATED this 17th day of September, 2009.

6
7 
8 _____
9 Tim Bangert

10 
11 _____
12 Jane Cameron

13 
14 _____
15 Erik Christiansen

16 
17 _____
18 Michael O'Brien

19 
20 _____
21 Laura Polachek

Certificate of Service

I, Pam Radzinski, certify that on the 21st day of September, 2009, I served the

foregoing Stipulation and Consent Order by mailing a copy to:

Natasha Lipovac
Husch Blackwell Sanders LLP
720 Olive Street, Suite 2400
St. Louis, MO 63101
Counsel for Wachovia Securities LLC
and Wachovia Capital Markets, LLC

Via email to:
natasha.lipovac@huschblackwell.com

 for Pam Radzinski
Executive Secretary