

STATE OF RHODE ISLAND

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In the matter of:	)	
WACHOVIA SECURITIES, LLC;	)	
and	)	
WACHOVIA CAPITAL MARKETS,	)	
LLC,	)	
Serve Wachovia Securities, LLC at:	)	<b>ADMINISTRATIVE CONSENT ORDER</b>
One North Jefferson Avenue	)	
St. Louis, Missouri 63103	)	
Serve Wachovia Capital Markets, LLC	)	
at:	)	
301 S. College Street	)	
TW-8, Mail Code NC0602	)	
Charlotte, North Carolina 28288-0601	)	
Respondents.	)	

WHEREAS, Wachovia Securities, LLC<sup>1</sup> ("Wachovia Securities"), is a broker-dealer registered in the state of Rhode Island with its home office at One North Jefferson Avenue, St. Louis, Missouri, and Wachovia Capital Markets, LLC ("Wachovia Capital Markets", collectively with Wachovia Securities, "Wachovia"<sup>2</sup>), is a broker-dealer with its home office at 301 South College Street, Charlotte, North Carolina; and

WHEREAS, a multi-state task force conducted and coordinated investigations into Wachovia's marketing and sale of auction rate securities to investors during the period of January 1, 2006, through February 14, 2008; and

WHEREAS, after a books and records inspection by a multi-state task force on July 17, 2008,

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<sup>1</sup> 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.

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

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1 Wachovia Securities has cooperated fully with regulators conducting the investigations by responding to  
2 inquiries, providing documentary evidence and other materials, and providing regulators with access to  
3 information relating to the investigations; and

4 WHEREAS, Wachovia has advised regulators of its agreement to resolve the investigations  
5 relating to its marketing and sale of auction rate securities to investors; and

6 WHEREAS, Wachovia agrees to, among other things, reimburse certain purchasers of auction  
7 rate securities, and to make certain payments at the direction of the Director, Department of Business  
8 Regulation (the "Department") and

9 WHEREAS, Wachovia elects to permanently waive any right to a hearing and appeal under § 7-  
10 11-602 of the Rhode Island Uniform Securities Act (the "RIUSA") § 7-11-101 *et seq.* of the R.I. Gen  
11 Laws and the Rules promulgated thereunder with respect to this Consent Order (the "Order");

12 NOW, THEREFORE, the Department as administrator of the RIUSA hereby enters this Order.

13 I.

14 **FINDINGS OF FACT**

15 1. Wachovia Securities admits the jurisdiction of the Department and Wachovia Capital  
16 Markets consents to the jurisdiction of the Department for purposes of this Order. Neither admits nor  
17 denies the Findings of Fact and Conclusions of Law contained in this Order, and each consents to the  
18 entry of this Order by the Department.

19 2. Auction rate securities are long-term debt or equity instruments that include auction  
20 preferred shares of closed-end funds, municipal auction rate bonds, and various asset-backed auction rate  
21 bonds (collectively referred to herein as "ARS"). While ARS are all long-term instruments, one  
22 significant feature of ARS (which historically provided the potential for short-term liquidity) is the  
23 interest/dividend reset through auctions that occur in varying increments of between 7 and 42 days. If an  
24 auction is successful, investors are able to exit the ARS market on a short-term basis. If, however, an  
25 auction "fails," investors are required to hold all or some of their ARS until the next successful auction in

1 order to liquidate their funds. Beginning in February 2008, the ARS market experienced widespread  
2 failed auctions.

3 3. In early March 2008, Wachovia Securities' investors, unable to access their ARS funds,  
4 began to submit complaints to their respective state regulators. In Rhode Island the Department received  
5 one investor complaint concerning the sale of ARS by Wachovia Securities. This complaint covered ARS  
6 holdings totaling over four hundred thousand dollars ("400,000.00").

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

8 4. In connection with the sale of ARS, investors state variously that they were told by  
9 Wachovia Securities and its registered agents that ARS were:

- 10 a. just like cash;
- 11 b. same as cash;
- 12 c. safe as cash;
- 13 d. same as money markets;
- 14 e. safe as money markets;
- 15 f. cash equivalents;
- 16 g. short-term adjustable rate securities;
- 17 h. cash alternatives;
- 18 i. completely safe;
- 19 j. liquid at any time; and/or
- 20 k. always liquid at an auction.

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

25 5. Wachovia Securities further fostered the misconception that ARS were cash-like

1 instruments by providing account portfolio summaries to certain of its customers that listed ARS as “cash  
2 equivalents.” In fact, ARS were not “cash equivalents” and full liquidity was only available at an auction  
3 if the auction was successful.

4 6. Although Wachovia Securities sold ARS as conservative, safe, and liquid investments to  
5 its investors until February 2008, Wachovia had information that several auctions had failed in August  
6 2007 and early 2008, before the mass failures in February 2008. During this same period of time,  
7 Wachovia failed to inform its customers purchasing ARS after such auctions began to fail that certain  
8 auctions would have failed had Wachovia or another broker-dealer not entered support bids in those  
9 auctions.

10 7. Although Wachovia knew, or should have known, of the inherent risks and the recent  
11 volatility of the ARS market, only minimal information regarding the ARS market was provided to  
12 Wachovia Securities’ retail ARS customers.

13 8. Wachovia and its registered securities agents were, or should have been, aware that the  
14 ARS market was suffering from increasing failures and liquidity issues, and they should have disclosed  
15 those facts to investors who were purchasing auction rates after such issues arose. Based on these facts,  
16 Wachovia engaged in dishonest and unethical practices in the marketing and sale of ARS. Pursuant to §  
17 7-11-212 (8) of the RIUSA, these practices constitute grounds to revoke Wachovia’s registration. These  
18 practices included, among other things, the following:

19 a. Wachovia told some ARS investors purchasing ARS after the market disruptions  
20 began to occur that:

- 21 i. ARS were cash equivalents;
- 22 ii. ARS were completely safe; and/or
- 23 iii. ARS were liquid at any time.

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

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

2 9. The interest rates on ARS are reset periodically through the auction process. In the event  
3 that there is insufficient demand for a particular issue and an auction fails, the interest rate resets to a  
4 “maximum rate” or “failure rate” as defined in the offering documents for that particular issue. Typically,  
5 this maximum rate would be higher than prevailing market rates in order to compensate ARS holders who  
6 are unable to sell their positions and offer an “incentive” to induce buyers to return to the market although  
7 in some cases, particularly for student loan auction rates, the maximum rate might be lower than the  
8 prevailing rate.

9 10. In December 2007, with the encouragement of its underwriters, the Missouri Higher  
10 Education Loan Authority (“MOHELA”) sought and secured approval to waive its maximum rate for  
11 certain issues of ARS. Absent such waivers, the ARS issued by MOHELA would not have been allowed  
12 to reset at interest rates high enough to clear auctions.

13 11. As a result of the maximum rate waivers, certain MOHELA ARS issues reset to a higher  
14 rate for a brief period after the waiver was implemented. However, due to a feature of those issues that  
15 caps the average interest rate over any given one-year period, the interest rates reset to 0% after the  
16 expiration of the waiver period. The ramifications of this maximum rate waiver were not explained to  
17 Wachovia Securities’ customers who subsequently purchased MOHELA ARS.

18 12. Wachovia Securities engaged in dishonest and unethical practices by not adequately  
19 explaining to individual investors who purchased ARS with maximum rate waivers, among other things,  
20 the following:

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

23 b. that the high interest rate allowed by the waiver would expire at the end of the  
24 waiver period unless extended by the issuer.

25 Pursuant to § 7-11-212 (8) of the RIUSA, these practices constitute grounds to revoke Wachovia

1 Securities' registration.

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

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

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

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

19 16. Wachovia Securities failed to reasonably supervise its employees, which is grounds for  
20 revocation of its registration under § 7-11-212 (11) of the RIUSA:

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

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

25 ii. failing to provide pertinent information concerning the complexity of the  
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1 ARS product; and

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

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

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

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

10 **II.**

11 **CONCLUSIONS OF LAW**

12 17. The Department has jurisdiction over this matter pursuant to the RIUSA

13 18. The Department finds Wachovia Securities engaged in dishonest or unethical practices in  
14 the securities business and failed to supervise its employee, and that this conduct constitutes grounds to  
15 revoke Wachovia Securities' registration under §§ 7-11-212 (8) and (11) of RIUSA

16 19. The Department finds this order and the following relief appropriate, in the public  
17 interest, and consistent with the purposes intended by the RIUSA.

18 **III.**

19 **ORDER**

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

22 **IT IS HEREBY ORDERED:**

23 1. This Order concludes the investigation by the Department and any other action that the  
24 Department could commence under applicable Rhode Island law on behalf of Rhode Island investors as it  
25 relates to Wachovia, and its marketing and sale of auction rate securities to investors.





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- i. Accounts with the following owners:
  - 1. non-profit charitable organizations; and
  - 2. religious corporations.

ii. Accounts with the following owners and with account values or household values up to \$10 million:

- 1. trusts;
- 2. corporate trusts;
- 3. corporations;
- 4. employee pension plans/ERISA and Taft Hartley Act plans;
- 5. educational institutions;
- 6. incorporated non-profit organizations;
- 7. limited liability companies;
- 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.

7. 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.

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

3           9.       As part of Wachovia's general obligation to notify all investors in the Relevant Class  
4 pursuant to paragraph 8, above, Wachovia shall mail the Required Notification, defined below, by  
5 November 10, 2008, to all investors in the Relevant Class that held ARS positions in a Wachovia account  
6 as of August 31, 2008. For purposes of the Order, "Required Notification" shall mean a notice that  
7 includes general statements and information specific to each investor, including:

- 8           a.       a general notification of all provisions of this Order;
- 9           b.       the specific security purchased;
- 10          c.       the quantity purchased;
- 11          d.       the par value of the holding;
- 12          e.       a prominent statement disclosing that at this time the Relevant Class member's ARS  
13 holdings may not be liquid and that there is a possibility that this offer may be the only opportunity  
14 for the investor to liquidate the ARS holdings; and
- 15          f.       a statement that the offer to repurchase the ARS holdings, and other relief specified  
16 in the Order, is being made pursuant to a settlement with state securities regulators.

17          10.       By November 10, 2008, Wachovia shall mail the Required Notification to all investors in  
18 the Relevant Class that transferred ARS positions to a firm other than Wachovia, prior to the date of this  
19 Order, if the initial purchase of the Eligible ARS was on or after January 1, 2003 unless the ARS has been  
20 redeemed in full by the issuer.

21          11.       Wachovia shall demonstrate that all investors in the Relevant Class received the Required  
22 Notification if Wachovia demonstrates that: 1) Wachovia mailed the Required Notification via First  
23 Class mail at the customer's last known address and did not receive a return notice, or 2) Wachovia  
24 repurchased ARS from the investor.

25          12.       Wachovia Securities shall establish and maintain a dedicated telephone assistance line,  
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1 with appropriate staff, to respond to questions from investors concerning the terms of this Order and  
2 Wachovia's no net cost loan (nonrecourse, no release) program. Wachovia Securities shall maintain this  
3 dedicated telephone assistance line through June 30, 2009.

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

7 a. the arbitrations will be conducted by a public arbitrator (as defined by section  
8 12100(u) of the NASD Code of Arbitration Procedures for Customer Disputes, eff. April 16,  
9 2007), under the auspices of FINRA;

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

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

13 d. any Relevant Class member who chooses to pursue such a claim shall bear the  
14 burden of proving that they suffered consequential damages and that such damages were caused  
15 by investors' inability to access funds consisting of investors' ARS purchases through Wachovia;  
16 and

17 e. Wachovia shall be able to defend itself against such claims; provided, however,  
18 that Wachovia shall not contest liability related to the sale of ARS; and provided further that  
19 Wachovia shall not be able to use as part of its defense an investor's decision not to borrow  
20 money from Wachovia.

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

25 15. If Wachovia defaults in any of its obligations set forth in this Order, the Department may  
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1 vacate this Order, at its sole discretion, upon 10 days notice to Wachovia and without opportunity for  
2 administrative hearing or may refer this matter for enforcement as provided in § 7-11-602 of the RIUSA.

3 16. This Order is not intended to indicate that Wachovia or any of its affiliates or current or  
4 former employees shall be subject to any disqualifications contained in the federal securities law, the rules  
5 and regulations thereunder, the rules and regulations of self regulatory organizations or various states'  
6 securities laws including any disqualifications from relying upon the registration exemptions or safe  
7 harbor provisions. In addition, this Order is not intended to form the basis for any such disqualifications.

8 17. This Order may not be read to indicate that Wachovia or any of its affiliates or current or  
9 former employees engaged in fraud or violated any federal or state laws, the rules and regulations  
10 thereunder, or the rules and regulations of self regulatory organizations.

11 18. For any person or entity not a party to this Order, this Order does not limit or create any  
12 private rights or remedies against Wachovia including, without limitation, the use of any e-mails or other  
13 documents of Wachovia or of others for the marketing and sale of auction rate securities to investors, limit or  
14 create liability of Wachovia, or limit or create defenses of Wachovia to any claims.

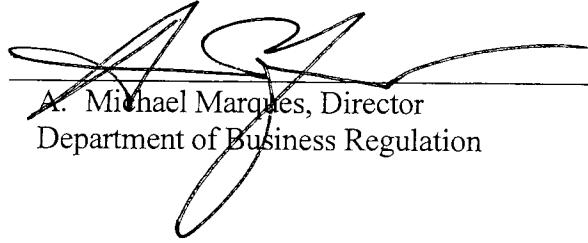
15 19. This Order shall not disqualify Wachovia or any of its affiliates or current or former  
16 employees from any business that they otherwise are qualified or licensed to perform under applicable  
17 state law and this Order is not intended to form the basis for any disqualification.

18 20. Nothing herein shall preclude Rhode Island, its departments, agencies, boards, commissions,  
19 authorities, political subdivisions and corporations, other than the Department and only to the extent set forth  
20 in paragraph 1 above, (collectively, "State Entities") and the officers, agents or employees of State Entities  
21 from asserting any claims, causes of action, or applications for compensatory, nominal and/or punitive  
22 damages, administrative, civil, criminal, or injunctive relief against Wachovia in connection with the  
23 marketing and sale of auction rate securities at Wachovia.

24 21. Wachovia shall pay its own costs and attorneys' fees with respect to this matter.

25 Dated this 28<sup>th</sup> day of April, 2009.

1 BY ORDER OF THE DEPARTMENT OF BUSINESS REGULATION

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3   
4 A. Michael Marques, Director  
5 Department of Business Regulation

6  
7 ORDER NO. 09-110

CONSENT TO ENTRY OF ADMINISTRATIVE ORDER BY WACHOVIA

1  
2 Wachovia hereby acknowledges that it has been served with a copy of this Consent Order, has read  
3 the foregoing Order, is aware of its right to a hearing and appeal in this matter, and has waived the same.

4 Wachovia Securities admits the jurisdiction of the the Department and Wachovia Capital Markets  
5 consents to the jurisdiction of the the Department for purposes of this Order. Neither Wachovia Securities  
6 nor Wachovia Capital Markets admits or denies the Findings of Fact and Conclusions of Law contained in  
7 this Order; and each consents to entry of this Order by the Commissioner as settlement of the issues  
8 contained in this Order.

9 Wachovia states that no promise of any kind or nature whatsoever was made to it to induce it to enter  
10 into this Order and that it has entered into this Order voluntarily.

11 Douglas L. Kelly represents that he/she is Exec. V.P. of Wachovia  
12 Securities, LLC and that, as such, has been authorized by Wachovia Securities, LLC to enter into this Order  
13 for and on behalf of Wachovia Securities, LLC.

14 \_\_\_\_\_ represents that he/she is \_\_\_\_\_ of Wachovia Capital  
15 Markets, LLC and that, as such, has been authorized by Wachovia Capital Markets, LLC to enter into this  
16 Order for and on behalf of Wachovia Capital Markets, LLC.

17 Wachovia agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with  
18 regard to any state, federal or local tax for any administrative monetary penalty that Wachovia shall pay  
19 pursuant to this Order.

20 Dated this 22<sup>nd</sup> day of APRIL, 2009

21  
22 Wachovia Securities, LLC

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24 By: 

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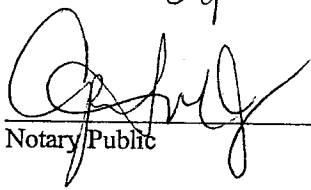
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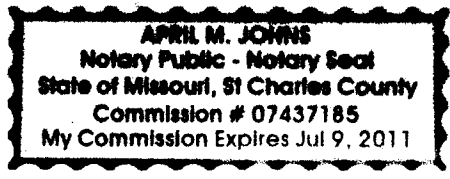
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SUBSCRIBED AND SWORN TO before me this 22<sup>nd</sup> day of April, 2009.

  
\_\_\_\_\_  
Notary Public

My commission expires:

7/9/2011



CONSENT TO ENTRY OF ADMINISTRATIVE ORDER BY WACHOVIA

1  
2 Wachovia hereby acknowledges that it has been served with a copy of this Consent Order, has read  
3 the foregoing Order, is aware of its right to a hearing and appeal in this matter, and has waived the same.

4 Wachovia Securities admits the jurisdiction of the the Department and Wachovia Capital Markets  
5 consents to the jurisdiction of the the Department for purposes of this Order. Neither Wachovia Securities  
6 nor Wachovia Capital Markets admits or denies the Findings of Fact and Conclusions of Law contained in  
7 this Order; and each consents to entry of this Order by the Commissioner as settlement of the issues  
8 contained in this Order.

9 Wachovia states that no promise of any kind or nature whatsoever was made to it to induce it to enter  
10 into this Order and that it has entered into this Order voluntarily.

11 \_\_\_\_\_ represents that he/she is \_\_\_\_\_ of Wachovia  
12 Securities, LLC and that, as such, has been authorized by Wachovia Securities, LLC to enter into this Order  
13 for and on behalf of Wachovia Securities, LLC.

14 VINCENT ALTAMURA represents that he/she is SVP of Wachovia Capital  
15 Markets, LLC and that, as such, has been authorized by Wachovia Capital Markets, LLC to enter into this  
16 Order for and on behalf of Wachovia Capital Markets, LLC.

17 Wachovia agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with  
18 regard to any state, federal or local tax for any administrative monetary penalty that Wachovia shall pay  
19 pursuant to this Order.

20 Dated this 22 day of April.

21  
22 Wachovia Securities, LLC

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24 By: \_\_\_\_\_  
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Title: \_\_\_\_\_

Wachovia Capital Markets, LLC

By: \_\_\_\_\_

Title: SUP

SUBSCRIBED AND SWORN TO before me this 22<sup>nd</sup> day of April, 2009.

Chanise Stokes Collins  
Notary Public

My commission expires:  
June 10, 2011