

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 200500216920102**

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REGISTRATION & DISCLOSURE

TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: Wachovia Securities, LLC, n/k/a Wells Fargo Advisors, LLC, Respondent
Member Firm
CRD No. 19616

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Wachovia Securities, LLC, n/k/a Wells Fargo Advisors, 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 below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against it alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. 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 FINRA, or to which FINRA 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 FINRA:

BACKGROUND

Wachovia is a registered broker-dealer and has been a member of FINRA since 1987.

RELEVANT DISCIPLINARY HISTORY

Wachovia has been the subject of the following relevant disciplinary history:

- On April 30, 2009, FINRA accepted an AWC (No. 2007010181101), finding that Wachovia failed to establish and maintain supervisory systems and procedures related to the delivery of prospectuses and

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product descriptions, in violation of Section 5(b)(2) of the Securities Act of 1933 and NASD Rules 3010 and 2110. Wachovia was censured, fined \$1,400,000 and ordered to perform an undertaking.

- On February 23, 2009, FINRA accepted an AWC (No. 2007009470901), finding that Wachovia and its clearing firm failed to establish and maintain supervisory systems and procedures related to the retention and maintenance of records concerning changes of a customer's address, investment objectives, profile information, and asset transfers, in violation of Section 17(a) of the Securities Exchange Act of 1934 and Rules 17a-3 and 17a-4, and NASD Conduct Rules 3010(a) and (b), 3110, 3012(a) and (b), and 2110. Wachovia and its clearing firm were sanctioned jointly and severally, censured, fined \$1,100,000, and ordered to perform an undertaking.
- On February 12, 2009, FINRA accepted an AWC (No. E9A2005013001), finding that Wachovia failed to establish and maintain supervisory systems and procedures related to Class B shares, NAV Transfer Programs, and UIT volume discounts, in violation of Conduct Rules 2110, 2310 and 3010. Wachovia was censured, fined \$3,860,000 and ordered to perform undertakings.
- On June 21, 2007, FINRA accepted an AWC (No. EAF0400840001), finding, among other things, that Wachovia failed to establish and maintain supervisory systems and procedures related to fee-based business, in violation of NASD Conduct Rules 3010(a) and (b) and 2110. Wachovia was censured, fined \$2,000,000 and ordered to perform an undertaking.
- On September 13, 2006, the New York Stock Exchange (NYSE) issued a Stipulation and Consent (Hearing Board Decision (HBD) No. 06-172), finding that Wachovia failed to establish and maintain adequate procedures and controls for certain activities at its bank-affiliate which affected Command Asset Program accounts, including a system of follow-up and review of its business activities relating to changes of customer addresses, in violation of NYSE Rules 342(a) and (b). Wachovia was censured and fined \$300,000.
- On August 26, 2006, the NYSE issued a Stipulation and Consent (HBD #06-151), finding that Wachovia failed to preserve electronic records relating to the business of the firm for at least three years and failed to reasonably supervise the retention and/or review of electronic communications, in violation of Section 17(a) of the Exchange Act And Rule 17a-4 thereunder, and NYSE Rules 440, 342 and 342.17. Wachovia and its clearing firm were censured, fined \$2,250,000, of which \$1,650,000 is waived, conditional upon the firm paying that

amount pursuant to its settlement of a regulatory action by state securities regulators relating, in part, to email retention, and ordered to perform an undertaking.

- On August 13, 2004, the NYSE issued a Stipulation and Consent (HBD #04-115), finding that Wachovia failed to reasonably supervise and provide appropriate procedures of supervision and control with respect to, among other things, assuring that certain discretionary accounts were receiving the appropriate supervisory review, in violation of NYSE Rules 342 and 472. Wachovia was censured and fined \$250,000.

OVERVIEW

The underlying conduct giving rise to supervision charges against Wachovia arises from customer complaints with similar allegations against two brokers, sisters B.S. and D.S., who at times worked as a team. To wit, from August 30, 2001 to October 24, 2004, the Sisters each engaged in an extensive pattern of unsuitable variable annuity transactions, including usually unauthorized and undisclosed partial withdrawals and switches, accomplished through deceitful practices, including falsifying documents with bad addresses, forged signatures, inaccurate birth dates, and impersonating customers on phone calls to the insurance companies to facilitate the switches. In particular, B.S. and D.S. repeatedly represented that the annuity transactions were funded with new money and not with the proceeds of exchanges or replacements, thus avoiding additional supervisory review.

As described below, during the relevant period, Wachovia suffered from supervisory failures regarding variable annuity sales, and had an inadequate system in place that would detect undisclosed switches or otherwise monitor a representative's annuity business, other than a manual ticket review by the branch office manager. These procedures were inadequate to detect, deter, and prevent the Sisters' conduct that resulted in customer harm. As a result, Wachovia violated NASD Conduct Rules 2110 and 3010(a) and 3010(b).

FACTS AND VIOLATIVE CONDUCT

Wachovia's written supervisory procedures (WSPs) placed responsibility with the Branch Office Manager (BOM) for the review of annuity transactions, both initial purchases and exchanges. For the period in which B.S. and D.S. engaged in abusive sales practices regarding variable annuities, Wachovia's supervisory system and written supervisory procedures were inadequate to detect abusive sales practices, as follows:

- Wachovia's WSPs did not describe adequately the required documentation and/or information the BOM (or his designee) should review during a suitability analysis or how to evidence approval. As a result of inadequate procedures in this area,

there were inconsistent and inadequate suitability reviews conducted at Wachovia of transactions executed by B.S. and D.S.

- The WSPs relied substantially on a dialogue between the BOM and the Financial Advisor (FA) regarding a suitability analysis; the procedures did not require the BOM to verify representations made by the FA. As a result, no steps were taken to detect the repeated falsehoods by the Sisters that the annuity transactions represented an investment of new funds and did not represent exchanges or replacements.
- To the extent that the BOM reviewed information on the computer regarding the source of funds, the Wachovia system did not reflect that insurance companies were the source of deposits that the Sisters asserted were new funds.
- Wachovia did not have any exception reports appropriate for monitoring variable annuity sales practices. During the period that the Sisters were engaging in unauthorized annuity switches, Wachovia generated Monthly Active Account Reports based on established criteria largely related to equities, such as commissions, number of trades, commission-to-equity ratio, and percentage loss. These reports did not successfully identify annuity sales practice violations. In addition, there was inadequate follow-up and written correspondence to the customer was not required.
- Wachovia did not have exception reports to identify variable annuity related concerns such as the following: (i) customer age; (ii) heavy concentration in variable products; (iii) sales to non-natural persons; (iv) annuities exceeding a certain percentage of the customer's liquid net worth; (v) account deposits within a certain period of a new annuity purchase; and (vi) representatives with high production in variable contracts.
- Wachovia failed to verify that the customer's information on the annuity application (i.e., birth date, customer address) matched that on the brokerage account. In many instances, D.S. misstated birth dates on annuity applications for elderly customers so that she could earn higher commission rates on variable products. Also, D.S. used false customer addresses to facilitate the unauthorized switches for three customers.
- Wachovia did not have adequate controls to monitor annuity withdrawals. In that regard, it had preferred annuity vendors, and annuity purchases from these vendors would appear on the customer's account statement. Wachovia could have requested, but did not, that the preferred vendors provide periodic reports showing annuity withdrawal transactions to monitor for surrender charges, switching, exchanges, etc.
- From at least February 2002 until the last quarter of 2006, Wachovia did not have an adequate procedure to remove annuities from customer accounts when they

were surrendered. Wachovia instead relied upon a disclaimer on each customer's account statements which read, "Annuity values and all sub fund information is provided directly from the insurance companies. Accuracy is not guaranteed and surrender charges may apply. Annuities are not protected by SIPC. Please contact your Financial Advisor if you no longer own any of the annuity positions listed below." Wachovia procedure by which customers' account statements were updated relied upon the FA advising the branch's Operations Department that an annuity had been closed. At that time, the Operations area would then send the surrender information to Wachovia's Annuity Department, which would remove the position from the client's statement. The Sisters failed to so advise the branch's Operations Department, and were able to use this weakness in Wachovia's procedure to conceal their unauthorized partial withdrawals.

Wachovia did not have an adequate procedure to reject annuity transactions where the annuity buy ticket was not complete. Wachovia's Annuity Guidelines state that the FA must complete an annuity buy ticket in connection with a new sale of an annuity, an exchange into an annuity, or the addition of funds to an existing annuity. The annuity buy tickets for many of the subject transactions, however, were processed without full and complete information, in particular with no response indicated to two switch questions. These omissions went unnoticed by Wachovia.

The foregoing acts, practices, and conduct constitute separate and distinct violations of NASD Rules 2110, 3010(a) and 3010(b) by Wachovia.

B. Respondent also consents to the imposition of the following sanctions:

1. A censure;
2. A fine in the amount of \$350,000.00; and
3. An undertaking to certify to the District Director of FINRA District 2, within 90 days of the acceptance of this AWC, that it has reviewed its procedures regarding variable annuities and has systems and procedures in place that are reasonably designed to detect abusive sales practices.

Respondent agrees to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Respondent has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

Respondent specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

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

II.

WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Complaint issued specifying the allegations against it;
- B. To be notified of the 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 National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Respondent specifically and voluntarily waives any right to claim bias or prejudgment 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.

Respondent further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA 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.

III.

OTHER MATTERS

Respondent understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;

- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against it;
- C. If accepted:
1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against it;
 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about Respondent's disciplinary record;
 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313;
 4. 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. Respondent may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects Respondent's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party; and
- D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. 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 FINRA, nor does it reflect the views of FINRA or its staff.

The undersigned, on behalf of Respondent, certifies that a person duly authorized to act on its behalf has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it has agreed to its provisions voluntarily; and that no

offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce Respondent to submit it.

8/14/2009
Date

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


By: Charles J. Van Gronigen
Its: Senior Vice President

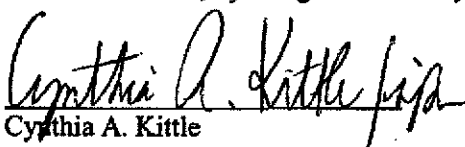
Reviewed by:


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Accepted by FINRA:

8/28/09
Date

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


Cynthia A. Kittle
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