

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. E9A2005013001**

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REGISTRATION & DISCLOSURE

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

**RE: Wachovia Securities, LLC (f/k/a First Union Securities, Inc.), Respondent
Member Firm
BD No. 19616**

**Wachovia Securities Financial Network, LLC (f/k/a First Union Securities Financial
Network, Inc.), Respondent
Member Firm
BD No. 11025**

Pursuant to NASD Rule 9216 of FINRA's Code of Procedure, Wachovia Securities, LLC, ("Wachovia Securities"), and Wachovia Securities Financial Network, LLC ("Wachovia Financial") (the "Firms") submit 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, FINRA will not bring any future actions against the Firms alleging violations based on the same factual findings described herein.

The Firms understand that:

1. Submission of this AWC is voluntary and will not resolve the respective matters unless and until the AWC has been reviewed and accepted by the National Adjudicatory Council ("NAC"), a Review Subcommittee of the NAC, or the 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 them; and
3. If accepted:
 - a. this AWC will become part of the Firms' permanent disciplinary records and may be considered in any future actions brought by FINRA or any other regulator against them;
 - b. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about each of the Firms' disciplinary records;
 - c. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-3; and
 - d. The Firms may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or

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indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Nothing in this provision affects the Firms' testimonial obligations or right to take legal or factual positions in litigation or other legal proceeding in which FINRA is not a party.

The Firms also understand that their 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

Wachovia Securities, through its predecessors, has been a member of FINRA (f/k/a National Association of Securities Dealers or NASD) since 1987, and its principal offices are located in St. Louis, Missouri. Wachovia Securities has approximately 22,600 registered representatives and 5,000 branch offices.¹

On February 12, 2004, NASD censured and fined Wachovia Securities \$4,844,465, and ordered the firm to undertake certain remedial and corrective measures relating to providing refunds to customers who did not receive appropriate mutual fund Class A share breakpoint discounts. The sanctions were based on Wachovia Securities' failure to provide mutual fund breakpoint discounts as described in relevant fund prospectuses in violation of NASD Rule 2110. On the same date, Wachovia Securities settled a related action with the U.S. Securities and Exchange Commission (the "SEC").

Wachovia Securities Financial Network, LLC

Wachovia Financial has been a member of FINRA (f/k/a National Association of Securities Dealers or NASD) since 1983, and its principal offices are located in Richmond, Virginia. Wachovia Financial has approximately 945 registered representatives and 370 branch offices.

On February 3, 2006, the State of Florida, Office of Financial Regulation, issued a cease-and-desist order and stipulation and consent with Wachovia Financial in connection with mutual fund transactions effected between January 1, 2002 and December 31, 2004 for Florida residents that may have been eligible for, but did not receive, the benefit of NAV pricing. The firm was fined \$50,000 and agreed to undertake a review and restitution process. The sanctions were based upon the firm's inadequate supervision of recommendations by its associated persons whose Florida clients switched from one mutual fund to another.

I.

WAIVER OF PROCEDURAL RIGHTS

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

¹ Effective January 1, 2008, Wachovia Securities was consolidated with the retail brokerage operations of A.G. Edwards through an asset transfer. The matters herein relate solely to Wachovia Securities' activities predating this consolidation.

- 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 NAC and then to the SEC and a U.S. Court of Appeals.

Further, Wachovia Securities and Wachovia Financial specifically and voluntarily waive 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 Securities and Wachovia Financial further specifically and voluntarily waive any right to claim that a person violated the ex parte prohibitions of NASD Rule 9143 or the separation of functions prohibitions of NASD 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. Findings

Wachovia Securities and Wachovia Financial 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:

SUMMARY

Wachovia Securities Made Unsuitable Recommendations of Class B and Class C Shares and Wachovia Financial Made Unsuitable Recommendations of Class B Shares of Mutual Funds

A review of Wachovia Securities' and Wachovia Financial's sales of Class B and Class C shares of mutual funds disclosed that, between January 1, 2003 and June 30, 2004 (the "Relevant B Share Period"), Wachovia Securities effected transactions where it made recommendations to customers to purchase Class B and Class C shares and Wachovia Financial made recommendations to customers to purchase Class B shares through their respective registered representatives. In connection with their recommendations, Wachovia Securities and Wachovia Financial did not consider on a consistent basis, that

an equal investment in Class A shares would generally have been more advantageous for certain customers. Accordingly, Wachovia Securities will undertake a remediation plan that includes more than 14,100 transactions involving at least 5,700 customer households. Wachovia Financial will undertake a remediation plan that includes more than 440 transactions involving at least 150 customer households.

In addition, the Firms' supervisory and compliance policies and procedures during the Relevant B Share Period were not reasonably established, maintained and/or enforced so that the Firms, at the time of each sale, provided consideration to, on a consistent basis, the benefits of the various mutual fund share classes as they applied to individual customers.

Wachovia Securities Failed To Establish, Maintain and Enforce Systems and Procedures Reasonably Designed to Ensure That Its Customers Received the Opportunity to Purchase Class A Shares in Certain Mutual Funds at Net Asset Value

Certain mutual funds offer net asset value ("NAV") Transfer Programs that allow qualifying investors to purchase Class A shares at NAV and not pay any initial sales charges, if the customer invests the proceeds from the redemption of shares of another mutual fund and previously had paid either a front-end or back-end sales charge. During the period January 1, 2002 through December 31, 2004 (the "Relevant NAV Period"), Wachovia Securities failed to establish, maintain and enforce systems and procedures designed to ensure that all eligible investors received the opportunity to purchase Class A shares of such mutual funds at NAV.

Wachovia Securities Failed To Provide Customers the Benefit of Sales Charge Discounts on Sales of Unit Investment Trusts

From January 1, 2001 to June 30, 2005, Wachovia Securities failed to apply correctly a rollover discount in connection with approximately 15,147 purchases of Unit Investment Trusts ("UITs") by customers. From January 1, 2001 to May 31, 2006, Wachovia Securities failed to apply correctly a breakpoint discount in connection with approximately 5,000 purchases of UITs by customers. As a result, the customers unnecessarily paid, in aggregate, over \$2.71 million in additional and excessive sales charges.

During those periods, Wachovia Securities also failed to establish and maintain a supervisory system, and failed to establish, maintain and enforce written supervisory procedures, that were reasonably designed to ensure its customers received the benefit of rollover and breakpoint sales charge discounts on eligible UIT purchases.

MUTUAL FUND SHARE CLASSES

1. During the Relevant B Share Period, Wachovia Securities and Wachovia Financial sold mutual funds with different classes of shares representing interests in the same portfolio of securities, but differing in the structure and amount of sales charges paid

directly by shareholders and continuous, asset-based fees assessed on each shareholder's investment.

2. For example, Class A shares are subject to a front-end load, or initial sales charge, when originally purchased, and have modest annual fund expenses, including Rule 12b-1 fees that are typically 0.25 percent. The majority of the front-end sales load is paid to the selling broker-dealer as a commission. The balance of the initial investment is paid for the fund's shares. Typically, with mutual funds, the front-end load decreases as the size of the investment increases. This concept applies to both single purchases and to multiple purchases in the same family of funds that may be aggregated with the customer's other investments, as well as investments by that customer's household, as permitted by the funds' prospectuses. For most investments in which the total dollar amount invested in a fund family is \$1 million or more, the front-end load is generally waived.² These discounts are commonly referred to as "breakpoints" and the discounts typically increase at each of the \$50,000, \$100,000, \$250,000, \$500,000 and \$1 million levels.
3. Generally, Class A share investments that, when aggregated, fall below \$50,000 are subject to an initial sales charge that can range from 3.00 to 5.50 percent. However, for an investment: (i) between \$50,000 and \$99,999 the sales charge can range from 2.50 to 4.50 percent; (ii) between \$100,000 and \$249,999 the sales charge can range from 2.00 to 3.50 percent; (iii) between \$250,000 and \$499,999 the sales charge can range from 1.50 to 2.50 percent; (iv) between \$500,000 and \$999,999 the sales charge can range from 1.25 to 2.00 percent; and (v) of \$1 million or more the sales charge is reduced to zero. These breakpoints reduce the commissions paid to the selling broker-dealers by a corresponding amount. Customers can receive the benefits of breakpoint discounts by, among other ways, making a single investment, aggregating purchases, employing rights of accumulation, or utilizing letters of intent.³
4. In contrast, Class B shares do not carry any front-end sales charge and therefore do not have front-end breakpoint discounts regardless of the size of the investment. Instead of a front-end sales charge, Class B shares have significantly higher annual Rule 12b-1 fees (typically 1.00 percent) than Class A shares (typically 0.25 percent) and may be subject to a CDSC if redeemed prior to the expiration of a holding period specified in the prospectus. The amount of the CDSC is generally calculated as a percentage of the lesser of the initial amount invested or the investment's value at the time of the sale, declines each year and eventually disappears entirely. Class B shares usually convert to Class A shares, at no cost to the customer, after eight years.

² A CDSC, generally totaling 1.00 percent, is typically charged for redemptions that occur within the first year following the investment.

³ A right of accumulation permits a customer or an eligible group of related customers (e.g., the customer, the spouse and minor children) to "accumulate" or combine existing holdings of shares of funds within the same fund family with additional purchases of shares of the same fund family for the purpose of achieving breakpoints and associated discounts. Customers may also qualify for breakpoints by executing a letter of intent, which is an agreement to make multiple purchases of Class A shares issued by a fund family over a period of time, usually around 13 months, which, when aggregated, equal an amount that qualifies for a breakpoint discount.

5. Class C shares typically do not carry a front-end sales charge but may be subject to a 1.00 percent CDSC if the shares are redeemed within one year. In comparison to Class A shares, Class C shares generally have higher annual Rule 12b-1 fees (typically 1.00 percent). Class C shares never convert to Class A shares, thereby subjecting customers to higher expenses as long as the customers hold the Class C shares.
6. The different sales charges, availability of breakpoints and Rule 12b-1 expenses associated with different share classes have a direct effect on a mutual fund investment's return. The significance of these differences is that, at certain dollar levels and over certain holding periods, an equal investment in Class A shares generally will yield a better return than a similar investment in Class B or Class C shares.
7. With Class B shares, the mutual fund distributor, which is generally an affiliate of the mutual fund, advances a commission to the selling broker-dealer. Broker-dealers and their representatives may receive greater commissions from the sale of Class B shares than from the sale of the same amount of Class A shares if the sale would qualify for breakpoint discounts. Mutual fund complexes, through their distributors, recoup the commissions they advance for Class B shares through the substantially higher Rule 12b-1 fees and/or the CDSC. The different fee structures and characteristics of Class A, Class B, and Class C shares, including the availability of breakpoint discounts with regard to purchases of Class A shares, are described in the mutual fund prospectuses and statements of additional information.

**VIOLATIONS BY WACHOVIA SECURITIES AND WACHOVIA FINANCIAL
IN CONNECTION WITH CLASS B AND C SHARES**

8. On certain occasions during the Relevant B Share Period, Wachovia Securities recommended and sold Class B and/or Class C shares and Wachovia Financial recommended and sold Class B shares to customers who, depending upon among other things, the amount of the investment and the customer's contemplated holding period, would have benefited had they purchased Class A shares instead. Specifically, these customers made purchases of Class B and Class C shares in various mutual funds which, had they purchased Class A shares, could have qualified for breakpoints, through single purchases, aggregating multiple purchases, employing rights of accumulation or utilizing letters of intent. As a result of the customers' purchases of Class B shares, in some instances Wachovia Securities and Wachovia Financial received greater commissions than they would have received had the customers purchased Class A shares instead. In those instances, Wachovia Securities received approximately \$3.86 million and Wachovia Financial received approximately \$150,500 more than they would have had they sold Class A shares of the same mutual funds.
9. NASD Rule 2310 requires that, before recommending a transaction, a member firm and its registered representatives shall have reasonable grounds for believing, on the basis of information furnished by the customer, and after reasonable inquiry

concerning the customer's investment objectives, financial situation, and needs, that the recommended transaction is suitable for the customer. Further, FINRA has long held that in recommending share classes of a mutual fund, a registered representative has an obligation to avoid unnecessarily increasing the costs that his or her customers pay. Also, a registered representative's recommendations must be consistent with his or her customer's best interests.

10. In recommending the purchase of mutual funds, a member firm and its registered representatives must determine the suitability of the class of shares to be purchased as well as the suitability of the particular mutual fund. Primary considerations include the investment amount, the expected term of the investment, the applicable sales loads, fees and expenses associated with each class of shares, and the effect of such factors on the ultimate return on the investment to the investor, and the customer's personal and financial circumstances and investment objectives. These individual considerations must be balanced at the point of purchase by the member firm.
11. In determining the suitability of a particular share class, registered representatives must weigh the consequences of the class selection by considering the effect of the comparative sales loads and annual expenses for the customer's contemplated duration of the investment.
12. In certain instances during the Relevant B Share Period, Wachovia Securities and Wachovia Financial did not adequately consider, on a consistent basis, the foregoing elements when making recommendations to customers to purchase Class B or Class C shares instead of Class A shares. For example, in one instance, one of the Firms' customers invested \$150,000 in Class B shares, as opposed to Class A shares, in a bond fund. By purchasing Class B shares instead of Class A shares, the customer did not receive the benefit of the breakpoint available with Class A shares, and was subjected to additional fees and expenses (Rule 12b-1 fees and CDSCs). A quantitative analysis at the point of sale would have revealed that, had the customer directed an identical dollar amount toward the purchase of Class A shares, then the redemption value for the Class A shares would have been higher than the redemption value for Class B shares, as of the end of each year following the purchase date until the date when the Class B shares convert into Class A, regardless of the rate of return that the customer could have earned.
13. In light of the above, Wachovia Securities and Wachovia Financial violated NASD Rules 2310 and 2110.
14. In connection with the aforementioned findings, Wachovia Securities and Wachovia Financial failed to establish, maintain and enforce adequate supervisory and compliance policies and procedures that were reasonably designed to achieve compliance with the NASD rules described above. In particular, Wachovia Securities' and Wachovia Financial's procedures did not adequately set forth a means to identify purchases of Class B and/or Class C shares by customers for whom Class A shares would have been more economically beneficial. In addition, the Firms' procedures were not sufficient to ensure that their registered representatives made adequate disclosure to each customer about the various classes of mutual funds,

including, when recommending Class B or Class C shares, disclosures that (i) such shares were subject to higher annual fees that could have a negative impact on the customers' investment return, or (ii) once breakpoints became available, an equal investment in Class A shares could yield a higher return.

15. In light of the above, Wachovia Securities and Wachovia Financial violated NASD Rules 3010 and 2110.

VIOLATIONS BY WACHOVIA SECURITIES IN CONNECTION WITH NAV TRANSFER PROGRAMS

16. When purchasing Class A shares, investors typically purchase the shares at the "public offering price," which is the NAV plus the initial sales charge. Most mutual funds, however, offer investors the opportunity to purchase Class A shares at NAV – without paying an initial sales charge – under certain circumstances. For example, as described above, mutual funds that sell Class A shares usually offer sales charge discounts at certain levels of investment, commonly referred to as "breakpoints." While the terms and conditions of these discounts vary among different mutual funds, most mutual funds allow investors who invest \$1 million or more to purchase the shares at NAV, so long as these shares are held for at least one year. Other examples of NAV opportunities include those provided by mutual funds to retirement plans, employees of broker-dealers, and employees of mutual fund companies and their affiliates.
17. During the Relevant NAV Period, some mutual funds offered investors the opportunity to purchase Class A shares at NAV through NAV Transfer Programs, regardless of the amount invested. Under these programs, an investor purchasing Class A shares using proceeds from the redemption of shares of another mutual fund was eligible to purchase Class A shares at NAV, provided that the investor paid an initial sales charge or CDSC on the redeemed shares and that the qualifying redemption occurred sufficiently close in time to the new purchase. While the precise terms of each NAV Transfer Program varied from fund to fund, if the prior redemption qualified under an NAV Transfer Program, the investor was entitled to purchase Class A shares without paying an initial sales charge. An investor who purchases Class A shares with a sales load, when s/he qualified for a purchase at NAV, generally will pay up to 5.50% of his purchase price in sales charges that he did not have to incur. In addition, a customer who purchases Class B or Class C shares, when he qualified for the purchase of A shares at NAV through an NAV Transfer Program, will pay both higher ongoing Rule 12b-1 fees, and potentially, CDSCs upon redemption. Therefore, the purchase of Class A shares at NAV, through an NAV Transfer Program or otherwise, will result in lower costs compared to an equal purchase of Class A shares with an initial sales charge, or an equal purchase of Class B or Class C shares.
18. During the Relevant NAV Period, Wachovia Securities failed to exercise reasonable due diligence to identify the essential terms and conditions of the NAV Transfer Programs of certain mutual funds, and failed to establish, maintain and enforce systems and procedures to ensure that its customers received NAV pricing when they

qualified. As a result, some Wachovia Securities customers who were eligible to purchase Class A shares under NAV Transfer Programs: (1) purchased Class A shares and incurred front-end sales charges that they should not have paid, and/or (2) purchased other share classes of these mutual funds and thereby became subject to CDSCs, as well as the higher ongoing Rule 12b-1 fees, typically associated with Class B and Class C shares.

19. During the Relevant NAV Period, Wachovia Securities sold certain mutual fund families that had NAV Transfer Programs. Although not every purchaser qualified for the NAV Transfer Programs, sales of the four fund families with the most sales at Wachovia Securities with NAV Transfer Programs during the Relevant NAV Period totaled over \$11 billion.⁴
20. During the Relevant NAV Period, Wachovia Securities failed to establish, maintain and enforce supervisory systems and procedures reasonably designed to identify opportunities for investors to purchase mutual funds at NAV, and ensure that all eligible investors received the benefit of available NAV Transfer Programs.
21. In light of the above, Wachovia Securities violated NASD Rules 3010 and 2110.

VIOLATIONS BY WACHOVIA SECURITIES IN CONNECTION WITH UIT SALES

UIT Breakpoint and Rollover Discounts

22. At the times relevant herein, UIT sponsors typically offered sales charge discounts to investors (disclosed in the prospectuses) known as "breakpoint" discounts. A breakpoint discount constituted a reduction in the percentage sales charge that was applied to incrementally larger purchases based on the dollar amount being invested. Under policies established by UIT sponsors, a breakpoint discount was typically available only on a purchase, or multiple purchases, made by a particular investor from the sponsor on a single day. Under these policies, purchases made on separate days by the same investor would not qualify for a breakpoint discount.
23. Some UIT sponsors also allowed investors to aggregate, or combine, purchases made in related accounts on the same day to reach a breakpoint threshold and thereby receive the benefit of a reduced sales charge.
24. In addition to breakpoint discounts based on the amount of a purchase, UIT sponsors also typically offered "rollover" sales charge discounts. This type of discount applied when an investor used the proceeds from a UIT that matured or terminated to purchase a new UIT from the same sponsor. Generally, UIT sponsors required an investor to use the proceeds from a UIT that had matured to purchase a new UIT within 30 days to receive a rollover discount.

⁴ Total sales numbers reflect gross sales by Wachovia Securities in these funds, for 2002, 2003 and 2004 including sales that may not have qualified for NAV pricing.

Wachovia Securities' Failure to Apply Discounts to Eligible UIT Transactions

25. From January 1, 2001 through June 30, 2005, Wachovia Securities failed to apply correctly a rollover discount in connection with about 15,147 UIT purchases by customers. As a result, its customers unnecessarily paid, in aggregate, about \$1.976 million in additional and excessive sales charges. From January 1, 2001 through May 31, 2006, Wachovia Securities also failed to apply correctly a breakpoint discount in connection with about 5,000 UIT purchases by customers. As a result, its customers unnecessarily paid, in aggregate, about \$735,000 in additional and excessive sales charges.
26. As of February 2004, Wachovia Securities had notice that the proper application of rollover and breakpoint discounts to eligible UIT purchases by customers constituted a compliance matter that necessitated its prompt and diligent attention. On February 12, 2004, FINRA and the SEC issued a press release announcing settlements with 15 firms, including Wachovia Securities, of enforcement and disciplinary actions based upon those firms' failures to deliver mutual fund breakpoint discounts to customers. As part of those settlements, FINRA and the SEC found that Wachovia Securities failed to give mutual fund customers the benefit of applicable breakpoint discounts and failed to disclose to its customers that they were not receiving the benefit of applicable discounts.⁵
27. On March 31, 2004, FINRA issued Notice to Members (NtM) 04-26, *Unit Investment Trust Sales*. NtM 04-26 noted that FINRA had recently taken a number of steps to ensure that members understood, informed customers about, and correctly applied breakpoint discounts in selling mutual fund shares. It stated that its purpose was, "to remind members that the same duties extend to the sale of UITs that offer price breaks," and that members should develop and implement procedures for ensuring the proper application of such discounts in connection with the sale of UITs.
28. Thereafter, Wachovia Securities failed to provide all customers the benefit of sales charge discounts on UIT purchases and did not promptly undertake or perform any review, testing or analysis to determine if the firm was properly identifying and applying breakpoint and rollover discounts to all eligible UIT purchases.
29. In about September 2004, approximately six months after FINRA issued NtM 04-26, Wachovia Securities' senior management learned that a limited internal sampling of UIT transactions had disclosed that rollover and breakpoint discounts had not been properly applied to a significant number of eligible purchases by customers. In the fourth quarter of 2004, the firm authorized a remediation project for UIT purchases in which the firm had failed to apply an available sales charge discount.
30. Even after it discovered that it had failed to apply sales charge discounts to a significant percentage of eligible UIT transactions, Wachovia Securities did not promptly take effective action, adopt consequential new procedures or controls or implement meaningful measures to prevent further instances of missed UIT

⁵ See AWC No. CAF040008, February 12, 2004 and SEC Rel. No. 34-49229, February 12, 2004.

discounts. It was not until about March 1, 2005 that any material new procedure was implemented. That procedure was not completely effective. As a result, Wachovia Securities continued through May 31, 2006 to fail to provide customers the benefit of sales charge discounts on eligible UIT purchases.

31. By failing to apply, and provide customers the benefit of, applicable sales charge discounts on all eligible UIT purchases as detailed above, Wachovia Securities violated NASD Rule 2110.

**Wachovia Securities' Failure to Establish Adequate
Written Supervisory Procedures for Sales of UITs**

32. From January 1, 2001 to May 31, 2006, Wachovia Securities failed to establish and implement a supervisory system and written supervisory procedures that were reasonably designed to ensure that sales charge discounts were correctly applied to all eligible purchases of UITs by customers. The firm placed the onus on representatives and branch managers to correctly and universally apply UIT discounts to eligible purchases. Its written supervisory procedures, however, lacked substantive guidelines, instructions, policies, procedures or steps that representatives and/or managers were obligated to take or perform in effecting UIT purchases for customers to determine if the purchase qualified for a discount and/or to ensure customers received the benefit of any applicable sales charge discount.
33. It is a long-standing regulatory principal that it is not sufficient for large, multi-office broker-dealers, such as Wachovia Securities, to establish a supervisory system and procedures which rely solely on supervision by branch managers. Lacking written policies and supervisory procedures reasonably designed to enable first line supervisors to discharge their duties pertaining to UITs, Wachovia Securities also did not establish and implement an effective supervisory system or written procedures to ensure that branch managers diligently fulfilled their supervisory responsibilities pertaining to sales of UITs. The firm's failure to establish and implement an adequate and effective supervisory system and effective written supervisory procedures contributed substantially to its failure to apply sales charge discounts to over 20,000 UIT purchases by customers, as set forth above.
34. By failing to establish an effective supervisory system and written supervisory procedures reasonably designed to ensure that sales charge discounts were correctly applied on all eligible UIT purchases, Wachovia Securities violated NASD Rules 3010 and 2110.

B. Sanctions

1. Wachovia Securities consents to the imposition, at a maximum, of the following sanctions:
 - a. A censure; and

- b. A fine of \$4.41 million.

While testing certain programs for conducting a trade-by-trade review in connection with the prior breakpoint settlements with NASD and the SEC, Wachovia Securities noted customers who had not benefited from available NAV transfer programs. Wachovia Securities undertook remediation involving Class A shares purchased from January 2001 to November 3, 2003, returning approximately \$2.4 million to investors in connection with over 4,700 transactions. In addition, with respect to the missed UIT discounts, after identifying the failures, Wachovia Securities conducted a remediation program that encompassed customers' UIT purchases from January 1, 2001 through May 31, 2006 in which it had failed to ensure customers received the benefit of an available sales charge discount. The firm returned approximately \$3 million (including interest) to customers in connection with about 20,145 UIT transactions. In determining the appropriate sanctions for this settlement with respect to NAV transfers and UIT sales, FINRA considered these remedial actions by Wachovia Securities.

- 2. Wachovia Financial consents to the imposition, at a maximum, of the following sanctions:
 - a. A censure; and
 - b. A fine of \$150,500.
- 3. The Firms agree to complete the following undertakings:⁶

Wachovia Securities' Undertakings Relating to NAV Transfer Program Remediation

- a. Wachovia Securities has provided, or will provide, remediation to customers who, during the period January 1, 2002 through the Notice of Acceptance (the "effective date") of this AWC, purchased shares of mutual funds and qualified for, but did not receive, the benefit of an NAV Transfer Program (each such purchase constitutes a "Qualifying NAV Purchase").⁷
- i. Refund of Initial Sales Charge: For each customer who paid an initial sales charge, Wachovia Securities shall refund the sales charge paid, plus interest from the date of the purchase through the payment date at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. § 6621(a)(2) (the "IRS Rate").

⁶ Certain types of accounts (e.g., 401K Plan accounts for which Wachovia Securities and Wachovia Financial are the record keeper) and transactions (e.g., mutual funds purchased in annuity contract sub accounts) are excluded from these undertakings based on the fact that they are subject to specific contractual pricing terms, subject to different share class restrictions, or the "point of purchase" occurred away from the Firms.

⁷ Eligible purchases for which a customer used proceeds of qualifying redemptions totaling less than \$2,000 are excluded and shall not be deemed "Qualifying NAV Purchases."

- ii. Refund of Various Fees and Expenses: For each customer who purchased a class of shares other than Class A, Wachovia Securities shall make a cash payment to the customer sufficient to place the customer in a substantially equivalent financial position to the position such customer would have been in with respect to the Qualifying NAV Purchase had the investor purchased Class A shares at NAV rather than another class of shares, plus interest from the date of purchase through the payment date at the IRS Rate.⁸
 - iii. Class B and/or Class C Share Purchases. For any Qualifying Class B and/or Class C Share Purchase, as defined below in paragraph II.B.3.d.i. that also constitutes a Qualifying NAV Purchase, or any purchase, a portion of which is a Qualifying NAV Purchase and a portion of which is a Qualifying Class B and/or Class C Share Purchase and not a Qualifying NAV Purchase, Wachovia Securities shall remediate the purchase pursuant to the methodology described in the NAV Remediation Methodology.
- b. Wachovia Securities has provided, or will provide, remediation pursuant to Section II.B.3.a. above, in accordance with a methodology not unacceptable to FINRA staff (the "NAV Remediation Methodology"). The NAV Remediation Methodology will be provided in writing to FINRA staff prior to retaining the Third Party Examiner, as described in Section B.3.g., below. The Third Party Examiner will utilize the Remediation Methodology to assess Wachovia Securities' implementation of the remediation process.
 - c. Within 60 days from the effective date of this AWC, and prior to any remediation payment, Wachovia Securities shall submit to FINRA for review a sample letter or letters in plain English notifying customers of remediation payments concerning their Qualifying NAV Purchases. The letter(s) shall not be unacceptable to FINRA.

Wachovia Securities' and Wachovia Financial's Undertakings Relating to Class B and Class C Share Remediation

- d. Wachovia Securities and Wachovia Financial will provide remediation to certain customers who, during the period January 1, 2003 through the effective date of this AWC (the B and/or C Share Remediation Time Period), purchased Class B and/or Class C Shares of mutual funds.⁹
- i. Wachovia Securities and Wachovia Financial shall each create a list of customers who purchased \$50,000 or more of Class B shares during the B and/or C Share Remediation Time Period, in any single fund family, which shall be aggregated by

⁸ The remediation in this matter is based upon actual performance and only includes interest from the date remediation is calculated to the date paid.

⁹ Wachovia Securities may offset from the Class B and/or Class C share remediation any amounts paid to a customer in the NAV Transfer Program remediation required under paragraph II.B.3.a. of this AWC.

household¹⁰ and fund family in determining if the \$50,000 threshold was met; and (ii) Wachovia Securities shall create a list of customers who purchased Class C shares during the B and/or C Share Remediation Time Period which, when aggregated by household and fund family, total \$500,000 or more and involve payment of a front-end load, or \$1 million or more where no front-end load was paid. The lists must include at least the customer's name(s) and contact information, a firm-designated household identification number, the trade date, fund name, fund symbol and number of shares purchased, and the gross principal amount invested for every purchase. Every purchase transaction on the lists is deemed a "Qualifying Class B and/or Class C Share Purchase." When determining the lists of Qualifying Class B and/or Class C Share Purchases, Wachovia Securities and Wachovia Financial shall each make such calculations based on the effective date of this AWC. However, Qualifying Class B and/or Class C Share Purchases shall not include the following items (1) to (3), and may not, at Wachovia Securities and/or Wachovia Financial's option, include the following items (4) to (9):

- (1) Purchases of Class B and Class C shares for which customers have previously settled and signed releases of claims against Wachovia Financial and/or Wachovia Securities;
- (2) Purchases of Class B and Class C shares which were later cancelled at no cost to the customer, or were cost-free exchanges;
- (3) Purchases of Class B shares which, when aggregated with other Class B share purchases at the firm by the same customer household in the same fund family during the B and/or C Share Remediation Time Period, total less than \$100,000, and involved a mutual fund that imposed a Class A share initial sales charge exceeding 4.00 percent for purchase amounts less than \$100,000;
- (4) Purchases of Class B shares which, when aggregated with other Class B share purchases at the firm by the same customer household in the same fund family during the B and/or C Share Remediation Time Period, total less than \$100,000, and where the customer (1) entered into a systematic withdrawal plan at the time of the Class B share purchase, and immediately began receiving systematic withdrawals from the Class B share purchase without incurring CDSCs, or (2) chose not to reinvest all capital gains and dividends from the Class B share purchase;
- (5) Purchases of Class B shares which, assuming a 5.00 percent annual rate of return and considering all expenses, are projected to have a higher redemption value, determined as of the end of each year following the purchase date, in comparison to Class A shares in two or more years during the period beginning with the effective date of the AWC and ending on the date the Class B shares are scheduled to automatically convert to Class A shares under the terms of the fund prospectuses in effect at the time of the purchase;

¹⁰ "Household" includes all accounts that are related by at least two of the following three factors: (1) tax identification/social security numbers, (2) address, and (3) last or "key" name.

- (6) Purchases of Class B shares which, assuming a 5.00 percent annual rate of return and considering all expenses, are projected, as of the date on which the Class B shares are scheduled to automatically convert to Class A shares, to have a value within \$100 of the projected value of Class A shares had the customers purchased Class A shares instead of Class B shares;
 - (7) Purchases of Class B and Class C shares where the gross principal amount invested was \$250 or less;
 - (8) Purchases of Class B shares which, assuming Class A shares were purchased instead, would not be eligible for a breakpoint at \$100,000 or more in the mutual funds listed in "Schedule A" (attached); and
 - (9) Purchases of Class B shares which, assuming Class A shares were purchased instead, would not be eligible for a breakpoint at \$250,000 or more in the mutual funds listed in "Schedule B" (attached).
- ii. Wachovia Securities and Wachovia Financial may further remove Qualifying Class B and/or Class C Share Purchases as long as it provides FINRA with quantitative proof that the customer could not materially benefit¹¹ from having the particular transaction converted to Class A shares and the removal of such Qualifying Class B and/or Class C Share Purchase is not unacceptable to FINRA.
 - iii. Within 120 days from the effective date of this AWC, Wachovia Securities and Wachovia Financial shall offer any customer, who made a Qualifying Class B and/or Class C Share Purchase(s) and still holds all, or any portion of, such shares, the option of converting such Class B and/or Class C shares into Class A shares in such a manner that each customer is placed in substantially the same financial position, based on actual fund performance, in which such customer would have been with respect to the Qualifying Class B and/or Class C Share Purchase(s) had the customer purchased Class A shares instead of Class B and/or Class C shares.¹²
 - iv. Customers electing to convert any Qualifying Class B and/or Class C Share Purchase shall receive:
 - (1) an amount of Class A shares equal to what the customer could have purchased on the date of the Qualifying Class B and/or Class C Share Purchase utilizing the same amount of money, before application of any fees or expenses, invested in the Qualifying Class B and/or Class C Share Purchase and applying the

¹¹ Wachovia Securities and Wachovia Financial will not be required to offer a customer conversion if the customer would not materially benefit from an offer of conversion because either the annual expense differential between Class A shares and Class B and/or Class C shares, the CDSC schedule, and/or the conversion year quantitatively are such that Class B and/or Class C shares may be substantially equal, or more appropriate, compared to Class A shares of the same fund, at particular investment levels.

¹² In addition to the Qualifying Class B and/or Class C Share Purchase, any conversion will also take into account any shares acquired through reinvestment of distributions paid on the Qualifying Class B and/or Class C Share Purchases.

breakpoint sales charges associated with the Class A shares calculated as described herein; and

- (2) an additional amount of Class A shares equal to the number of reinvestment shares (as of a trading day sufficiently preceding the conversion date to allow the execution of the necessary transactions) the customer acquired in connection with the Qualifying Class B and/or Class C Share Purchase, converted on a share-for-share basis.
- v. Also, Wachovia Securities and Wachovia Financial shall pay cash to put those customers who made a Qualifying Class B and/or Class C Share Purchase(s) and sold some or all of their Class B and/or Class C shares comprising the Qualifying Class B and/or Class C Share Purchase(s) into substantially the same financial position, based on actual fund performance and redemption value, in which such customers would have been had the customers purchased Class A shares instead of Class B and/or Class C shares. In the event that a customer is entitled to a cash payment as specified in this sub-paragraph, and is also eligible to convert Class B and/or Class C shares that the customer continues to hold, Wachovia Securities and/or Wachovia Financial shall specify in its communication to the customer that the cash payment is not in lieu of the customer's right to convert all remaining eligible Class B and/or Class C share holdings.
- vi. In performing the undertakings set forth in paragraphs II.B.3.d.iv. and II.B.3.d.v., above, each customer shall be entitled to breakpoints to the full extent permitted by the prospectus and/or Statement of Additional Information ("SAI") for each relevant fund.¹³
- vii. In the event that any customer who made a Qualifying Class B and/or Class C Share Purchase(s) elects to convert any of those Qualifying Class B and/or Class C Share Purchases to Class A shares from Class B and/or Class C shares, and Wachovia Securities and/or Wachovia Financial are unable to effectuate such conversion for any reason, Wachovia Securities and/or Wachovia Financial shall pay cash to such customer in an amount that will place the customer in substantially the same financial position, based on actual fund performance and liquidation value, that such customer would have been in as of the effective date of this AWC had the customer

¹³ If the Firms' respective offers to convert and/or or their cash payments relate to a Qualifying Purchase of Class B shares, the Firms may elect, in lieu of including all eligible assets noted in the relevant fund's prospectus/SAI, to include only the balance of all Class B share investments held in accounts maintained with the Firm to be aggregated in accordance with the relevant fund's prospectus/SAI to determine the applicable breakpoints at the time of the Qualifying Purchase, including investments made before the relevant time period and held at the time of the Qualifying Purchase. If Wachovia Securities offers to convert and/or its cash payment relates to a Qualifying Purchase of Class C shares, Wachovia Securities may elect, in lieu of including all eligible assets noted in the relevant fund's prospectus/SAI, to include only the balance of all Class C share investments held in accounts maintained with Wachovia Securities to be aggregated in accordance with the relevant fund's prospectus/SAI to determine the applicable breakpoints at the time of the Qualifying Purchase, including investments made before the relevant time period and held at the time of the Qualifying Purchase. In connection with the foregoing, the Firms must assume that a customer would have executed Letters of Intent to the greatest extent offered by the relevant fund's prospectus/SAI.

made his or her Qualifying Class B and/or Class C Share Purchase(s) in Class A shares instead of Class B and/or Class C shares.

- viii. When calculating the financial position of any customer for purposes of conversion, Wachovia Securities and Wachovia Financial shall make such calculation based on the date of conversion, or on such date immediately prior to the date of conversion sufficient to allow the execution of the necessary transactions. When calculating the financial position of any customer for purposes of a cash payment, Wachovia Securities and/or Wachovia Financial shall make such calculation as of the date the Qualifying Class B and/or Class C Share Purchase was redeemed, in the case of closed or partially closed positions, or, in the event that the cash payment is required as a substitute for conversion, as close as practical to the date of remediation.
- e. Within 60 days from the effective date of this AWC and prior to any remediation payment, Wachovia Securities and Wachovia Financial shall submit to FINRA for review a sample letter in plain English: (i) offering customers, according to the particular characteristics of their account and purchases, the opportunity to convert their Qualifying Class B and/or Class C Share Purchases; (ii) explaining the economic advantages and disadvantages to the customer of the options; and (iii) stating that the customer should consult with a tax advisor to determine whether the conversion carries any federal, state, or local tax consequences. The letter shall not be unacceptable to FINRA. Customers who accept Wachovia Securities and/or Wachovia Financial's conversion offer with respect to their Qualifying Class B and/or Class C Share Purchases must agree to convert all of the Qualifying Class B and/or Class C Share Purchase shares held by the customer as of the date of the offer, and may not elect a partial conversion. Customers shall have 60 days from the mailing of the letters to accept the offer and advise Wachovia Securities and/or Wachovia Financial of their decision to accept.

Undertakings Applicable to NAV Transfer and Class B/Class C Share Remediations

- f. Within 60 days from the effective date of this AWC, Wachovia Securities and Wachovia Financial shall designate and train staff (a "Response Team") to field and respond to customer inquiries in connection with the NAV and Class B and Class C Share remediation processes (collectively, the "Remediation Processes").
- g. Within 60 days from the effective date of this AWC, Wachovia Securities and Wachovia Financial shall each retain at its own expense, a Third Party Examiner, not unacceptable to FINRA, to examine the firm's performance of its obligations under the terms of this AWC as reflected in its certified Initial Report(s) to FINRA as described below in paragraph II.B.3.m.
- h. Wachovia Securities and Wachovia Financial shall each exclusively bear all costs, including compensation and expenses, associated with the retention and performance of the Third Party Examiner.
- i. Wachovia Securities and Wachovia Financial (i) shall not have the authority to terminate the Third Party Examiner without the prior written approval of FINRA; (ii) shall compensate the Third Party Examiner, and persons engaged to assist the Third Party

Examiner, for services rendered pursuant to this AWC at their reasonable and customary rates; and (iii) shall not be in and shall not have an attorney-client relationship with the Third Party Examiner and shall not seek to invoke the work product, attorney-client or any other doctrine or privilege to prevent the Third Party Examiner from transmitting any information, reports or documents to FINRA.

- j. Wachovia Securities and Wachovia Financial shall cooperate fully with the Third Party Examiner and shall provide the Third Party Examiner with prompt access to Wachovia Securities' and Wachovia Financial's files, books, records and personnel as the Third Party Examiner reasonably deems necessary or appropriate in fulfilling any function or completing any task described in these undertakings.
- k. Wachovia Securities and Wachovia Financial shall complete the Remediation Processes within 270 days from the effective date of this AWC.
- l. Within 330 days following the effective date of this AWC, Wachovia Securities and Wachovia Financial shall each file a report (the "Initial Report") with FINRA, and simultaneously with the Third Party Examiner, through which it will provide a detailed description of the following:

Qualifying Class B and Class C Share Purchases

- i. The Qualifying Class B and/or Class C Share Purchases, including the customer's name(s) and contact information, a firm-designated household identification number, the trade date, fund name, fund symbol, number of shares purchased, and the gross principal amount invested for each Qualifying Class B and/or Class C Share Purchase;
- ii. The transactions the firm removed from the list of Qualifying Class B and/or Class C Share Purchases and the specific basis for each removal;
- iii. Those transactions for which customers received a letter offering conversion;
- iv. Those transactions for which customers received a cash payment, including details concerning the amount paid. Any cash payments resulting from the firm's inability to effect conversion shall be duly noted;
- v. How the firm created and staffed the Response Team to field and respond to customer inquiries, including, the number of individuals used to staff the Response Team, how the Response Team staff members were trained to respond to customer inquiries, how and by whom the Response Team was supervised, and what tools and information were used to respond to customer inquiries;
- vi. Each customer who had a Qualifying Class B and/or Class C Share Purchase and contacted the firm concerning remediation, and that the firm maintained a record of each customer inquiry; and

- vii. Each transaction for which the customer accepted the firm's offer of conversion and/or cash, including the material terms thereof, number of shares and value transferred.

Qualifying NAV Purchases

- viii. The remediation process for Qualifying NAV Purchases, including the identification of, and payment to, customers eligible for remediation, pursuant to paragraph II.B.3.a. above, and the application of the Remediation Methodology to identify and calculate payments to customers;
 - ix. All Qualifying NAV Purchases, in the format of a Microsoft Excel spreadsheet, including each customer's name, contact information and account number, the trade date, fund name, fund symbol, number of shares purchased, the gross principal amount invested for each Qualifying NAV Purchase, and the total dollar amount of restitution provided to each customer;
 - x. How the firm created and staffed the Response Team to field and respond to customer inquiries, including, the number of individuals on the Response Team, the training of these individuals, how and by whom the Response Team was supervised, what tools and information were used to respond to customer inquiries, and how the firm maintained a record of all customer inquiries relating to Qualifying NAV Purchases; and
 - xi. A list of all customers and investors who contacted the Response Team concerning remediation in connection with any Qualifying NAV Purchases.
- m. Wachovia Securities' and Wachovia Financial's Initial Report(s) submitted to FINRA must be certified to, and signed by officers of Wachovia Securities and Wachovia Financial registered with FINRA at the time of the certification. Wachovia Securities and Wachovia Financial shall preserve for a period of not less than three years from the effective date of the AWC and make available to FINRA the records underlying the certification as FINRA shall request.
- n. At the conclusion of the examination, but not later than 420 days following the effective date of this AWC, Wachovia Securities and Wachovia Financial shall each require its Third Party Examiner to submit a written Final Report to Wachovia Securities and Wachovia Financial, respectively, and to FINRA. The Final Report must recite the efforts the Third Party Examiner undertook to examine Wachovia Securities' and Wachovia Financial's certified Initial Reports, as well as the Examiner's findings. The Final Report shall address, at a minimum, (i) the Examiner's assessment of the firm's performance of the remediation processes (including the identification of customers eligible for remediation, exchange offers made and accepted, and cash payments), as reflected in the Initial Report, and whether such performance was consistent with the remediation described above, and, with respect to Qualifying NAV Purchases, the NAV Remediation Methodology, and (ii) a description of the review performed and the conclusions reached.

For good cause shown, and upon receipt of a timely request from Wachovia Securities or Wachovia Financial, FINRA may extend any of the procedural dates set forth above.

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

III.

OTHER MATTERS

- A. Wachovia Securities and Wachovia Financial understand that they may attach to this AWC a Corrective Action Statement that is a statement of demonstrable corrective steps taken to prevent future misconduct. The Firms understand that in this Statement it may not deny the charges or make any statement that is inconsistent with the AWC. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.
- B. Wachovia Securities and Wachovia Financial agree to pay any monetary sanctions imposed on them within 20 days of notice that this AWC has been accepted and each Firm has submitted an Election of Payment form showing the method by which the Firm proposes to pay the fines imposed in this matter.
- C. Wachovia Securities and Wachovia Financial specifically and voluntarily waive any right to claim that they are unable to pay now, or at any time hereafter, any monetary sanction imposed in this matter.

The undersigned certify on behalf of Wachovia Securities and Wachovia Financial that he/she has read and understands all of the provisions of this AWC and have 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 the Firms and/or the undersigned to submit it.

11/12/08
Date

WACHOVIA SECURITIES, LLC
By: [Signature]
Name: Robert T. Mooney
Title: Chief Governance Officer

WACHOVIA SECURITIES
FINANCIAL NETWORK, LLC

11/12/08
Date

By: [Signature]
Name: Robert T. Mooney
Title: Chief Governance Officer

Reviewed by:

[Signature]
Kevin B. Hurley, Esq.
Counsel for Wachovia Securities, LLC
and Wachovia Securities Financial Network, LLC
Senior Vice President & Chief Regulatory Counsel
Wachovia Securities Legal Department WS2217
901 E. Byrd Street Richmond, VA 23219

804-344-6297
Facsimile: 804-782-6665

Accepted by FINRA:

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

2/12/09
Date

[Signature]
Katherine A. Malfa
Vice President
FINRA Department of Enforcement
1801 K Street, NW
Suite 800
Washington, DC 20006

202.974.2853
Facsimile: 202.721.8341