

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT**

NO. 0000598690

200703947090/

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

RE: Wachovia Securities, LLC (CRD 19616), Respondent
First Clearing, LLC (CRD 17344), Respondent

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Respondents submit 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 the respondents alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Wachovia Securities, LLC ("Wachovia"), a member firm, and First Clearing, LLC ("First Clearing"), also a member firm (collectively the "Firm" or "Respondents"),¹ hereby accept and consent, 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

Headquartered in St. Louis, Missouri, Wachovia provides financial advisory, brokerage, asset management and other financial services nationwide.

Headquartered in St. Louis, Missouri, First Clearing provides securities-execution and brokerage-clearance services to Wachovia Securities, Wachovia Financial Network, LLC, and unrelated retail securities firms throughout the United States.

RELEVANT PRIOR DISCIPLINARY HISTORY

Within the last three years, the Firm has been the subject of two disciplinary proceedings by the New York Stock Exchange ("NYSE"). In 2006, the Firm settled an action with

¹ During the time period in question both Wachovia and First Clearing were 100% owned subsidiaries of Wachovia Securities Financial Holdings, LLC and were non-bank affiliates of Wachovia Corporation.

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NYSE in which NYSE found that, during the period from at least July 2002 through September 2003, the Firm failed to reasonably supervise securities account-related activity in the retail branches of its bank affiliate. The Firm was charged with violations of NYSE Rule 342. The Firm was censured, and fined \$300,000.

In 2006, Wachovia Capital Markets, LLC, Wachovia Securities, LLC, and First Clearing, LLC settled an NYSE enforcement matter involving a failure by Wachovia and its related entities to provide for the review and/or retention of certain e-mail communications as required by the NYSE Rules and federal securities laws during the period from about January 1999 through April 2006. The Firms were charged with violations of NYSE Rules 440, and 342. The Firms were sanctioned as a single entity. The sanction was a censure, a fine of \$2,250,000, and an undertaking to retain an independent consultant to conduct a comprehensive review of the policies, procedures, and practices of the Firms and, report on and make recommendations as to appropriate policies, procedures, and practices, designed to bring their policies, procedures, and practices into compliance and prevent recurrence of the violations.

OVERVIEW

This matter involves violations relating to the following areas of operational deficiency at Wachovia and First Clearing:

- First Clearing's failure to provide Clearing Agreement notifications;
- First Clearing's failure to send change of address notifications;
- First Clearing's failure to send investment objective change notifications;
- First Clearing's failure to provide partial call notifications;
- First Clearing's provision of inaccurate bond ratings on trade confirmations;
- First Clearing's failure to send correct fee schedules to customers;
- First Clearing's failure to send margin disclosure statements to customers;
- Wachovia and First Clearing's failures to provide asset transfer notifications; and
- Wachovia and First Clearing's failure to provide customer profile information.

Overall, during the period from June 2003 through October 2008 the Firm failed to mail approximately 800,000 required notifications to customers. In addition, the Firm failed to have policies, procedures, or internal controls in place to supervise the mailings in question, and failed to have supervisory staff assigned to monitor them.

By virtue of the conduct set forth herein, Wachovia violated Section 17(a) of the Securities Exchange Act ("Exchange Act") of 1934, Rules 17a-3 and 17a-4 thereunder, and NASD Conduct Rules 3110, 2110, and 3012(a) by failing to maintain and furnish records of the furnishing of notifications of changes of address to customers, notifications of change of investment objectives to customers, and by failing to establish and maintain adequate supervisory controls and testing reasonably designed to achieve compliance; violated 17(a) of the Exchange Act, Rules 17a-3 and 17a-4 thereunder, and NASD Conduct Rules 3110 and 2110 by failing to maintain and furnish records of the furnishing

of accurate customer profile information forms; violated 3012(b) and 2110 by failing to send asset transfer notifications to customers; and violated NASD Conduct Rules 3010(a), 3010(b), and 2110 by failing to establish and maintain adequate written policies and procedures and an adequate system of supervision reasonably designed to achieve compliance.

First Clearing, by virtue of the conduct set forth herein, violated Section 17(a) of the Exchange Act, Rules 17a-3 and 17a-4 thereunder, and NASD Rules 3110, 2110, and 3012(a) by failing to maintain and furnish records of the furnishing of notifications of change of address to customers, notifications of change of investment objectives to customers, and by failing to establish and maintain adequate supervisory controls and testing reasonably designed to achieve compliance; violated 17(a) of the Exchange Act, Rules 17a-3 and 17a-4 thereunder, and NASD Conduct Rules 3110 and 2110 by failing to maintain and furnish records of the furnishing of accurate customer profile information forms, accurate fee schedules, and accurate trade confirmations to customers; violated NASD Rules 3012(b) and 2110 by failing to send asset transfer notifications to customers; violated NASD Rules 3230(g) and 2110 by failing to provide customers with written notification of the existence of a clearing or carrying agreement; violated NASD Rules 2260 and 2110 by failing to provide customers with written notification of partial calls relating to debt issuances prior to execution; violated NASD Rules 2341 and 2110 by failing to send margin disclosure statements to customers; and violated NASD Rules 3010(a), 3010(b), and 2110 by failing to establish and maintain adequate written policies and procedures, and an adequate system of supervision reasonably designed to achieve compliance.

FACTS AND VIOLATIVE CONDUCT

Wachovia

- 1) **Investment Objective Change Notification Failures: Violation of 17(a) of the Exchange Act, Rules 17a-3 and 17a-4 thereunder, and NASD Conduct Rules 3110, 3012(a) and 2110.**

Exchange Act Rules 17a-3(a)(17)(i)(B)(3) and 17a-4(e)(5) specifically require that firms maintain records that they have sent confirmations of investment objective changes to customers within 30 days of the change. NASD Rule 3110(a) requires that member firms comply with the requirements of Rule 17a-4. In addition, NASD Conduct Rule 3012(a) provides, in pertinent part, that each member must "establish, maintain, and enforce a system of supervisory control policies and procedures that...test and verify that the member's supervisory procedures are reasonably designed...to achieve compliance with applicable securities laws and regulations, and with applicable NASD rules."

During the period from June 2003 and September 2005, Wachovia failed to send customers confirmation of changes in investment objectives, and thus failed to keep records of such mailings. Wachovia had programmed its computer systems to generate the required mailing on the 20th day following the change in a customer's investment

objective. However, Wachovia erroneously programmed the system so that if that 20th day was a non-business day, such as a weekend or holiday, the system did not generate a mailing to the customer, while at the same time incorrectly notifying the system that the letter had been sent.

These errors, as well as the other errors associated with the Firm's automated mailing system discussed in detail below, went undetected by Wachovia because it failed to assign supervisory review and adequate testing over its automated mailing system, and failed to implement internal controls designed to detect and prevent errors in this system.

A separate programming issue resulted in Wachovia failing to mail confirmations of investment objective changes to an additional 12,000 customers who became Wachovia customers following its merger with Prudential. While the programming that led to that error was changed in March 2006, and mailings were sent to the 12,000 customers, the Firm determined that an additional 17,000 mailings had not been sent during the time it took to implement the change. As a result of these failings, Wachovia failed to send required notifications of change in investment objectives to over 44,000 customers and to keep records reflecting those mailings.

In addition, Wachovia sent over 274,000 defective investment objective change confirmations to customers as a result of three separate programming errors. The first two programming errors caused Wachovia to send confirmations to certain customers in which the customers' old investment objectives appeared on the investment objective change confirmations rather than the new investment objective. The first programming error caused Wachovia to send approximately 59,000 defective investment objective change confirmations to customers between October 2005 and April 2006, while the second programming error caused Wachovia to send over 15,000 defective confirmations to customers between June 2006 and August 2006.

Finally, between August 18, 2006 and March 2007, a third programming error caused Wachovia to send approximately 200,000 defective confirmation letters that incorrectly listed the customers' investment objectives as "N/A" as opposed to listing the objectives.

By failing to send confirmation of investment objective changes to customers and failing to send accurate confirmations of such investment objective changes to customers within 30 days of the change, and to keep records indicating that such confirmations had been sent, Wachovia violated Section 17(a) of the Exchange Act, Rules 17a-3 and 17a-4 thereunder, and NASD Conduct Rules 3110 and 2110. In addition, because it failed to assign supervisory review over its automated mailing system, and failed to establish and maintain a supervisory system to test that its supervisory procedures were reasonably designed to achieve compliance, Wachovia violated NASD Conduct Rules 3012 and 2110.

2) Failure to Mail Change of Address Notifications: Violation of 17(a) of the Exchange Act, Rule 17a-3 and 17a-4 thereunder, and NASD Conduct Rules 3110, 3012(a) and 2110.

Wachovia also failed to confirm with customers, and to keep records of such confirmations, changes of address by those customers. Exchange Act Rules 17a-3 and 17a-4, and NASD Conduct Rule 3110, require that firms keep records indicating that change of address notifications have been sent to customers. This failure occurred as a result of a system update which changed the field that generated the notification from "print" to "on-line viewing." As a result, between February 2004 and December 2005, Wachovia failed to send approximately 340,000 change of address notifications to customers. Again, this error went undetected by Wachovia because it failed to implement adequate supervisory review and testing, as well as implement internal controls over its automated mailing system.

By failing to send change of address notifications and to keep records indicating that such confirmations had been sent, Wachovia violated Section 17(a) of the Exchange Act, Rule 17a-3 and 17a-4 thereunder, and NASD Conduct Rules 3110 and 2110. In addition, by failing to establish, test and maintain supervisory controls to ensure compliance with the applicable securities laws and NASD Conduct Rules, Wachovia violated NASD Conduct Rules 3012 and 2110.

First Clearing

System Failures at First Clearing

1) Failure to Provide Clearing Agreement Notifications: Violation of NASD Conduct Rules 3230(g) and 2110.

NASD Conduct Rule 3230(g) provides, in pertinent part, "Each customer whose account is introduced on a fully disclosed basis shall be notified in writing upon the opening of his account of the existence of the clearing or carrying agreement." First Clearing failed to send approximately 26,612 Rule 3230(g) notification letters to customers as a result of four different programming errors in its systems.

First, from January 2004 through May 2006, a programming error in the Firm's system caused the system to incorrectly populate a specific data field in such a way that it appeared that a new account had experienced an update, as opposed to an account opening. As a result of this error, the Firm failed to send approximately 21,000 Clearing Agreement notifications to customers.

Next, First Clearing maintains a front-end application called the "New Account Wizard" ("NAW"). When new accounts are opened for owners with existing accounts, certain information can be automatically copied into the new account's account opening form. Due to a programming error, the account opening date was also being copied from the existing account onto the new account. As a result of this failure to accurately populate

this field with accurate information about the account opening date, between October 2004 and October 2006, First Clearing failed to send approximately 28,000 Rule 3230(g) notification letters to customers.

The third programming error, similar to the error that affected confirmations of investment objective changes, resulted in a failure to mail letters on non-business days. This error resulted in a failure to send approximately 100 NASD Conduct Rule 3230(g) notification letters between January 2000 and May 2006.

Finally, First Clearing did not properly set data fields to generate NASD Conduct Rule 3230(g) notification letters for one introducing firm at the time of that firm's conversion to First Clearing's systems. As a result, between September 2005 and August 2006, First Clearing failed to mail approximately 5,462 notifications to customers of that firm.

By failing to notify customers of the existence of a clearing or carrying agreement, as discussed above, First Clearing violated NASD Conduct Rules 3230(g) and 2110.

2) Change of Address Notification and Other Failures: Violation of 17(a) of the Exchange Act, Rules 17a-3 and 17a-4 thereunder, and NASD Conduct Rules 3110, 3012(a) and 2110.

First Clearing also failed to send change of address notifications to customers as a result of three different errors in First Clearing's systems. The first error occurred when First Clearing failed to turn on the "print stream" function in the platform it used for six introducing broker-dealers who were converting onto that platform between May and December 2006. As a result, 1,513 required change of address notifications were never printed or mailed by First Clearing to customers of those firms. The Firm's systems displayed images of the change of address notifications so it appeared as though they had been printed and mailed.

The second error occurred in September 2007 when an introducing firm transferred its clearing business to First Clearing and 139 current and former Wachovia customers were copied over onto that firm's accounts by First Clearing. This problem arose due to errors relating to coding used by First Clearing to identify these accounts. As a result, change of address letters were improperly generated and sent to the current and former Wachovia customers, who had no association with the introducing firm's accounts, indicating that the name and address had been changed on the that firm's account.

Finally, First Clearing failed to mail welcome letters, change of address verifications, and investment objective change notifications as to certain accounts transferred between First Clearing introducing firms from December 2005 to the present.

By failing to send these notifications and keep records indicating that such notifications had been sent, First Clearing violated Section 17(a) of the Exchange Act, Rules 17a-3 and 17a-4 thereunder, and NASD Conduct Rules 3110 and 2110. In addition, by failing to establish, test and maintain supervisory controls to ensure compliance with the applicable

securities laws and NASD Conduct Rules, First Clearing violated NASD Conduct Rules 3012 and 2110.

- 3) Failure to Send Investment Objective Change Notifications for New Sub-Firm Accounts: Violation of 17(a) of the Exchange Act, Rules 17a-3 and 17a-4 thereunder, and NASD Conduct Rules 3110, 3012(a) and 2110.

On June 20, 2006, the addition of a new "sub-firm," or introducing firm, to the First Clearing computer system resulted in a failure to generate 579 investment objective change notification mailings. This failure was due to a problem with programming associated with the addition of a new "sub-firm number," which is part of the process for the conversion of a new introducing firm to First Clearing's platform.

By failing to send confirmations of investment objective changes to customers within 30 days of the change and to keep records indicating that such confirmations have been sent, First Clearing violated Section 17(a) of the Exchange Act, Rules 17a-3 and 17a-4 thereunder, and NASD Conduct Rules 3110 and 2110. In addition, by failing to establish, test and maintain supervisory controls to ensure compliance with the applicable securities laws and NASD Conduct Rules, First Clearing violated NASD Conduct Rules 3012(a) and 2110.

- 4) Failure to Provide Partial Call Notifications: Violation of NASD Conduct Rules 2260(a)(2) and 2110.

NASD Conduct Rule 2260(a)(2) requires, in pertinent part, that "[f]or a debt security other than a municipal security, the member must make reasonable efforts to forward any communication, document, or collection of documents pertaining to the issue that...contains material information about such issue including, but not limited to...material event notices." Material information about an issue includes information about a partial call of that security.¹

First Clearing sends notifications to customers prior to liquidations executed due to partial calls. The Firm utilizes a lottery function within its BETA system² to randomly determine which shares will be liquidated in a partial call situation. Due to a pre-set limit, First Clearing was processing a daily maximum of 30 data files for partial calls, each file representing one account that needed to be notified of a partial call of a security held in the account. Once the number of accounts to be notified exceeded 30, the newest file(s) would be added to the list of accounts to be notified, but it would cause the oldest file(s) to be deleted from the notification queue. As a result, certain customers with partial calls that were contained in the deleted files did not receive notice of the call prior to their position being called. From July 2005 through November 2006, approximately

¹ A "partial call" is a redemption by the issuer of a portion of the outstanding amount. Which bonds are redeemed in partial calls is usually determined by lottery.

² The BETA system is a software system utilized by Wachovia for customer and transaction management.

200 accounts did not receive notifications prior to a position being called due to this daily limit. First Clearing also failed to provide prior notice to customers regarding voluntary corporate actions as required by Rule 2260.

By failing to provide material information to debt holders, including partial call notifications, as discussed above, First Clearing violated NASD Conduct Rules 2260(a)(2) and 2110.

5) Incorrect Bond Ratings on Trade Confirmations: Violation of 17(a) of the Exchange Act, Rules 17a-3 and 17a-4 thereunder, and NASD Conduct Rules 3110(a) and 2110.

Exchange Act Rule 17a-3(a)(8) requires, in pertinent part, that "copies of confirmations of all purchases and sales of securities" sent to customers be kept by firms. As a result of a systems error at First Clearing, the Firm provided customers with trade confirmations for certain bonds transactions that contained inaccurate ratings. Between October 2006 and April 2007, First Clearing's computer systems incorrectly translated an electronic feed sent by a ratings agency regarding non-investment grade bonds (those receiving a CCC rating or lower). First Clearing's incorrect translation caused trade confirmations to reflect inaccurate bond ratings for certain bonds. Some bonds were incorrectly assigned higher ratings, while others were incorrectly assigned lower ratings. Despite the inaccuracies in the bond ratings, all the confirmations nonetheless accurately identified the securities as non-investment grade.

By failing to send accurate confirmations and keep records indicating that such accurate confirmations had been sent, as discussed above, First Clearing violated Section 17(a) of the Exchange Act, Rules 17a-3 and 17a-4 thereunder, and NASD Conduct Rules 3110(a) and 2110.

6) Failure to Send Correct Fee Schedules to Customers: Violation of 17(a) of the Exchange Act, Rules 17a-3 and 17a-4 thereunder, and NASD Conduct Rules 3110 and 2110.

Exchange Act Rule 17a-3(a)(17)(iii) requires, in pertinent part, that firms maintain "a record for each account indicating that each customer or owner was furnished with a copy of each written agreement entered into." In January and February 2007, First Clearing failed to provide the correct version of a fee schedule in certain mailings sent to over 54,000 customers of its introducing firms.

By failing to provide accurate fee schedules to customers, and keep records indicating that such accurate fee schedules had been sent, First Clearing violated Section 17(a) of the Exchange Act, Rules 17a-3 and 17a-4 thereunder, and NASD Conduct Rules 3110 and 2110.

7) Failure to Send Margin Disclosure Statements to Customers: Violation of NASD Conduct Rules 2341 and 2110.

NASD Conduct Rule 2341 requires that margin disclosure statements be provided to customers who open margin accounts. The rule provides, in pertinent part, "No member shall open a margin account...for or on behalf of a non-institutional customer, unless, prior to or at the time of opening the account, the member has furnished to the customer, individually, in writing or electronically, and in a separate document, the margin disclosure statement." Between June 2006 and February 2007 First Clearing failed to include margin disclosure statements in new account packages sent to over 47,000 accounts. This occurred as a result of the failure to include the correct version of the General Account Agreement Disclosure Document ("GAADD") in the new account packages.

In addition, First Clearing failed to send margin disclosure statements to approximately 7,000 new accounts opened between October 2006 and January 2007. This occurred as the result of a transmission failure between its NAW and BETA systems.

By failing to send margin disclosure statements to customers, as discussed above, First Clearing violated NASD Conduct Rules 2341 and 2110.

System Failures Affecting Both Wachovia and First Clearing

1) Asset Transfer Notification Failures: Violation of NASD Conduct Rules 3012(b) and 2110.

NASD Conduct Rule 3012(b) provides, in pertinent part, that each member must establish "procedures that are reasonably designed to review and monitor ...all transmittals of funds...from customers to third party accounts...including the hand-delivery of checks...The policies and procedures established...must include a means or method of customer confirmation, notification, or follow-up that can be documented."

The Firm had an error in its operational procedures utilized by employees who were conducting manual reviews of certain transactions. This error resulted in the Firm's failure to send over 3,000 required notifications to customers when assets were transferred to a third-party or an outside entity.

In addition, the Firm failed to send asset transfer notifications to customers related to the payment of fees to outside money managers.

By failing to send asset transfer notifications to customers, as discussed above, both Wachovia and First Clearing violated NASD Conduct Rules 3012(b) and 2110.

2) Customer Profile Information Verification Form Failures: Violation of 17(a) of the Exchange Act, Rules 17a-3 and 17a-4 thereunder, and NASD Conduct Rules 3110(a) and 2110.

Exchange Act Rule 17a-3 (a)(17)(i)(A) requires, in pertinent part, that records be maintained indicating that an "account record including the customer's...annual income, net worth (excluding value of primary residence), and the account's investment objectives" has been provided to the customer. The Customer Profile Information Verification ("CPIV") form is the document the Firm sent to customers containing information regarding income, net worth, and investment objectives, among other things. During the period from 2007 to the present, the CPIV form displayed "F" as a net worth code, but no corresponding dollar range appeared in the financial code legend. Customers with an "F" net worth code thus were not able to verify their net worth amount as recorded by the Firm.

By failing to send complete CPIV forms to customers, and keep records indicating that such complete CPIV forms had been sent, as discussed above, the Firm violated Section 17(a) of the Exchange Act, Rules 17a-3 and 17a-4 thereunder, and NASD Conduct Rules 3110(a) and 2110.

Wachovia and First Clearing Violated NASD Conduct Rule 3010

A broker-dealer must establish and enforce procedures to supervise employees. NASD Conduct Rule 3010(a) provides that:

Each member shall establish and maintain a system to supervise the activities of each registered representative, registered principal, and other associated person that is reasonably designed to achieve compliance with applicable securities laws and regulations, and with the Rules of this Association. Final responsibility for proper supervision shall rest with the member.

Wachovia and First Clearing each had an inadequate system of supervision in place with respect to the various required mailings at issue in this matter because the supervisory systems established were not reasonably designed to achieve compliance with NASD Conduct Rules and federal securities laws.

NASD Conduct Rule 3010(b)(1) provides, in pertinent part, "Each member shall establish, maintain, and enforce written procedures to supervise the types of business in which it engages and ... that are reasonably designed to achieve compliance with applicable securities laws and regulations, and with the applicable Rules of NASD."

During the time periods in question, Wachovia and First Clearing failed to have any written policies or procedures in place regarding the various mailings at issue in this matter, in violation of NASD Conduct Rule 3010(b)(1).

B. Respondents also consent to the imposition of the following sanctions:

1. A censure.
2. A fine of \$1,100,000.
3. a. Wachovia and First Clearing shall:
 - i) Retain, within 60 days of the Notice of Acceptance of this AWC, an Independent Consultant, not unacceptable to FINRA staff, to conduct a comprehensive review of the adequacy of the Firm's policies, procedures, testing and systems adopted in response to the activity described in this AWC, to ensure that the Firm's procedures are reasonably designed to achieve compliance with FINRA rules and the federal securities laws.
 - ii) Exclusively bear all costs, including compensation and expenses, associated with the retention of the Independent Consultant.
 - iii) Cooperate with the Independent Consultant in all respects, including by providing staff support. Wachovia and First Clearing shall place no restrictions on the Independent Consultant's communications with FINRA staff and, upon request, shall make available to FINRA staff any and all communications between the Independent Consultant and the Firm and documents reviewed by the Independent Consultant in connection with his or her engagement. Once retained, Wachovia and First Clearing shall not terminate the relationship with the Independent Consultant without the FINRA staff's written approval; Wachovia and First Clearing shall not be in and shall not have an attorney-client relationship with the Independent Consultant and shall not seek to invoke the attorney client privilege or other doctrine or privilege to prevent the Independent Consultant from transmitting any information, reports or documents to the FINRA.
 - iv) At the conclusion of the review, which shall be no more than 160 days after the date of Notice of Acceptance of this AWC, require the Independent Consultant to submit to the Firm and FINRA staff a Written Report. The Written Report shall address, at a minimum, (i) the adequacy of the Firm's policies, systems and procedures, and training, as set forth in paragraph 3.a.i above; (ii) a description of the review performed and the conclusions reached, and (iii) the Independent Consultant's recommendations for modifications and additions to the Firm's policies, systems, procedures and training; and

- v) Require the Independent Consultant to enter into a written agreement that provides that for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter in to any other employment, consultant, attorney-client, auditing or other professional relationship with Wachovia and First Clearing, or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. Any firm with which the Independent Consultant is affiliated in performing his or her duties pursuant to this AWC shall not, without prior written consent of the FINRA staff, enter in to any employment, consultant, attorney-client, auditing or other professional relationship with Wachovia and First Clearing or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity as such for the period of the engagement and for a period of two years after the engagement.
- b. Within 90 days after delivery of the Written Report, Wachovia and First Clearing shall adopt and implement the recommendations of the Independent Consultant or, if it determines that a recommendation is unduly burdensome or impractical, propose an alternative procedure to the Independent Consultant designed to achieve the same objective. The Firm shall submit such proposed alternatives in writing simultaneously to the Independent Consultant and the FINRA staff. Within 30 days of receipt of any proposed alternative procedure, the Independent Consultant shall: (i) reasonably evaluate the alternative procedure and determine whether it will achieve the same objective as the Independent Consultant's original recommendation; and (ii) provide the Firm with a written decision reflecting his or her determination. The Firm will abide by the Independent Consultant's ultimate determination with respect to any proposed alternative procedure and must adopt and implement all recommendations deemed appropriate by the Independent Consultant.
- c. Within 30 days after the issuance of the later of the Independent Consultant's Written Report or written determination regarding alternative procedures (if any), Wachovia and First Clearing shall provide the FINRA staff with a written implementation report, certified by an officer of Wachovia and First Clearing, attesting to, containing documentation of, and setting forth the details of the Firm's implementation of the Independent Consultant's recommendations.
- d. Upon written request showing good cause, the FINRA staff may extend any of the procedural dates set forth above.

Respondents agree to pay the monetary sanction upon notice that this AWC has been accepted and that such payment is due and payable. Respondents have submitted an

Election of Payment form showing the method by which they propose to pay the fine imposed.

Respondents specifically and voluntarily waive any right to claim that they are 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

Respondents specifically and voluntarily waive the following rights granted under FINRA's Code of Procedure:

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

Further, Respondents specifically and voluntarily waive 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.

Respondents further specifically and voluntarily waive 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

Respondents understand 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 the Respondents; and
- C. If accepted:
 - 1. this AWC will become part of Respondents permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against them;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about Respondents disciplinary record;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8310 and IM-8310-3; and
 - 4. Respondents 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. Respondents 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 Respondents right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. Respondents may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondents understand that they 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.

Respondents certify that they have read and understand all of the provisions of this AWC and have been given a full opportunity to ask questions about it; that they have 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 Respondents to submit it.

JANUARY 13, 2009

Date

WACHOVIA SECURITIES LLC AND FIRST CLEARING LLC

Wachovia Securities, LLC and First
Clearing, LLC

By: 

Ron Kessler
Executive Vice President

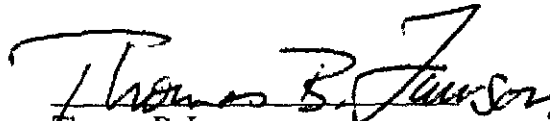
Reviewed by:

Jeffrey Coverdell
Counsel for Respondent
Wachovia Securities
Mailstop MO2045
One North Jefferson
St. Louis, MO 63103
(314) 955-6077

Accepted by FINRA:

2 / 20 / 09
Date

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



Thomas B. Lawson
Chief Counsel
FINRA Department of Enforcement
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Washington, DC 20006