

**NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. E8A2003062017**

TO: Department of Enforcement
NASD

RE: Wachovia Securities LLC
Member
CRD No. 19616

Pursuant to Rule 9216 of NASD Code of Procedure, Wachovia Securities, LLC (Wachovia or Member) 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 Wachovia alleging violations based on the same factual findings.

Wachovia 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 Wachovia; and
3. If accepted:
 - a. this AWC will become part of Wachovia's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against Wachovia;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about Wachovia's disciplinary record;
 - 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. 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 allegation in this AWC or create the impression that the AWC is without factual basis. Nothing in this provision affects my testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

Wachovia 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, has been a member of NASD since July 1987. The company is a registered broker-dealer with the SEC and is a member of the New York Stock Exchange. The firm's business includes securities and commodities brokerage, investment advisory and asset management services. The firm clears its brokerage transactions through First Clearing LLC, a subsidiary of Wachovia, on a fully disclosed basis. In 2001, First Union Corporation and the former Wachovia Corporation merged and First Union changed its name to Wachovia Corporation. As used herein, Wachovia Securities, Inc., (formerly First Union Securities, Inc.) and Wachovia Securities, LLC, are collectively referred to as "Wachovia."

Wachovia's most recent disciplinary history is as follows:

In January 2006, Wachovia, without admitting or denying the allegations, agreed to pay a fine of \$7,500 for a violation of NYSE Exchange Rule 123C for failing to adhere to the order entry and cancellation procedures for market-on-close and limit-on-close orders.

On April 13, 2005, Wachovia, without admitting or denying the allegations, submitted an AWC to NASD for violations of NASD Conduct Rules 2110, 2210, 3010 and IM-2210-1 in that Wachovia, acting through a registered representative created and distributed written communications that failed to disclose material facts regarding investment products. Furthermore, Wachovia, acting through a branch manager, failed to reasonably supervise a registered representative's written communications activities in connection with correspondences and sales literature. In addition, Wachovia failed to file the registered representative's sales literature with NASD. The firm also failed to establish and maintain procedures that were reasonably designed to achieve compliance with NASD's requirement for filing sales literature within 10 days of first use. The firm also reviewed and approved a registered representative's written communications that were deficient because they failed to disclose adequately material facts regarding products or investment strategies recommended. By approving these written communications, Wachovia failed to

reasonably supervise the registered representative. The firm's written supervisory procedures incorrectly defined sales literature which is required to be filed with NASD within 10 days of first use. The firm's managerial personnel used the written supervisory procedures to determine whether a written communication should be forwarded to NASD. By incorrectly defining sales literature, Wachovia's written supervisory procedures improperly instructed the firm's managerial personnel on when written communication qualified as sales literature that needed to be filed with NASD. Wachovia was censured and fined \$25,000.

On November 30, 2004, Wachovia, without admitting or denying the allegations, submitted an AWC to NASD for violations of NASD Rules related to its failure to file Form U4 and U5 amendments in a timely manner from January 2002 to March 2004. The firm was censured and fined \$650,000. The firm was also prohibited from registering any associated person in a non-supervisory sales capacity for 5 consecutive business days. The firm was also required to conduct an internal audit related to the timely filing of amendments.

On August 13, 2004, Wachovia consented to an NYSE censure and fine of \$250,000 after an exam of First Union in 2000 and 2001 found registration issues, customer complaint reporting deficiencies, review of discretionary account shortcomings, insufficient disclosure in mutual fund switch letters and lack of clear language in research reports.

On February 12, 2004, the firm presented an AWC for violations of NASD Conduct Rule 2110 for selling shares issued by mutual funds without providing certain customers with breakpoint discounts described in the prospectuses of the funds, failed to give its customers breakpoint discounts in 28.77% of eligible mutual fund transactions in 2001 and 2002 that resulted in missed breakpoints that would have reduced customers' charges by at least \$4.8 million on their purchases of mutual fund shares with front-end loads during the relevant period. The firm was censured and fined \$2,422,232 by NASD and \$2,422,232 by the SEC.

I.

WAIVER OF PROCEDURAL RIGHTS

Wachovia 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 Wachovia;
- 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, Wachovia 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.

Wachovia 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. Wachovia hereby accepts and consents, without admitting or denying the allegations or 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:

Summary

This matter involves an arrangement whereby Wachovia received special cash compensation for the sale of Putnam mutual fund shares during an IRA promotion from approximately January 1, 2002 to April 30, 2002. As used herein, the term "Wachovia" refers to Wachovia Securities, Inc. (formerly known as First Union Securities, Inc.) and Wachovia Securities, LLC.

The special cash compensation arrangement was not made available to all who distributed Putnam mutual funds and the details of the arrangement were not properly disclosed in the prospectus or Statements of Additional Information for Putnam mutual funds.

NASD Rule 2830(l)(4) generally prohibits a member from accepting special cash compensation from an investment company or its affiliates where the special cash compensation arrangement is not available on the same terms to all members who distribute the investment company's securities unless the name of the member and the details of the arrangements are disclosed in the investment company's prospectus or SAI.

Special Cash Compensation

During the relevant period, when Wachovia customers purchased shares of the Putnam funds for IRAs, pursuant to the special cash compensation arrangement, Wachovia received special cash compensation for the sales from the distributor of the Putnam funds. Wachovia, in turn, passed along this special cash compensation to its registered representatives in the form of additional commissions paid on the sales. The special compensation was paid by the distributor of Putnam funds, and Wachovia's customers did not pay any additional amount for the Putnam funds purchased as part of the promotion.

The special cash compensation generally consisted of an additional 50 basis point payout in addition to the regular commission on the sale of mutual fund B shares and C shares.

Between January 1 2002 and April 30, 2002, Wachovia sold approximately \$6,771,269.63 worth of Putnam B shares and C shares pursuant to the promotion. Accordingly, Wachovia received approximately \$33,856.35 in special cash compensation in addition to its regular commissions for the sale of the Putnam funds.

NASD Conduct Rule 2830 (l)(4)

NASD Rule 2830(l)(4) prohibits a member from accepting cash compensation from an investment company or its affiliates unless the compensation is described in the investment company's current prospectus, and requires additional disclosure where there are special cash compensation arrangements. The rule provides that:

"No member shall accept any cash compensation from any offeror unless such compensation is described in a current prospectus of the investment company. When special cash compensation arrangements are made

available by an offeror to a member, which arrangements are not made available on the same terms to all members who distribute the investment company securities of the offeror, a member shall not enter into such arrangements unless the name of the member and the details of the arrangements are disclosed in the prospectus."¹

The purpose of the special cash compensation disclosure requirements is to inform investors of certain higher concessions that broker-dealers receive to promote specific products. These disclosures allow customers to make fully informed decisions regarding the reasons that their brokers are recommending a particular product over a wide range of products available.

The violation

The special cash compensation arrangement that Putnam entered into with Wachovia was not made available to all members that distributed Putnam shares. Furthermore, the Putnam mutual funds' prospectuses and SAIs did not disclose the details of the special cash compensation arrangement and did not specifically mention the name of Wachovia as a participant in the arrangement.

Because the special cash compensation arrangements were not offered to all members who distributed Putnam mutual fund shares and because the details of the arrangement including naming Wachovia were not disclosed in the Putnam prospectuses or SAIs, Wachovia violated NASD Conduct Rules 2830(l)(4) and 2110 when it accepted \$33,856.35 in special cash compensation from Putnam during the relevant period.

Sanctions

B. Wachovia also consents to the imposition, at a maximum, of the following sanctions:

1. A censure and
2. A fine of \$25,000.

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

¹ NASD Rule 2830(l)(4). NASD has interpreted this provision to permit the disclosure required by Rule 2830(l)(4) in an investment company's SAI to the extent that the cash compensation arrangement would qualify as a type of distribution arrangement required by SEC rules to be disclosed in the SAI. See Notice to Members 99-55 (July 1999), Question #18.

III.

OTHER MATTERS

- A. Wachovia 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. 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 NASD, nor does it reflect the views of NASD or its staff.
- B. Wachovia 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 have attached an Election of Payment form showing the method by which it proposes to pay any fine imposed.
- C. Wachovia 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.

Wachovia 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 Wachovia to submit it.

2/16/07
Date

Elington D. J. Hoke
Wachovia Securities SVP
Respondent

By: Elizabeth D. Blake

Reviewed by:

Robert M. Dennis
Counsel for Respondent

Accepted by NASD:

February 26, 2007
Date

Kevin G. Kulling
Kevin G. Kulling
Regional Counsel

Carlotta A. Romano
Senior Vice President and
Regional Director

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