

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2005001720503

TO: Department of Enforcement
NASD

RE: Wachovia Securities, LLC
CRD No. 19616

Pursuant to Rule 9216 of NASD Code of Procedure, Wachovia Securities, LLC ("Wachovia," or "Respondent") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described in Part II below. This AWC is submitted on the condition that, if accepted, NASD will not bring any future actions against Respondent alleging violations based on the same factual findings.

The Respondent understands that:

1. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by NASD's Department of Enforcement and National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;
2. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the Respondent; and
3. If accepted:
 - a. this AWC will become part of the Respondent's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against it;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about the Respondent's disciplinary records;
 - c. NASD may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-2; and
 - d. The Respondent may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Nothing in this provision affects Respondent's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

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The Respondent also understands that its experience in the securities industry and disciplinary history may be factors that will be considered in deciding whether to accept this AWC. That experience and history are as follows:

Wachovia Securities, LLC is currently, and was during all times relevant hereto, a member of NASD and registered as a broker/dealer with the Securities and Exchange Commission. The firm registered with NASD in July 1987. In July 2003, Wachovia Corporation entered into a joint venture with Prudential Securities, Inc. n/k/a/ Prudential Equity Group's ("Prudential Securities") parent company whereby Prudential Securities transferred the assets relating to its U.S. and Latin American retail securities brokerage operations to a holding company that now operates under the name Wachovia Securities, LLC. The firm's recent relevant disciplinary history includes the following:

On August 1, 2006, the NYSE Division of Enforcement issued a Hearing Board Decision (No. 06-151), wherein Wachovia and certain broker-dealer affiliates were censured and fined a total of \$2,250,000 and ordered to complete a regulatory undertaking for violations of the federal securities laws and NYSE Rules by failing to properly retain and supervise email correspondence.

On June 13, 2005, the Missouri Securities Division issued a Cease and Desist order (No. AP-05-20), wherein the firm was fined \$300,000 for failing to adequately supervise its agents in the State of Missouri.

On May 23, 2005, the State of Maine, Office of Securities fined the firm \$27,000 for failing to reasonably supervise one of its registered representatives. Specifically, the representative was not licensed to do business in the state.

On April 13, 2005, NASD accepted a Letter of Acceptance, Waiver and Consent (No. CE2050007), wherein Wachovia was censured and fined \$25,000 for violations of NASD Rules 2110, 2210(d)(1)(a), (d)(1)(b) and (c)(1), 3010(a)(1) and (b)(1) and IM-2210-2. The firm agreed to findings that it failed to reasonably supervise a registered representative's communications with the public.

On November 30, 2004, NASD accepted a Letter of Acceptance, Waiver and Consent (No. CAF040089), wherein the firm was censured and fined \$650,000 for violations of Article V, Sections 2(c) and 3(b) of NASD's By-Laws and NASD Rules 2110 and 3010, by failing to timely file Forms U-4 and U-5. The firm agreed to findings that its supervisory system and procedures were not reasonably designed to achieve compliance with its reporting obligations. In addition to the censure and fine, the firm was prohibited from registering any registered persons in a non-supervisory sales capacity for five consecutive business days.

On November 12, 2004, State of California, Department of Corporations issued a Stipulation and Consent order wherein the firm was fined \$250,000 for failing to supervise one of its agents, and for failing to enforce its written procedures regarding the agent's unauthorized disbursement of client funds.

On August 13, 2004, the NYSE issued an order (No. HPD #04-115), wherein the firm was fined \$250,000 for reporting violations, failing to file or promptly file forms U-4, U-5, and RE-3, failing to report or accurately report customer

complaints, failing to maintain accurate books and records, and failing to reasonably supervise and establish a system of follow-up and review with regard to assuring compliance with exchange rules in connection with continuing education and registration requirements.

On January 28, 2002, the NYSE issued a Decision (No. HPD#01-232), wherein the firm was fined \$145,000 for violations of NYSE and SEC rules in connection with a failure to supervise and control, and for failing to keep and preserve accurate records and failing to promptly report customer complaints.

I.

WAIVER OF PROCEDURAL RIGHTS

The Respondent specifically and voluntarily waives the following rights granted under NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against Respondent;
- B. To be notified of the Formal Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the NAC and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, the Respondent specifically and voluntarily waives any right to claim bias or prejudice of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

The Respondent further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

II.

ACCEPTANCE AND CONSENT

- A. The Respondent hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NASD, or to which NASD is a party, prior to a hearing and

without an adjudication of any issue of law or fact, to the entry of the following findings by NASD:

Background and Underlying Misconduct

During the period from approximately May 1994 through May 2004, registered representative Edward T. Dold ("Dold") operated a fraudulent *Ponzi* scheme by which he raised approximately \$2.4 million from at least eleven, mostly elderly, customers. Dold perpetrated the scheme by soliciting several of his customers to invest in a fictitious entity by the name of LW, Inc. To entice the customers, Dold provided them with documents, which he had secretly prepared on Prudential Securities letterhead, that falsely represented, among other things, that an investment in LW Inc. was suited for "a client whose nature is conservative," and that investments in LW, Inc. that were held to maturity would present "no risk to [investment] principal." After he successfully lured the customers into making investments in LW, Inc., Dold provided many of them with bogus periodic statements, also secretly prepared on Prudential Securities, and later Wachovia, letterhead, that showed growth in their investments.

By providing the customers with false account statements and making periodic purported profit payments to them, Dold was successful in getting most of the customers to make multiple investments in LW, Inc. over the course of several years. The customers used the check-writing feature on their securities accounts to make investments in LW, Inc.

In reality, LW, Inc. was just a bank account controlled by Dold. He commingled the customers' funds in the account and, in order to create the perception that the "investment" was generating profits, used a portion of the funds to make purported profit payments to earlier investors in the scheme. Dold used the balance of customer funds for his personal use and benefit.

Dold's scheme was revealed in May 2004, when the executors of the estate of one of Dold's long-time Prudential Securities' customers complained to Wachovia that Dold would not provide them with account records for the deceased customer's LW, Inc. investment. Wachovia and Prudential Securities subsequently launched an investigation that included inspecting Dold's office and reviewing the hard drive of his office computer. The firms discovered information related to the scheme, including copies of LW, Inc. bank statements and cancelled checks for the years 1997-2004, copies of false accounts statements that Dold sent to customers, and copies of correspondence to and from customers regarding LW, Inc. The review of Dold's computer reveals that he maintained information regarding LW, Inc. on the computer, and that he used the computer to generate the false account statements.

Prudential Securities and Wachovia subsequently turned this information over to criminal authorities and assisted in the criminal prosecution of Dold. The firms were also able to identify other victims of Dold's scheme by reviewing all of his customers' account statements. Prudential Securities voluntarily entered into settlements with ten of the eleven affected customers, and paid out over \$1.5

million in restitution. The firm also paid an arbitration award in the amount of over \$2 million in connection with an arbitration brought by the estate of the remaining customer.

The FBI's investigation of this matter resulted in a criminal conviction against Dold for money laundering. He was sentenced to ten years imprisonment and ordered to pay restitution to the defrauded investors in the amount of \$1,931,949. Dold is currently serving his sentence in a federal prison located in Texas. NASD barred Dold from association with any NASD member firm in any capacity for his conduct described herein.

Wachovia Securities, LLC's Supervisory Violations

During the period from approximately July 2003 through May 2004, Wachovia failed to establish and maintain a system to supervise Dold's activities that was reasonably designed to achieve compliance with applicable securities laws and regulations, and NASD Rules. Dold became a Wachovia employee in July 2003, when that firm took over Prudential Securities' retail brokerage operations, including the Lubbock, Texas branch office where Dold worked.

By the time that he joined Wachovia, Dold had already raised at least \$2.3 million from at least eleven customers. During his employment with Wachovia, Dold continued his fraudulent scheme by soliciting at least an additional \$135,000 from existing LW, Inc. investors; generating and sending false statements to customers on Wachovia letterhead; and continuing to make purported profit payments to customers. Dold also sent and received emails regarding LW, Inc. via Wachovia's email system; and received customer correspondence regarding LW, Inc., via facsimile and U.S. mail, at the branch office. Dold also continued to receive LW, Inc. bank statements, including canceled checks that showed payments to Wachovia customers, at the branch office.

Wachovia's supervisory system failed to detect any of Dold's activities. Although the firm had procedures addressing certain aspects of Dold's fraudulent scheme, it did not have an adequate system in place at the Lubbock Branch Office to enforce its procedures. For example, the firm's procedures required supervisory review of all incoming and outgoing correspondence, and prohibited the receipt of personal mail at the branch office. However, the firm failed to review correspondence regarding LW, Inc. that was sent and received by Dold at the branch office. Specifically, during the period from July 2003 through September 2003, Wachovia failed to review a series of correspondence between Dold and the attorney representing the estate of Dold's deceased customer. The attorney sent at least two letters, one via US Mail and the other via facsimile, and at least three emails to Dold at the Lubbock office. In response, Dold sent at least five emails to the attorney. Additionally, LW, Inc. bank statements that were sent to Dold at the branch office were identified as "personal" and delivered directly to Dold without being reviewed by a supervisor.

Wachovia also did not have a reasonable supervisory system to follow up on "red flags" indicating possible misconduct by Dold. For example, although Wachovia, acting through the Lubbock branch office manager, admitted to

receiving and reviewing at least one piece of correspondence from the attorney to Dold, a letter dated August 25, 2003 that referenced LW, Inc., the firm did not conduct a meaningful follow-up. The branch manager's inquiry consisted only of asking the branch office secretary, if she had ever heard of LW, Inc. The secretary, who had worked in the office for over twenty years, explained to the manager that "LW" stood for "Lubbock Warriors," an AAU basketball team that Dold had been involved with for many years. The manager then asked Dold about LW, Inc., and Dold gave the same explanation. Dold also explained that the attorney's letter was simply an inquiry about the team and AAU basketball business, and was in no way related to his securities business.

Wachovia's only response was to tell Dold that his personal mail should not come to the office, and that he needed to disclose LW, Inc. as an outside business activity. The firm took no further action such as calling the attorney to verify Dold's story.

In November 2003, Wachovia received a more critical clue about Dold's fraudulent activities. On November 6, 2003, the branch secretary showed the manager an LW, Inc. bank statement, and informed him that she had been receiving the statements in the branch office for years, and that she had been delivering them directly to Dold. The manager opened the statement and discovered five canceled checks that had been written to Wachovia customers. When the firm questioned Dold about the payments to customers, Dold explained that the payments represented refunds of donations to the AAU basketball team that he coached. Dold again explained that the activity had nothing to do with his securities business.

Even in light of several indicators of possible misconduct by Dold, Wachovia failed to conduct a meaningful investigation of his activities prior to May 2004. The firm did not contact the customers and ask them why they were receiving funds from Dold and LW, Inc.; did not review other LW bank statements, which would have revealed additional periodic payments to customers; did not ask Dold for a contact within the LW, Inc. organization so that it could verify the financial arrangements between the team and sponsors; and did not review any of Dold's customer accounts to see if the customer had written checks to LW, Inc. At least three customers wrote a total of six checks, valued at approximately \$135,000, during the time that Dold was a Wachovia employee. Each check was made payable to LW, Inc., and was reflected on the customers' Wachovia Securities account statement.

Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rules 2110 and 3010 by Wachovia Securities, LLC.

- B. The Respondent also consents to the imposition, at a maximum, of the following sanctions:

A censure and a monetary fine in the amount of \$50,000.

The sanctions imposed herein shall be effective on a date set by NASD staff.

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The sanctions imposed herein shall be effective on a date set by NASD staff.

III.

OTHER MATTERS

- A. Respondent understands that it may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The Respondent understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by NASD, nor does it reflect the views of NASD or its staff.
- B. The Respondent agrees to pay any monetary sanctions imposed on it upon notice that this AWC has been accepted and that such payments are due and payable and has attached an Election of Payment form showing the method by which it proposes to pay any fine imposed.
- C. The Respondent specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

The Respondent certifies that it has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce it to submit it.

12/1/06
Date

Wachovia Securities, LLC

By: [Signature]
(signature)

Name: James May
(printed name)

Title: President, Private Client

Reviewed by:

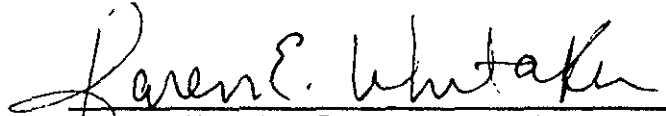
Kevin B. Hurley
Counsel for Respondent

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Accepted by NASD:

12/18/2006
Date

Signed on behalf of the
Director of ODA, by delegated authority



Karen E. Whitaker, Regional Counsel
NASD Department of Enforcement
12801 N. Central Expressway, Suite 1050
Dallas, TX 75243
Phone: 972-716-7610 / Fax: 972-716-7646

NASD Regional Director

Virginia F. M. Jans, Vice President
NASD, District 6
12801 N. Central Expressway, Suite 1050
Dallas, TX 75243
972-701-8554