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REGISTRATION & DISCLOSURE

**NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. EAF0400840001**

**TO: Department of Enforcement
NASD**

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

Pursuant to Rule 9216 of NASD Code of Procedure, Respondent 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 Respondent alleging violations based on the same factual findings.

Respondent 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 Respondent; and
3. If accepted:
 - a. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against Respondent;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about Respondent'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. Respondent may not take any action or make or permit to be made any

public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. Nothing in this provision affects Respondent's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

Respondent 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 firm since 1987. The firm is headquartered in Richmond, Virginia, and employs more than 10,000 registered representatives in more than 2,600 branches. The firm has no relevant disciplinary history.

I.

WAIVER OF PROCEDURAL RIGHTS

Respondent 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 Respondent;
- 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, Respondent specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

Respondent further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of 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. Respondent hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of 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

Wachovia Securities LLC ("Wachovia" or "the firm") has offered a fee-based brokerage program called "Pilot Plus" to its customers since 1999. Customers with Pilot Plus accounts pay Wachovia a fee based on the total value of eligible assets in the account.

Between January 1, 2001, and December 31, 2004 (the "review period"), Wachovia failed to establish and maintain an adequate supervisory system, including written procedures, reasonably designed to review and monitor its fee-based brokerage business, in violation of NASD Conduct Rules 3010(a) and (b) and 2110. While the firm informed its brokers that a Pilot Plus account was not appropriate for customers who made a limited number of trades, buy-and-hold customers, and customers with smaller accounts (assets below \$50,000), Wachovia's system and procedures nevertheless were not reasonably designed to determine whether Pilot Plus accounts were appropriate for its customers.

As a result of the firm's supervisory deficiencies during the review period, Wachovia allowed approximately 1,200 customers to continue in Pilot Plus accounts without adequately reassessing whether the accounts remained appropriate for the customers. These customers either conducted no trades in their Pilot Plus accounts for at least two consecutive years or had Pilot Plus accounts where the total value of the assets in the accounts averaged below \$25,000 for at least one full year.

During the review period, approximately 594 Wachovia customers conducted no trades in their Pilot Plus accounts for at least two consecutive years and paid the firm approximately \$1.9 million in fees during the time when their accounts were inactive. In addition, approximately 620 Wachovia customers held assets that remained below \$50,000 and averaged less than \$25,000 for at least one full year during the review period. These customers all paid at least the minimum annual fee of \$1,000, which represented more than 4% of the assets in their accounts during this time period, twice the maximum rate allowed under the Pilot Plus agreement. During the time

that these customers' eligible assets averaged below \$25,000 for at least one full year, they paid a total of approximately \$1 million in Pilot Plus fees.

Additionally, Wachovia exempted certain high-producing brokers, who were members of the firm's "Red Carpet Club," from some of the firm's review and approval processes. Consequently, Red Carpet Club members were able to open Pilot Plus accounts for certain customers for whom fee-based accounts may not have been appropriate, including inactive accounts as well as certain customers whose assets were below the firm's stated \$50,000 minimum. This resulted in Red Carpet Club members' customers constituting more than 99% of those accounts in Pilot Plus that held less than \$25,000 in assets for at least one full year. Further, two brokers, who were recruited from another firm and immediately became Red Carpet Club members, brought more than 340 of their customers to Wachovia and opened Pilot Plus accounts for them. Approximately 77 (or 23%) of these customers conducted no trades in their Pilot Plus account for at least a year and paid approximately \$129,000 in Pilot Plus fees.

Wachovia also failed to reasonably enforce its written procedures designed to protect Pilot Plus customers from being assessed double fees on the purchases of Class A shares of mutual funds that carried an up-front sales charge; that is, paying a sales load, then the Pilot Plus asset-based fee on top of the load. As a consequence of the firm's failure to enforce these procedures during the review period, more than 110 customers inappropriately were charged both a front end load and Pilot Plus fees on Class A shares of mutual funds.

Wachovia provided its brokers with a piece of sales literature relating to Pilot Plus that brokers could choose to use with their customers. The sales literature referred to Pilot Plus as a "monitored brokerage account," but inaccurately stated in a footer that Pilot Plus was a "fee-based, investment *advisory* service provided by Wachovia Securities" (emphasis added). By making this inaccurate material statement in this communication with the public, Wachovia violated NASD Conduct Rules 2210(d) and 2110.

Background

Fee-based brokerage accounts are an alternative to traditional commission-based accounts. The primary difference is that fee-based customers are charged a fee based on the assets held in the account rather than on a per transaction basis.

In 1995, in response to concerns about potential conflicts of interest in the brokerage industry, the Securities and Exchange Commission released its Report of the Committee on Compensation Practices, commonly known as the "Tully Report." This report described fee-based accounts as a "best practice" in the industry because they align the customer's and broker's interests. In this arrangement, the broker and customer both are motivated to build the assets in the customer's account. This is in contrast to the traditional commission-based account, in which there is always the risk of temptation for the income-seeking broker to attempt to increase the trading activity in a customer's account. The report further advised that a fee-based account also may be appropriate "for investors who prefer a consistent and explicit monthly or

annual charge for services received, and whose level of trading activity is moderate.” But the report also pointed out that small and low-activity accounts would endure higher costs as a fee-based account than as a commission-based account because of the imposed fees.

As a result of regulatory initiatives by the SEC in 1999 granting a “safe harbor” from the registration requirements of the Investment Advisers Act of 1940 for broker-dealers based on the form of compensation received,¹ NASD member firms began offering customers fee-based accounts as an alternative to traditional commission-based charges for brokerage services and that trend is increasing.²

In November 2003, NASD released *Notice to Members 03-68* (“NTM 03-68”), which “remind[ed] members that they must have reasonable grounds for believing that a fee-based program is appropriate for a particular customer, taking into account the services provided, cost, and customer preferences.”

NTM 03-68 recommends that supervisory procedures for fee-based accounts include a periodic review to determine whether the fee-based accounts remain appropriate for existing customers.³ The Notice to Members cautions that a finding that a customer would have been billed less in a commission-based account than in a fee-based account is not conclusive that the account is inappropriate for that customer. But, in such a case, the firm should give careful scrutiny to the account.

Wachovia’s Pilot Plus Fee-Based Program

Wachovia began offering a fee-based brokerage account now called, “Pilot Plus,” to its customers in 1999. In 2001, Wachovia had just over 18,000 Pilot Plus customers who paid more than \$55 million in Pilot Plus fees. By the end of 2004, that number had grown to more than 41,000 customers who paid more than \$110 million in Pilot Plus fees.

Pilot Plus customers pay a quarterly fee based on the value of the assets held in the account. The fee is based on the market value of all long and short securities positions in “eligible assets.” During the review period, eligible assets included 1) equity securities, 2) mutual funds that are either a) no-load funds offered at net asset value, or b) subject to loads or transaction fees, but on which the loads and transaction fees are waived; 3) fixed income securities, and 4) cash. The maximum rate allowed on eligible assets pursuant to the Pilot Plus agreement was 2% on equities and 1.5% on mutual funds, fixed income securities, and cash. These rates could be discounted by the firm, but all Pilot Plus accounts, regardless of size, paid a minimum quarterly fee of \$250 (\$1,000 per year) unless a specific exemption was granted by the firm.

Wachovia advised its registered representatives to determine whether fee-based accounts

¹ See SEC Rel. No. 34-42099, Nov. 4, 1999, *Certain Broker-Dealers Deemed Not to Be Investment Advisers*.

² See SEC Rel. No. 34-50980, Jan. 6, 2005, *Certain Broker-Dealers Deemed Not to Be Investment Advisers*.

³ Absent unusual circumstances, NASD recommends conducting such a review annually. NTM 03-68, n. 8.

were appropriate for their clients. In its Associates Guide and other documents provided to its registered representatives, the firm advised that Pilot Plus was not appropriate for:

- Customers with a limited number of transactions (low turnover);
- Customers with long-term buy-and-hold strategies;
- Customers with accounts that had less than \$50,000 in assets; and
- Customers who are day traders or excessive traders (over 120 trades per year).

During the review period, all new Pilot Plus accounts, except those new accounts opened by a member of the firm's Red Carpet Club, required approval by both a branch manager and a representative from Wachovia's Consulting Services Group. The Consulting Services Group ("CSG") was the Wachovia unit principally responsible for development, marketing and oversight of all fee-based programs offered by the firm, including monitoring the activity and appropriateness of Pilot Plus accounts.

Wachovia required a minimum account balance of \$50,000 at the time a Pilot Plus account was opened. However, certain accounts with less than \$50,000 were opened based on CSG's review. In addition, Red Carpet Club members could open Pilot Plus accounts with less than \$50,000 in assets without CSG's review. Pilot Plus customers generally received the same level of services as the firm's customers who were in commission-based accounts, except that the Pilot Plus customers had the option to receive quarterly performance reports from the firm for no additional fee.

**Wachovia Failed to Establish and Maintain a Supervisory System,
Including Written Supervisory Procedures, Reasonably Designed
to Review and Monitor its Fee-Based Business**

NASD Conduct Rule 3010(a) requires firms to establish and maintain a supervisory system, including written procedures, to supervise the activities of its registered representatives and associated persons, that is reasonably designed to achieve compliance with applicable securities laws and regulations and NASD Rules. Wachovia violated NASD Conduct Rules 3010(a) and (b) and 2110 by failing to establish and maintain a supervisory system, including written procedures, reasonably designed to review and monitor its fee-based brokerage business.

A. Wachovia's Supervisory Failures Relating to Inactive Accounts and Small Accounts

Wachovia recognized that fee-based accounts may not be appropriate for certain categories of investors, including those with inactive accounts and those with accounts below \$50,000. But Wachovia's supervisory system and procedures failed to provide adequate supervisory review to determine whether Pilot Plus accounts were and continued to be appropriate for its customers.

Prior to December 2003, Wachovia did not have an adequate system or procedures in

place to monitor Pilot Plus accounts for inactivity or for low asset levels. In December 2003, Wachovia began conducting annual inactivity reviews. Those reviews were based on a report that identified inactive Pilot Plus accounts. For purposes of this report, "inactivity" was defined as "fewer than five trades in a 12-month period." Accounts falling under this definition of inactivity underwent a review by the firm's Consulting Services Group. Based on the results of that review, the firm's procedures required that one of two letters be sent to the customer, either: 1) a "negative consent letter," which permitted the customer's continued participation in Pilot Plus, or 2) a termination letter. In practice, however, Wachovia failed to consistently issue either of the two letters, as required. Moreover, the firm conducted its inactivity reviews one time per year and the report captured only information for accounts that had been open for one year or more. Thus, Pilot Plus accounts could be opened for almost two full years before ever receiving an inactivity review.

Between January 1, 2001 and December 31, 2004, approximately 594 customers conducted no trades in their Pilot Plus accounts for at least two consecutive years and paid approximately \$1.9 million in fees during the years when they made no trades in their accounts. Although some of these customers had traded previously in their Pilot Plus accounts, after these customers went an entire year without trading, Wachovia's system and procedures were not reasonably designed to determine whether they remained appropriate for Pilot Plus. Consequently, these approximately 594 customers remained in Pilot Plus for at least an additional year, during which they incurred approximately \$1 million in fees without conducting any trades.

Among the 594 customers were 15 who remained in Pilot Plus for four consecutive years and paid fees to Wachovia despite not conducting any trades in their accounts. One such customer was DT, who opened a Pilot Plus account prior to 2001. Between 2001 and 2004, DT made no trades in his Pilot Plus account. Despite the account's lack of trading activity during those four years, DT paid the firm between approximately \$6,400 and \$7,400 in fees each year, totaling \$27,958 over the four year period. In a traditional account, DT would not have paid the firm any commissions during those four years, although DT would have been charged an annual service fee of \$50.

In addition, there were approximately 620 Pilot Plus customers whose total billable assets remained below \$50,000 and averaged below \$25,000 for at least one full year during the review period. Due to Wachovia's inadequate monitoring of accounts with low asset levels, those accounts were not sufficiently reviewed to determine the appropriateness of these accounts remaining in Pilot Plus. These customers all paid at least the minimum annual fee of \$1,000, which represented at least 4% of the assets in their Pilot Plus accounts. This fee was at least twice Wachovia's stated top rate of 2%. During the years that these customers' total average annual eligible assets fell below \$25,000, they paid a total of approximately \$1 million in Pilot Plus fees. Furthermore, approximately 14 of these customers paid fees to Wachovia that were in excess of 4% of the average annual assets in their Pilot Plus accounts, even though they engaged in no trading activity in at least two consecutive Pilot Plus years.

B. Wachovia's Supervisory Failures Relating To Its Red Carpet Club Members

In 2001, Wachovia created the Red Carpet Club to give the firm's top financial advisors more control over their business. Red Carpet Club membership was based on fee generation, number of accounts under management, and assets under management. The firm issued the Red Carpet Club members identifying stickers that they could place on new account forms which exempted that broker and his customers from certain restrictions applicable to other brokers. Whereas most fee-based accounts were opened only after review and approval by both a branch manager and a representative from CSG, Red Carpet Club customers did not receive CSG review and approval. As a result, Red Carpet Club members opened Pilot Plus accounts for customers with total assets which were below the firm's stated \$50,000 minimum account balance.

Approximately 99% of the approximately 620 accounts that held assets valued at less than \$25,000 for at least one full year were customers of Red Carpet Club members. During the review period, 76 Red Carpet accounts had under \$10,000 in average net assets for at least four straight quarters and paid the minimum annual fee of \$1,000. Applying the minimum annual fee to accounts with these asset levels resulted in a need to generate annual rates of return from approximately 10% to as much as 77% in order to break even.

For example, the value of assets in one Red Carpet Club account ranged between \$5,100 and \$18,200 for three straight years, averaging approximately \$9,600 in assets per quarter. During this period, the account paid a total of \$3,000 in fees, representing approximately 31% of the average assets. The value of assets in another Red Carpet Club account ranged between \$459 and \$3,500 for one year, averaging approximately \$1,300 in assets per quarter. During this time, the account paid \$1,000 in fees, representing approximately 77% of the average assets.

In addition, Red Carpet Club members were able to open Pilot Plus accounts for certain inactive customers without CSG review. For example, the firm recruited two high producing brokers from another brokerage firm and immediately made them members of the Red Carpet Club. These brokers brought more than 340 of their customers to Wachovia and opened Pilot Plus accounts for them. Approximately 77 of these customers conducted no trades in their Pilot Plus accounts for at least a year and paid approximately \$129,000 in Pilot Plus fees.

In recommending Pilot Plus accounts for these approximately 340 customers, the two brokers incorrectly told them that Pilot Plus was an *advisory* account rather than a fee-based *brokerage* account. Wachovia failed to adequately supervise these brokers' communications with their customers. Further, after the firm discovered that these brokers had incorrectly informed customers that Pilot Plus was an advisory account, it failed to respond in a timely manner to correct the inaccurate representations made to these customers.

C. Wachovia's Supervisory Failures Relating to The Treatment of Class A Shares of Mutual Funds in Pilot Plus Accounts

Wachovia also failed to reasonably enforce its written procedures designed to protect Pilot Plus customers from being assessed double fees on the purchases of Class A shares of mutual funds. Ordinarily, when a customer purchases a Class A share of a mutual fund, the customer pays a front end sales charge or "load" at the time of purchase. Under Wachovia's procedures, customers in Pilot Plus were able to purchase Class A shares of particular mutual funds at net asset value, or "NAV," which meant that they did not pay a load. These mutual funds were eligible assets on which the customers were assessed a Pilot Plus fee. On the other hand, customers who purchased Class A shares outside of a Pilot Plus account and paid a load on the purchase were not allowed to transfer those shares into a Pilot Plus account for at least 13 months. But during the review period, Wachovia failed to enforce these procedures. Consequently, contrary to the firm's stated procedures, more than 110 customers were charged both a load and Pilot Plus fees on the purchase of Class A shares of mutual funds.

For example, one customer purchased Class A shares of a mutual fund on November 4, 2003, and paid a front-end load of \$3,800. Two days later, on November 6, 2003, the customer transferred these shares to a Pilot Plus account. Over the next thirteen months, Wachovia levied a Pilot Plus fee of \$1,000 on these assets, despite the customer having just paid a sales charge.

Wachovia Distributed Inaccurate Sales Literature to the Public

Wachovia provided its brokers with a piece of sales literature relating to Pilot Plus, for use with their customers. It was an optional piece that brokers could choose to include in communications with their customers. This piece characterized Pilot Plus as a "monitored brokerage account" in the main body of the text, but stated in a footer that Pilot Plus was a "fee-based, investment *advisory* service provided by Wachovia Securities" (emphasis added). This statement was inaccurate in that Pilot Plus was not an advisory service, but instead was a fee-based brokerage account. By making this inaccurate material statement in this communication with the public, Wachovia violated NASD Conduct Rules 2210(d) and 2110.

- B. Respondent also consents to the imposition, at a maximum, of the following sanctions:
1. A censure;
 2. A fine of \$2 million;
 3. Wachovia agrees to complete the following undertakings in order to identify and pay restitution to customers who were inappropriately allowed to continue in Pilot Plus accounts when Pilot Plus accounts were not appropriate for them

and/or were inappropriately charged fees on A-shares for which they had already paid a sales load:

- a. Within 180 days of the date of the Notice of Acceptance of this AWC, Wachovia shall identify all customers who are entitled to restitution under this AWC, as follows: Those customers, who between January 1, 2001 and December 31, 2004:
 - i. conducted no trades in their Pilot Plus accounts for two or more consecutive years;
 - ii. had eligible assets below \$50,000 and an average of below \$25,000 in eligible assets for at least one full year in their Pilot Plus accounts;
 - iii. purchased and paid a front-end load on A-shares in a commission-based account, and then converted the account into a Pilot Plus account within 13 months of the purchase of the A-shares, and paid a Pilot Plus fee on those shares within 13 months of purchase.
- b. Within 180 days of the date of the Notice of Acceptance of this AWC, Wachovia shall calculate the restitution for those customers identified as being entitled to restitution under paragraph 3(a), above, as follows:
 - i. Customers identified pursuant to 3(a)(i) shall be entitled to restitution equal to the Pilot Plus fees they paid in each consecutive year, except the first year, in which they conducted no trades;
 - ii. Customers identified pursuant to 3(a)(ii) shall be entitled to restitution equal to the Pilot Plus fees they paid for each year their total eligible assets averaged below \$25,000, less 2% of their average total eligible assets during the year;
 - iii. Customers identified pursuant to 3(a)(iii) shall be entitled to restitution equal to the Pilot Plus fees paid on the A-shares;
 - iv. Customers identified pursuant to both 3(a)(i) and 3(a)(ii), shall be entitled to restitution equal to the greater of the calculations under 3(b)(i) and 3(b)(ii);
 - v. Customers identified pursuant to 3(a)(i) or 3(a)(ii), and 3(a)(iii) shall be entitled to restitution equal to the amount of restitution calculated under the applicable section, 3(b)(i) or 3(b)(ii), plus the amount of restitution calculated under 3(b)(iii);
 - vi. Customers identified pursuant to 3(a)(i) and 3(a)(ii), and 3(a)(iii) shall be entitled to restitution equal to the total amount calculated pursuant to 3(b)(iv), plus the calculations under 3(b)(iii); and

- vii. Each of these customers shall be entitled to the restitution amount, as calculated above, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), from December 31, 2004, until the date this AWC is accepted by the NAC.
- c. Within 195 days of the Notice of Acceptance of this AWC, Wachovia must submit a report (the "Initial Report") to NASD and the Outside Consultant, certified to, and signed by, an officer of Wachovia who is registered with NASD at the time of the certification. Wachovia shall preserve such report for a period of not less than three years from the effective date of this AWC and make available to NASD the records underlying the certification as NASD may request. The Initial Report shall contain:
 - i. A detailed description of the methodology and process the firm used to identify the customers who are entitled to restitution, pursuant to 3(a), and to calculate the restitution and interest to which they are entitled, pursuant to 3(b);
 - ii. A list of all customers, who are entitled to restitution, identified by name, last known address and account number, and the amount of such restitution and interest.
- d. Within 90 days of the date of the Notice of Acceptance of this AWC, Wachovia shall retain an Outside Consultant, not unacceptable to NASD staff, to examine the Firm's performance of its obligations under the terms of this AWC. Specifically, the Outside Consultant shall review the methodology and process set forth in the Initial Report and verify that all customers have been properly identified and the restitution amounts reflected in Wachovia's certified Initial Report have been calculated correctly.
- e. Exclusively bear all costs, including compensation and expenses, associated with the retention of the Outside Consultant.
- f. Cooperate with the Outside Consultant in all respects, including by providing staff support. Wachovia shall place no restrictions on the Outside Consultant's communications with NASD staff and, upon request, shall make available to NASD staff any and all communications between the Outside Consultant and the Firm and documents reviewed by the Outside Consultant in connection with his or her engagement. Once retained, Wachovia shall not terminate the relationship with the Outside Consultant without the NASD staff's written approval; Wachovia shall not be in and shall not have an attorney-client relationship with the Outside Consultant and shall not seek to invoke the attorney client privilege or other doctrine or privilege to prevent the Outside Consultant from transmitting any information, reports or documents to the NASD.

- g. At the conclusion of the Outside Consultant's review, which shall be no more than 60 days after the Outside Consultant's receipt of the Initial Report, Wachovia shall require the Outside Consultant to submit to the Firm and NASD staff a written Final Report. The Final Report must recite the efforts the Outside Consultant undertook to examine Wachovia's certified Initial Report, as well as the Outside Consultant's findings. The Final Report shall address, at a minimum, (i) the Outside Consultant's assessment of the Firm's performance of the restitution process, as reflected in the Initial Report, including a review the Firm's methodology and process used, identification of customers and calculation of restitution amounts and interest; and (ii) a description of the review performed and the conclusions reached.
- i. Within 60 days after delivery of the Final Report, Wachovia shall ensure that all customers receive the restitution to which they are entitled under this AWC and shall provide the NASD staff with satisfactory proof of payment of the restitution or of reasonable and documented efforts undertaken to effect restitution. If for any reason Wachovia cannot locate any customer identified after reasonable and documented efforts within such period, or such additional period agreed to by the staff, Wachovia shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed property, or abandoned property fund for the state in which the customer is last known to have resided.
- j. Upon written request showing good cause, the NASD staff may extend any of the procedural dates set forth above.

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

III.

OTHER MATTERS

- A. Respondent 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. Respondent understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by NASD, nor does it reflect the views of NASD or its staff.
- B. Respondent agrees to pay any monetary sanctions imposed upon notice that this AWC has been accepted and that such payments are due and payable and has attached an Election of Payment form showing the method by which it proposes to pay any fine imposed.
- C. Respondent 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.

Respondent 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 Respondent to submit it.

5/2/07
Date

Elizabeth D. Blake
Respondent

Wachovia Securities, LLC

By: Elizabeth D. Blake
[Name and title] SVP

Reviewed by:

Brian L. Rubin
Brian L. Rubin, Esq.
Sutherland Asbill & Brennan LLP
1275 Pennsylvania Avenue, NW
Washington, DC 20004-2415
202-383-0124

Accepted by NASD:

6/21/2007
Date

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

A handwritten signature in black ink, appearing to read "Samuel L. Israel", written over a horizontal line.

Samuel L. Israel
Director and Chief Counsel
NASD Department of Enforcement
1801 K Street NW
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Washington, DC 20006
202-974-2800