

FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2007010181101

RECEIVED

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REGISTRATION & DISCLOSURE

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

RE: Wachovia Securities, LLC, Respondent
CRD No. 19616

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, Wachovia Securities, LLC ("Wachovia" or the "Firm") 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 Wachovia alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

- A. Wachovia 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 with its principal office located in St. Louis, Missouri. The Firm is primarily engaged in a retail based securities brokerage business and provides financial advisory, brokerage, asset management and other financial services nationwide. Wachovia has been a FINRA member since July 1987.¹

In October 2004, Enforcement requested that the Firm conduct a review to determine if it was in compliance with its prospectus delivery obligations and provide Enforcement with the results of its assessments. The Firm conducted its assessments using the period of July 1, 2003 through December 31, 2004 and provided Enforcement with the results of its reviews.

¹ On January 1, 2009, Wachovia Corporation, the parent company of Wachovia Securities, LLC merged with Wells Fargo & Co.

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RELEVANT DISCIPLINARY HISTORY

In Acceptance, Waiver and Consent No. 0000598690, dated February 20, 2009, the Firm and its affiliate First Clearing LLC consented to findings that from June 2003 through October 2008 they violated certain NASD Rules and federal securities laws by failing to mail approximately 800,000 required notifications to customers. Additionally, the Firm failed to have policies, procedures, or internal controls in place to supervise these mailings. Wachovia violated Section 17(a) of the Securities Exchange Act ("Exchange Act") of 1934, Rules 17a-3 and 17a-4 thereunder, and NASD Rules 3110, 2110, and 3012(a) by failing to maintain and furnish records of the 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; and violated Exchange Act Rules 17a-3 and 17a-4, and NASD Rules 3110 and 2110 by failing to maintain and furnish records of delivery of accurate customer profile information forms. The Firm also violated NASD Rules 3012(b) and 2110 by failing to send asset transfer notifications 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. The Firm and its affiliate consented to a penalty consisting of censures, fines totaling \$1,100,000 and undertakings.²

In NYSE Hearing Board Decision No. 06-172 dated September 13, 2006, the Firm consented to findings that it violated NYSE Rules 342 (a) and (b) by failing 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. The Firm consented to a censure and a fine in the amount of \$300,000.

In NYSE Hearing Board Decision No. 06-151 dated August 1, 2006, the Firm consented to findings that it violated Rule 17a-4 and NYSE Rule 440 by failing to preserve electronic records relating to its business for at least three years; and violated NYSE Rules 342 and 342.17 by failing to reasonably supervise and control activities of its employees, relating to the retention and/or review of electronic communications. The Firm and its two affiliated entities (Wachovia Capital Markets LLC and First Clearing LLC) consented to a penalty consisting of censures, fines totaling \$2,250,000 and undertakings.

OVERVIEW

From July 1, 2003 through December 31, 2004, (the "Relevant Period"), Wachovia failed to deliver prospectuses and product descriptions (collectively "offering documents") to certain customers who purchased any of nine investment products. Wachovia was required under federal securities laws and NASD Rules to deliver these offering

² First Clearing LLC also violated NASD Rules 3230(g), 2260, and 2341.

documents to customers but failed to do so. Offering documents provide essential information to prospective investors by disclosing pertinent information about the investment product. The Firm experienced wide-spread deficiencies during the Relevant Period with respect to the delivery of offering documents to customers who purchased nine investment products. The value of the transactions sampled by the Firm in the nine investment products where the Firm failed to deliver the required offering documents totaled approximately \$256 million.³ The Firm also had inadequate supervisory systems, and policies and procedures in place to ensure that offering documents were being sent to customers in connection with these securities transactions. In addition, the Firm failed to adequately supervise the submission of information to Enforcement and ensure that its submissions were accurate, complete and timely submitted.

FACTS AND VIOLATIVE CONDUCT

Role of the Service Provider

During the Relevant Period, Wachovia contracted with a service provider for the delivery of prospectuses and product descriptions on the Firm's behalf. The Firm forwarded to the service provider on a daily basis, an electronic file containing a list of all transactions requiring customer delivery of offering documents (the "List"). The List included transactional information such as the identity and address of the customer, the product purchase date, and the CUSIP number assigned to the product. The service provider in turn electronically provided the Firm with a daily report identifying the items on the prior day's List in which offering documents were or were not delivered ("exceptions"). The service provider also provided Wachovia with an explanation code for each exception. Wachovia's operations department was required on a daily basis to: review the service provider's report, correct any issues identified as exceptions and provide the updated information back to the service provider in order to ensure the service provider's delivery of the appropriate offering documents.

Prospectus and Product Description Delivery Rules

Section 5(b)(2) of the Securities Act of 1933 (the "Securities Act") prohibits the delivery of certain securities unless such delivery is accompanied by or preceded by a physical copy of a prospectus that met the requirements of the Securities Act.⁴

³ The Firm reviewed all of its secondary purchases of equity non-syndicate initial public offerings ("IPOs") transactions for compliance with its prospectus delivery obligations during the Relevant Period.

⁴ On December 1, 2005, a new set of prospectus delivery rules became effective. Among other things, the new rules eliminated the requirement that a final prospectus be accompanied with a confirmation for certain securities transactions. The new rules adopted an "access equals delivery" standard for many securities. Specifically, under the new rules, a final prospectus will be deemed to precede or accompany a security for sale for purposes of Section 5(b)(2) of the Securities Act if the final prospectus meeting the requirements of Section 10(a) of the Securities Act is filed or the issuer makes a good faith and reasonable effort to file it with the United States Securities and Exchange Commission ("SEC") as part of the registration statement within the timeframe set forth in Securities Act Rule 424. See Securities Offering reform, Exchange Act Release No. 34-52056, 2005 SEC Lexis 1789 (July 19, 2005).

Section 4(3)B of the Securities Act states: "[t]he provisions of section 5 shall not apply to transactions by a dealer (including an underwriter no longer acting as an underwriter in respect of the security involved in such transaction), except transactions in a security as to which a registration statement has been filed taking place prior to the expiration of forty days after the effective date of such registration statement or prior to the expiration of forty days after the first date upon which the security was bona fide offered to the public by the issuer or by or through an underwriter after such effective date, whichever is later (excluding in the computation of such forty days any time during which a stop order issued under section 8 is in effect as to the security), or such shorter period as the Commission may specify by rules and regulations or order, and... if securities of the issuer have not previously been sold pursuant to an earlier effective registration statement the applicable period, instead of forty days, shall be ninety days, or such shorter period as the Commission may specify by rules and regulations or order."

Securities Act Rule 174 provides further rules regarding the delivery of prospectuses in connection with aftermarket purchases in securities that are issued on a national securities exchange. In particular, the rule states that, for transactions in securities listed on "a registered national securities exchange...no prospectus need be delivered after the expiration of twenty five calendar days after the offering date" for such securities. The offering date is defined as the later of the effective date of the registration statement or the first date on which the security was bona fide offered to the public.

Section 24(d) of the Investment Company Act of 1940 (the "Investment Company Act") applies to transactions involving Exchange Traded Funds ("ETFs") and Unit Investment Trusts ("UITs"). Absent exemptive relief, transactions in ETFs and UITs, including secondary market transactions, would be subject to the prospectus delivery requirements under Section 5(b)(2) of the Securities Act. If the sponsor or other appropriate party has obtained an exemption from Section 24(d) of the Investment Company Act members and member organizations shall provide to all purchasers of such securities a written description (product description) of the terms and characteristics of such securities. The relief is conditioned on an undertaking that the rules of the securities exchange on which the ETF is listed require that member broker-dealers deliver to purchasers a product description.⁵

NASD Rule 2110 requires that a member, in the conduct of its business, observe high standards of commercial honor and just and equitable principles of trade. The failure to deliver offering documents to customers as required by Section 5(b)(2) of the Securities Act constitutes a violation of NASD Rule 2110.

⁵ The new "access equals delivery" rule, however, does not apply to securities issued by investment companies registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.).

Wachovia violated NASD Rule 2110 by failing to deliver prospectuses in connection with certain sales of registered securities in contravention of Section 5(b)(2) of the Securities Act

Wachovia violated NASD Rule 2110, by failing to deliver the required offering documents to certain customers who purchased equity non-syndicate IPOs in the aftermarket, collateral mortgage obligations ("CMOs"), auction market preferred securities, corporate debt securities, preferred stocks, mutual funds, alternative investments, and initial purchases of equity IPOs during the Relevant Period.

During the Relevant Period, the Firm had wide-spread deficiencies relating to the delivery of prospectuses in connection with multiple classes of securities, including secondary purchases of equity non-syndicate IPOs, CMOs, auction market preferred securities, corporate debt securities, preferred stocks, mutual funds, alternative investment securities, and equity IPO transactions. Out of a random sample of 20,801 transactions reviewed during the Relevant Period, the Firm failed to deliver the required prospectuses to customers in 4,524 instances as follows:

- For secondary purchases of equity non-syndicate IPOs, the Firm failed to deliver a prospectus in all 3,027 transactions executed during the Relevant Period. The market value of these transactions totaled approximately \$80 million;
- For CMOs, the Firm failed to deliver a prospectus in 25 of 29 transactions sampled. The market value of these 25 transactions was approximately \$24 million;
- For auction market preferred securities, the Firm failed to deliver a prospectus in 440 of 2,916 transactions sampled.⁶ The market value of these 440 transactions was approximately \$1.3 million;
- For corporate debt securities, the Firm failed to deliver a prospectus in 416 of 3,377 transactions sampled. The market value of these 416 transactions was approximately \$90 million;
- For preferred stocks, the Firm failed to deliver a prospectus in 414 of 3,488 transactions sampled. The market value of these 414 transactions was approximately \$25 million;
- For mutual funds, the Firm failed to deliver a prospectus in 174 of 6,002 transactions sampled. The market value of these 174 transactions was approximately \$13 million;
- For alternative investment securities, the Firm failed to deliver a prospectus in 19 of 461 transactions sampled.⁷ The market value of these 19 transactions was approximately \$868,000; and

⁶ Auction market preferred stocks are a form of auction rate securities.

⁷ Wachovia's alternative investments consisted of managed futures, fund of funds, and UITs. UITs are investment companies registered under the Investment Company Act. Wachovia did not apply for any exemptions under Section 24(d) of the Investment Company Act for its UITs. Accordingly, the Firm was required to provide a prospectus to customers who purchased UITs during the Relevant Period.

- For equity IPO transactions, the Firm failed to deliver a prospectus in nine of 1,501 transactions sampled. The market value of these nine transactions was approximately \$77,700.

The total value of the above transactions in which the Firm failed to deliver the required offering documents during the Relevant Period was approximately \$234.6 million. By executing transactions in the eight investment products described above and not delivering the required offering documents, customers were not provided with important disclosure information about these products. Thus, Wachovia acted in contravention of Section 5(b)(2) of the Securities Act, and thereby violated NASD Rule 2110.

Wachovia violated NASD Rule 2110 by failing to deliver prospectuses or product descriptions in certain securities registered under the Investment Company Act in contravention of Section 5(b)(2) of the Securities Act

ETFs are investment companies registered under the Investment Company Act. According to Section 5(b)(2), a prospectus is required, unless an exemption under Section 24(d) is granted. Wachovia did not apply for any exemptions under Section 24(d) of the Investment Company Act for its ETFs. Accordingly, the Firm was required to provide a prospectus to customers who purchased these products during the Relevant Period.

The Firm experienced a wide-spread deficiency with respect to its delivery of offering documents to certain customers who purchased ETFs during the Relevant Period. Wachovia reviewed a random sample of approximately 1,495 ETF transactions executed during the Relevant Period. The Firm failed to deliver the appropriate offering documents in approximately 1,432 of 1,495 ETF transactions. The market value of these transactions was approximately \$21.4 million.

By failing to deliver offering documents in the above-referenced transactions, Wachovia acted in contravention of Section 5(b)(2) of the Securities Act, and thereby violated NASD Rule 2110.

Causes of Wachovia's Failures to Deliver Offering Documents

Wachovia's offering document delivery failures during the Relevant Period were attributable to several causes. Each time the Firm offered a new ETF or equity non-syndicate IPOs in the aftermarket for sale, it had to manually code the CUSIP assigned to the investment product to indicate the necessity for delivery of the required offering documents. During the Relevant Period, Wachovia failed to code 28 of 30 CUSIPs assigned to ETFs and all CUSIPs assigned to its secondary purchases of equity non-syndicate IPOs for delivery. Since these CUSIPs were never manually coded, the transactions were not included on the List forwarded to its service provider for delivery of the required offering documents to customers.

Wachovia's prospectus delivery failures relating to CMOs, corporate debt securities, and preferred securities were caused by the Firm's failure to specify and communicate to its service provider the correct number of days required for the delivery of a prospectus for these transactions. For purchases of CMOs and corporate debt securities in the aftermarket, the Firm was required to deliver prospectuses for at least 40 days (at most 90 days) from the initial offering of these products. For aftermarket purchases of preferred securities, the Firm was required to deliver prospectuses for at least 25 days from the initial offering of these securities. The Firm failed to input into its electronic system the appropriate number of days a prospectus was required to be delivered after the initial offering date.

The Firm also failed to deliver offering documents to certain customers who purchased alternative investments, mutual funds and equity IPOs. The failures that occurred in these products were attributable to Wachovia's failure to address the exceptions identified on the daily report provided by its service provider. These exceptions should have prompted Wachovia to provide its service provider with additional information, including customer contact information, and transactional and account information. Wachovia failed to: review the exceptions on the daily reports, resolve any issues associated with these exceptions, and provide the updated customer information to its service provider in order for an offering document to be delivered. While conducting its review, Wachovia also learned of its service provider's practice of closing out exceptions without delivering the required offering documents, when the Firm failed to provide the requested information.

Wachovia also failed to deliver prospectuses to certain customers who purchased auction market preferred securities during the Relevant Period. Wachovia did not code any of its auction market preferred securities for delivery of prospectuses until instructed by the Firm's auction market preferred securities department. In numerous instances during the Relevant Period, this department failed to notify the Firm's operations department to code the transactions for prospectus delivery and with the appropriate number of days required for delivery. Therefore, Wachovia never notified its service provider to deliver the required prospectus for these transactions.

Wachovia failed to have an Adequate Supervisory System and Appropriate Written Supervisory Procedures in Violation of NASD Rules 3010 and 2110

A broker-dealer must establish and enforce procedures to supervise employees. NASD 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.

During the Relevant Period, the Firm failed to have adequate supervisory systems in place to ensure that customers who purchased certain investment products were receiving the appropriate offering documents. The Firm also did not have policies and procedures specific to each investment product discussed above and failed to designate a supervisor in the operations department or in any of its business units with the responsibility of ensuring that the Firm complied with its obligations to deliver offering documents.

NASD Rule 3010(b)(1) provides, in pertinent part, "[e]ach 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 Relevant Period, Wachovia did not have adequate written supervisory procedures or a supervisory system in place to ensure the delivery of certain offering documents. The Firm's failure to have appropriate supervisory procedures and systems in place to detect and prevent the causes of Wachovia's failures as described above violated NASD Rules 3010 and 2110.

Wachovia also failed to have an adequate supervisory system in place to appropriately supervise the submission of information to Enforcement and to ensure that the information was complete and accurate and timely submitted. During Enforcement's investigation of this matter the Firm missed numerous deadlines established for the production of information and submitted inaccurate and incomplete information to Enforcement regarding its delivery of offering documents to customers, thereby hindering and delaying Enforcement's investigation of this matter by approximately 16 months. The Firm's failure to have an adequate supervisory system in place to monitor the accuracy and completeness of the information submitted to Enforcement and its timely submission violated NASD Rules 3010 and 2110.

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

A censure and a fine in the amount of \$1,400,000.

Wachovia further undertakes to complete the following within 120 days of Notice of Acceptance of this AWC: (i) adopt and implement systems and procedures reasonably designed to achieve compliance with the federal securities laws and NASD/FINRA Rules applicable to the delivery of prospectuses and product descriptions, including systems and procedures to provide adequate oversight if third party vendors are utilized; and (ii) provide a written certification by a duly Authorized Senior Officer of Wachovia Securities LLC that the Firm has adopted and implemented supervisory systems and procedures reasonably designed to achieve compliance with the federal securities laws and NASD/FINRA Rules applicable to the delivery of prospectuses and product descriptions.

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

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

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

II.

WAIVER OF PROCEDURAL RIGHTS

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

- A. To have a Formal Complaint issued specifying the allegations against the Firm;
- 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, Wachovia 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.

Wachovia further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 under the FINRA Code of Procedure or the separation of functions prohibitions of FINRA Rule 9144 under the FINRA Code of Procedure, 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

Wachovia 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; and
- C. If accepted:
 - 1. this AWC will become part of Wachovia's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against Wachovia;
 - 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about Wachovia's disciplinary record;
 - 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 - 4. Wachovia 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. Wachovia 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 Wachovia's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.
- D. Wachovia may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Wachovia 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.

Wachovia certifies that it has read and understand 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 Wachovia to submit it.

April 15, 2009

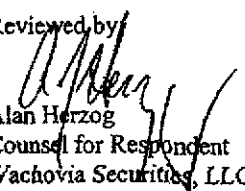
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Wachovia Securities LLC

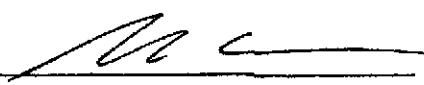
Respondent

Wachovia Securities, LLC

Reviewed by


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By:



Ron Kessler
Executive Vice President

Accepted by FINRA:

May 1, 2009

Date

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



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