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**STATE OF ILLINOIS
SECRETARY OF STATE
SECURITIES DEPARTMENT**

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In the matter of:)
WACHOVIA SECURITIES,) Case Number. 08-00202
LLC; and)
WACHOVIA CAPITAL)
MARKETS, LLC,)
Respondents.)
_____)

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ADMINISTRATIVE CONSENT ORDER

TO THE RESPONDENTS: WACHOVIA SECURITIES, LLC
One North Jefferson Avenue
St. Louis, Missouri 63103.

WACHOVIA CAPITAL MARKETS, LLC
301 S. College Street
TW-8, Mail Code NC0602
Charlotte, North Carolina 28288-0601

WHEREAS, Wachovia Securities, LLC¹ ("Wachovia Securities") is a broker-dealer registered in the state of Illinois with its home office at One North Jefferson Avenue, St. Louis, Missouri 63103; and

WHEREAS, Wachovia Capital Markets, LLC ("Wachovia Capital Markets," collectively with Wachovia Securities, "Wachovia"²), is a broker-dealer with its home office at 301 South College Street, Charlotte, North Carolina 28288; and

¹ In October 2007, Wachovia Corporation acquired the Missouri-based broker dealer A. G. Edwards & Sons, Inc. ("AG Edwards") which was subsequently combined with Wachovia Securities, LLC.

² Factual allegations in this Order may apply to Wachovia Securities and/or Wachovia Capital Markets, but do not necessarily refer to both entities.

1 Neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Order,
2 and each consents to the entry of this Order by the Department.

3 2. Auction rate securities are long-term debt or equity instruments that include
4 auction preferred shares of closed-end funds, municipal auction rate bonds, and various asset-
5 backed auction rate bonds (collectively referred to herein as "ARS"). While ARS are all long-
6 term instruments, one significant feature of ARS (which historically provided the potential for
7 short-term liquidity) is the interest/dividend reset through auctions that occur in varying
8 increments of between 7 and 42 days. If an auction is successful, investors are able to exit the
9 ARS market on a short-term basis. If, however, an auction "fails," investors are required to hold
10 all or some of their ARS until the next successful auction in order to liquidate their funds.
11 Beginning in February 2008, the ARS market experienced widespread failed auctions.
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14 3. In early April of 2008, Wachovia Securities' investors, unable to access their ARS
15 funds, began to submit complaints to the Department.

16 **Marketing and Sales of ARS to Investors**

17 4. In connection with the sale of ARS, some Illinois investors stated variously that
18 they were told by Wachovia Securities and its registered agents that ARS were:
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- 20 a. just like cash;
 - 21 b. same as cash;
 - 22 c. safe as cash;
 - 23 d. same as money markets;
 - 24 e. safe as money markets;
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- 1 f. cash equivalents;
- 2 g. short-term adjustable rate securities;
- 3 h. cash alternatives;
- 4 i. completely safe;
- 5 j. liquid at any time; and/or
- 6 k. always liquid at an auction.

7
8 5. Although marketed and sold to investors as safe, liquid, cash-like investments,
9 and although the ARS market had, in fact, functioned for more than twenty years with virtually
10 no auction failures, ARS are actually long-term instruments subject to a complex auction
11 process that, upon failure, can lead to illiquidity and lower interest rates.

12
13 6. Wachovia Securities further fostered the misconception that ARS were cash-like
14 instruments by providing account portfolio summaries to certain of its customers that listed
15 ARS as "cash equivalents." In fact, ARS were not "cash equivalents" and full liquidity was
16 only available at an auction if the auction was successful.

17
18 7. Although Wachovia Securities sold ARS as conservative, safe, and liquid
19 investments to its investors until February 2008, Wachovia had information that several
20 auctions had failed in August 2007 and early 2008, before the mass failures in February 2008.
21 During this same period of time, Wachovia failed to inform its customers purchasing ARS after
22 such auctions began to fail that certain auctions would have failed had Wachovia or another
23 broker-dealer not entered support bids in those auctions.

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25 8. Although Wachovia knew, or should have known, of the inherent risks and the

1 recent volatility of the ARS market, only minimal information regarding the ARS market was
2 provided to Wachovia Securities' retail ARS customers.

3 9. Wachovia and its registered securities agents were, or should have been, aware
4 that the ARS market was suffering from increasing failures and liquidity issues, and they
5 should have disclosed those facts to investors who were purchasing auction rates after such
6 issues arose. Based on these facts, Wachovia engaged in dishonest and unethical practices in
7 the marketing and sale of ARS. Pursuant to 8.E. (1) (b) of the Illinois Securities Act of 1953,
8 Wachovia's registration is subjected to sanction due to Wachovia's engagement in the unethical
9 practice in connection with the offer or sale of securities. These practices included, among other
10 things, the following:
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12 a. Wachovia told some ARS investors purchasing ARS after the market
13 disruptions began to occur that:
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- 15 i. ARS were cash equivalents;
- 16 ii. ARS were completely safe; and/or
- 17 iii. ARS were liquid at any time.

18 b. Wachovia was or should have been aware that the market for ARS was
19 becoming illiquid, yet Wachovia Securities continued to market and sell ARS to investors.
20

21 **Temporary Maximum Rate Waiver on Certain ARS**

22 10. The interest rates on ARS are reset periodically through the auction process. In
23 the event that there is insufficient demand for a particular issue and an auction fails, the interest
24 rate resets to a "maximum rate" or "failure rate" as defined in the offering documents for that
25

1 particular issue. Typically, this maximum rate would be higher than prevailing market rates in
2 order to compensate ARS holders who are unable to sell their positions and offer an "incentive"
3 to induce buyers to return to the market although in some cases, particularly for student loan
4 auction rates, the maximum rate might be lower than the prevailing rate.

5 11. Wachovia Securities engaged in dishonest and unethical practices by not
6 adequately explaining to individual investors who purchased ARS with maximum rate waivers,
7 among other things, the following:
8

9 a. that the ARS interest rates could not be reset at a level that would prevent
10 a failed auction absent the maximum rate waiver; and

11 b. that the high interest rate allowed by the waiver would expire at the end
12 of the waiver period unless extended by the issuer.
13

14 12. Pursuant to 8.E. (1)(b) of the Illinois Securities Act of 1953 these practices
15 constitute grounds to revoke Wachovia Securities' registration.

16 **Failure To Supervise Agents Who Sold ARS**

17 13. Although ARS are complicated and complex products, Wachovia Securities did
18 not provide its sales or marketing staff with the training and information necessary to
19 adequately explain these products or the mechanics of the auction process to their customers.
20 During the course of investigations, on-the-record statements taken from Wachovia Securities'
21 registered agents demonstrated that these agents lacked a basic understanding of the
22 functionality of the ARS products and the auction rate market.
23

24 14. Many of Wachovia Securities' registered agents were not adequately educated in
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1 the ARS products they were selling and did not know where to look for information to bolster
2 that knowledge. Wachovia Securities failed to provide timely and comprehensive sales and
3 marketing literature regarding ARS and the mechanics of the auction process. In addition,
4 Wachovia Securities failed to review account portfolio statements sent to its customers to ensure
5 that they reflected accurate information regarding ARS.

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7 15. Wachovia Securities' failure to provide sufficient training and information
8 concerning ARS and the market environment in which they were sold was not limited to one or
9 two agents, and is therefore indicative of Wachovia Securities' failure to ensure that its
10 registered personnel provided adequate information regarding ARS to its customers.

11 16. Wachovia Securities failed to reasonably supervise its employees, which is
12 grounds for revocation of its registration pursuant to 8.E.(1)(e)(iv) (failure to supervise) of the
13 Illinois Securities Law of 1953 by:

14 a. failing to provide adequate training to its registered agents regarding
15 ARS by, among other things:

16 i. failing to provide timely and comprehensive sales and marketing
17 literature regarding ARS and the mechanics of the auction process;

18 ii. failing to provide pertinent information concerning the
19 complexity of the ARS product; and

20 iii. failing to ensure that its agents were selling ARS to individual
21 investors for whom they were suitable; and

22 b. failing to review account portfolio statements sent to its customers to
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1 ensure that they reflected accurate information regarding ARS;

2 c. failing to review ARS transactions in accounts of customers who needed
3 liquidity; and

4 d. failing to ensure that its registered personnel were providing adequate
5 information regarding ARS to its customers.

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7 **II.**

8 **CONCLUSIONS OF LAW**

9 17. The Department has jurisdiction over this matter pursuant to the Illinois
10 Securities Law of 1953.

11 16. The Department finds that the above conduct subjects Wachovia to sanctions under
12 8E (1)(b) (unethical practice in the offer and sale of securities) of the Illinois Securities Law of
13 1953.

14 18. The Department finds Wachovia Securities failed to supervise its employees and
15 engaged in dishonest or unethical practices in the securities business, and that this conduct
16 constitutes grounds to revoke Wachovia Securities' registration under pursuant to 8.E. (1)(e)(iv)
17 (failure to supervise) of the Illinois Securities Law of 1953:
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19 19. The Department finds this order and the following relief appropriate, in the
20 public interest, and consistent with the purposes intended by the Illinois Securities Law of 1953.
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22 **III.**

23 **ORDER**

24 On the basis of the Findings of Fact, Conclusions of Law, and Wachovia's consent to the
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1 entry of this Order,

2 **IT IS HEREBY ORDERED:**

3 1. This Order concludes the investigation by the Department and any other action
4 that the Department could commence under applicable Illinois law on behalf of Illinois as
5 it relates to Wachovia, and its marketing and sale of auction rate securities to investors.

6 2. This Order is entered into solely for the purpose of resolving the referenced multi-
7 state investigation, and is not intended to be used for any other purpose.

8 3. Wachovia will CEASE AND DESIST from violating the Illinois Securities Law of
9 1953 and will comply with the Illinois Securities Law of 1953.

10 4. Within ten (10) calendar days after the entry of this Order, Wachovia shall pay
11 the sum of \$1,691,207.30 (One Million Six Hundred Ninety One Thousand Two Hundred
12 Seven Dollars and 30/100) to the Illinois Secretary of State, Investor Education Fund.

13 5. In the event another state securities regulator determines not to accept
14 Wachovia's settlement offer, the total amount of the payment to the State of Illinois shall
15 not be affected.

16 6. Wachovia Securities and Wachovia Capital Markets, respectively, as agents for
17 one or more affiliated companies and not as principal, shall offer to purchase at par ARS
18 that are subject to auctions that are not successful and are not subject to current calls or
19 redemptions ("Eligible ARS") from all investors in the Relevant Class. For purposes of
20 this Order the Relevant Class shall be defined as all investors who purchased ARS from
21 either Wachovia Securities or Wachovia Capital Markets, respectively, on or before
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1 February 13, 2008 into accounts maintained at Wachovia Securities or Wachovia Capital
2 Markets, respectively.

3 a. Wachovia Securities and Wachovia Capital Markets, as agents for one or
4 more affiliated companies and not as principal, shall make an offer to buy the Eligible
5 ARS from Individuals Investors, as defined below, who are in the Relevant Class. This
6 buy back shall commence no later than November 10, 2008 and conclude no later than
7 November 28, 2008. For purposes of this Order, Individual Investors shall include
8 natural persons, individual retirement accounts and the following entities or accounts:
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10 i. Accounts with the following owners:

- 11 1. non-profit charitable organizations; and
12 2. religious corporations.
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14 ii. Accounts with the following owners and with account values or
15 household values up to \$10 million:

- 16 1. trusts;
17 2. corporate trusts;
18 3. corporations;
19 4. employee pension plans/ERISA and Taft Hartley Act
20 plans;
21 5. educational institutions;
22 6. incorporated non-profit organizations;
23 7. limited liability companies;
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8. limited partnerships;
9. non-public companies;
10. partnerships;
11. personal holding companies;
12. unincorporated associations; and
13. governmental and quasi-government entities.

b. Wachovia Securities and Wachovia Capital Markets as agent for one or more affiliated companies and not as principal, shall commence a buy back of the Eligible ARS from all other investors in the Relevant Class not otherwise covered by subparagraph a, above, no later than June 10, 2009 and conclude no later than June 30, 2009.

8. No later than November 28, 2008, Wachovia shall pay any investor in the Relevant Class who sold ARS below par between February 13, 2008 and August 15, 2008 and whom Wachovia can reasonably identify, the difference between par and the price at which the investor sold the ARS.

9. Wachovia shall notify all investors in the Relevant Class of the provisions of this Order as provided in paragraphs 9 and 10.

10. As part of Wachovia's general obligation to notify all investors in the Relevant Class pursuant to paragraph 8, above, Wachovia shall mail the Required Notification, defined below, by November 10, 2008, to all investors in the Relevant Class that held ARS positions in a Wachovia account as of August 31, 2008. For purposes of the Order, "Required Notification"

1 shall mean a notice that includes general statements and information specific to each investor,
2 including:

- 3 a. a general notification of all provisions of this Order;
- 4 b. the specific security purchased;
- 5 c. the quantity purchased;
- 6 d. the par value of the holding;
- 7 e. a prominent statement disclosing that at this time the Relevant Class
8 member's ARS
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10 holdings may not be liquid and that there is a possibility that this offer may be the only
11 opportunity for the investor to liquidate the ARS holdings; and

12 f. a statement that the offer to repurchase the ARS holdings, and other relief
13 specified in the Order, is being made pursuant to a settlement with state securities
14 regulators.
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16 11. By November 10, 2008, Wachovia shall mail the Required Notification to all
17 investors in the Relevant Class that transferred ARS positions to a firm other than Wachovia,
18 prior to the date of this Order, if the initial purchase of the Eligible ARS was on or after January
19 1, 2003 unless the ARS has been redeemed in full by the issuer.
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21 12. Wachovia shall demonstrate that all investors in the Relevant Class received the
22 Required Notification if Wachovia demonstrates that: 1) Wachovia mailed the Required
23 Notification via First Class mail at the customer's last known address and did not receive a
24 return notice, or 2) Wachovia repurchased ARS from the investor.
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1 13. Wachovia Securities shall establish and maintain a dedicated telephone
2 assistance line, with appropriate staff, to respond to questions from investors concerning the
3 terms of this Order and Wachovia's no net cost loan (nonrecourse, no release) program.

4 Wachovia Securities shall maintain this dedicated telephone assistance line through June 30,
5 2009.

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7 14. With respect to any claim for consequential damages, to the extent such claims
8 are not resolved informally by Wachovia, Wachovia shall arbitrate the claim of any Relevant
9 Class member who elects to arbitrate, pursuant to the following provisions:

10 a. the arbitrations will be conducted by a public arbitrator (as defined by
11 section 12100(u) of the NASD Code of Arbitration Procedures for Customer Disputes,
12 eff. April 16, 2007), under the auspices of FINRA;

13
14 b. the above-referenced public arbitrator will be available for the exclusive
15 purpose of arbitrating any Relevant Class member's consequential damages claim;

16 c. Wachovia shall pay all applicable forum and filing fees;

17 d. any Relevant Class member who chooses to pursue such a claim shall
18 bear the burden of proving that they suffered consequential damages and that such
19 damages were caused by investors' inability to access funds consisting of investors' ARS
20 purchases through Wachovia; and
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22 e. Wachovia shall be able to defend itself against such claims; provided,
23 however, that Wachovia shall not contest liability related to the sale of ARS; and
24 provided further that Wachovia shall not be able to use as part of its defense an
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investor's decision not to borrow money from Wachovia.

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2 15. By November 28, 2008, Wachovia Securities and Wachovia Capital Markets,
3 respectively and separately, shall refund refinancing fees received by it to municipal auction
4 rate issuers that issued such securities in the initial primary market between August 1, 2007 and
5 February 13, 2008, and refinanced those securities through Wachovia after February 13, 2008.

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7 16. If Wachovia defaults in any of its obligations set forth in this Order, the
8 Department may vacate this Order, at its sole discretion, upon 10 days notice to Wachovia and
9 without opportunity for administrative hearing or may refer this matter for enforcement as
10 provided in the Illinois Securities Law of 1953.

11 17. This Order is not intended to indicate that Wachovia or any of its affiliates or
12 current or former employees shall be subject to any disqualifications contained in the federal
13 securities law, the rules and regulations thereunder, the rules and regulations of self regulatory
14 organizations or various states' securities laws including any disqualifications from relying
15 upon the registration exemptions or safe harbor provisions. In addition, this Order is not
16 intended to form the basis for any such disqualifications.
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18 18. This Order may not be read to indicate that Wachovia or any of its affiliates or
19 current or former employees engaged in fraud or violated any federal or state laws, the rules
20 and regulations thereunder, or the rules and regulations of self regulatory organizations.
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22 19. For any person or entity not a party to this Order, this Order does not limit or create
23 any private rights or remedies against Wachovia including, without limitation, the use of any e-
24 mails or other documents of Wachovia or of others for the marketing and sale of auction rate
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1 securities to investors, limit or create liability of Wachovia, or limit or create defenses of Wachovia
2 to any claims.

3 20. This Order shall not disqualify Wachovia or any of its affiliates or current or
4 former employees from any business that they otherwise are qualified or licensed to perform
5 under applicable state law and this Order is not intended to form the basis for any
6 disqualification,
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8 21. Nothing herein shall preclude Illinois, its departments, agencies, boards,
9 commissions, authorities, political subdivisions and corporations, other than the Department and
10 only to the extent set forth in paragraph 1 above, (collectively, "State Entities") and the officers,
11 agents or employees of State Entities from asserting any claims, causes of action, or applications for
12 compensatory, nominal and/or punitive damages, administrative, civil, criminal, or injunctive
13 relief against Wachovia in connection with the marketing and sale of auction rate securities at
14 Wachovia.
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16 22. Wachovia shall pay its own costs and attorneys' fees with respect to this matter.

17 23. The entry of the Consent Order resolves and settles the Securities Department's
18 administrative action with respect to the facts and allegations set forth in the Notice of Hearing
19 Case Number 08-00202.
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2 Dated this 29th day of March 2010.
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7 JESSE WHITE
8 SECRETARY OF STATE
9 STATE OF ILLINOIS
10

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