

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF ILLINOIS  
 EASTERN DIVISION

SECURITIES AND EXCHANGE	)	
COMMISSION,	)	
	)	
Plaintiff,	)	
	)	Civil Case No. 09 CV 743
v.	)	Judge Virginia M. Kendall
	)	Magistrate Judge Geraldine Soat Brown
WACHOVIA SECURITIES, LLC,	)	
	)	
Defendant.	)	

**CONSENT OF DEFENDANT WACHOVIA SECURITIES, LLC**

1. Defendant Wachovia Securities, LLC (“Defendant” or “Wachovia”) waives service of a summons and the complaint in this action, enters a general appearance, and admits the Court’s jurisdiction over it and over the subject matter of this action.

2. Without admitting or denying the allegations of the complaint (except as to personal and subject matter jurisdiction, which Defendant admits), Defendant hereby consents to the entry of the Judgment in the form attached hereto (the “Judgment”) and incorporated by reference herein, which, among other things:

- a. permanently restrains and enjoins Defendant from violations of Section 15(c)(1) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78o(c)(1)]; and
- b. provides that upon motion by the Commission, the Court shall determine whether it is appropriate to order Defendant to pay a civil penalty pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].

3. Defendant agrees that it shall comply with the following undertakings:

I. Key Definitions.

A. Eligible Auction Rate Securities. As used in this Consent, “Eligible ARS” shall mean auction rate securities that have failed at auction since February 13, 2008, and are still owned by an Eligible Customer.

B. Eligible Customers. As used in this Consent, “Eligible Customers” shall mean all customers who purchased ARS from Wachovia into accounts maintained at Wachovia on or before February 13, 2008.

1. “Individual Eligible Customers” shall mean natural persons and the following entities:

a. Accounts with the following owners: not-for-profit charitable organizations; and religious corporations or entities.

b. Accounts with the following owners and with account values and household values up to \$10 million: trusts; corporate trusts; corporations; employee pension plans/ERISA and Taft Hartley Act plans; educational institutions; incorporated not-for-profit organizations; limited liability companies; limited partnerships; non-public companies; partnerships; personal holding companies; unincorporated associations; and government and quasi-government entities.

2. “Other Eligible Customers” shall mean all Eligible Customers who are not Individual Eligible Customers as defined above.

II. Buyback of ARS.

A. Buyback from Individual Eligible Customers. Wachovia, as agent for one or more affiliated companies and not as principal, shall make an offer to buy back Eligible ARS at par, plus accrued interest or dividends, if any, from Individual Eligible Customers. This buyback will commence no later than November 10, 2008, and conclude no later than November 28, 2008.

B. Buyback from Other Eligible Customers. Wachovia, as agent for one or more affiliated companies and not as principal, shall make an offer to buy back Eligible ARS at par, plus accrued interest or dividends, if any, from Other Eligible Customers. This buyback will commence no later than June 10, 2009, and conclude no later than June 30, 2009.

III. Relief for Customers Who Sold Below Par. Wachovia shall make reasonable efforts to identify any Eligible Customers who sold ARS below par between February 13, 2008 and November 10, 2008. No later than November 28, 2008, Defendant shall pay any such identified Eligible Customers the difference between par and the price at which the Eligible Customers sold the ARS. Defendant shall also pay reasonable interest on the difference as soon as practicable after the date of this Consent.

IV. Consequential Damages Claims.

A. Special Arbitration Procedures. Wachovia shall consent to participate, at the Eligible Customer's election, in the special arbitration procedures as briefly described below. Under these procedures, a public arbitrator, under the auspices of the Financial Industry Regulatory Authority ("FINRA"), will be available for the exclusive purpose of arbitrating any Eligible Customer's consequential

damages claim. These arbitrations will be governed by the procedures described briefly below:

1. Arbitrator. Arbitration shall be conducted by a single non-industry arbitrator.
  2. Forum Fees. Wachovia will pay all forum fees associated with the arbitration for Eligible Customers.
  3. Burden of Proof. Eligible Customers shall bear the burden of proving by a preponderance of the evidence the existence and amount of consequential damages suffered as a result of the illiquidity of the Eligible ARS. Although it may defend itself against consequential damage claims, Wachovia shall not argue against liability for the illiquidity of the underlying ARS position or use as part of its defense any decision by the Eligible Customer not to borrow money from Defendant.
  4. Other Damages. Eligible Customers who elect to use the special arbitration procedures provided for in this Consent shall not be eligible for punitive damages, or any other type of damages other than consequential damages.
- B. Other Proceedings/Relief. All customers, including but not limited to Eligible Customers who avail themselves of the relief provided pursuant to this Consent, may pursue any remedies against Wachovia available under the law. However, those customers that elect to utilize the special arbitration procedures set forth above are limited to the remedies available in that process and may not bring or pursue a claim relating to ARS in another forum.

V. Customer Loans. Wachovia shall offer to loan Eligible Customers the full par amount of their ARS, should any such Eligible Customers need liquidity. The interest rates on such loans shall be set so that Eligible Customers will have no negative carry. “Negative carry” shall mean the excess interest costs associated with the loan when compared to interest or dividends paid on average on the Eligible ARS that are the subject of the loan. Such loans will become fully due and payable as soon as the proceeds of the par buybacks are credited to the Eligible Customer’s account or at the time the Eligible Customer declines Wachovia’s buyback offer. If a loan becomes due and payable for any other reason, Wachovia will either provide other financing on the same terms or will buy back the borrower’s ARS at par.

VI. Reimbursement for Loan Expenses. Wachovia shall make reasonable efforts to identify Eligible Customers who took out loans from Wachovia after February 13, 2008, because of liquidity concerns after auction failures. No later than November 28, 2008, Wachovia shall reimburse any such identified Eligible Customers no less than the negative carry. Defendant shall also pay reasonable interest on the amount of reimbursement paid as soon as practicable after the date of this Consent. Wachovia shall communicate to such Eligible Customers the methodology used to determine the reimbursement amount and offer such Eligible Customers the opportunity to review the determinations.

VII. Customer Notice Provisions.

A. Wachovia shall provide notice to Eligible Customers of the terms of this Consent, to the extent that such terms have not been previously provided to Eligible Customers in documents such as Wachovia Securities, LLC’s Offer to

Purchase Eligible Auction Rate Securities at Par and Other Information Relating to Auction Rate Securities, dated October 27, 2008, and Wachovia Securities, LLC's Information Relating to Auction Rate Securities, also dated October 27, 2008.

B. Wachovia shall establish and maintain a dedicated telephone assistance line, with appropriate staff, to respond to questions from investors concerning the terms of this Consent. Wachovia shall maintain this dedicated telephone assistance line through July 31, 2009.

VIII. Reports. Beginning March 31, 2009, and then quarterly thereafter, Defendant shall submit a written report detailing Wachovia's progress with respect to its obligations pursuant to this Consent. The report shall be submitted to Paul Montoya, Esq., U.S. Securities and Exchange Commission, Chicago Regional Office, 175 West Jackson Blvd, Suite 900, Chicago, IL, 60604, or as directed in writing by the SEC Staff. Such reports shall continue until September 30, 2009.

4. An affiliate of Wachovia, Wachovia Capital Markets, LLC ("Wachovia Capital"), voluntarily agrees to comply with the foregoing undertakings for customers who purchased ARS from Wachovia Capital into Wachovia Capital accounts on or before February 13, 2008.

5. Defendant agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any civil penalty amounts that Defendant pay pursuant to the Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors. Defendant further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any

federal, state, or local tax for any penalty amounts that Defendant pays pursuant to the Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors.

6. The Commission reserves the right to move the Court for the imposition of a civil penalty in the event it believes that Wachovia has not satisfied its obligations under this Consent. Any such motion will be made within 90 days after December 31, 2009, unless extended by mutual agreement. In determining whether to seek a penalty, the Commission will take into consideration its traditional criteria in determining whether to assess civil penalties, including the extent to which Wachovia has provided remediation to purchasers of ARS, taken appropriate remedial steps, paid financial penalties to other authorities for the conduct at issue, and cooperated with the Commission and other regulators in their investigations. Upon any such motion of the Commission, the Court shall determine whether it is appropriate to order a civil penalty pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and, if so, the amount(s) of the civil penalty. Defendant further agrees that in connection with the Commission's motion for civil penalties, and at any hearing held on such a motion: (a) Defendant will be precluded from arguing that it did not violate the federal securities laws as alleged in the Complaint; (b) Defendant may not challenge the validity of the Judgment, this Consent, or its related Undertakings; (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil

Procedure. In connection with the Commission's motion for civil penalties, the parties may take discovery, including discovery from appropriate non-parties.

7. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

8. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the Judgment.

9. Defendant enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

10. Defendant agrees that this Consent shall be incorporated into the Judgment with the same force and effect as if fully set forth therein.

11. Defendant will not oppose the enforcement of the Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waive any objection based thereon.

12. Defendant waives service of the Judgment and agrees that entry of the Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions. Defendant further agrees to provide to counsel for the Commission, within thirty days after the Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Judgment.

13. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted against Defendant in this civil proceeding. Defendant acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or



representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that it shall not be permitted to contest the factual allegations of the Complaint in this action.

14. Defendant understands and agrees to comply with the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegation in the complaint or order for proceedings." 17 C.F.R. § 202.5. In compliance with this policy, Defendant agrees: (i) not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; and (ii) that upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint. If Defendant breaches this agreement, the Commission may petition the Court to vacate the Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take

legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

15. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendant to defend against this action. For these purposes, Defendant agrees that Defendant is not the prevailing party in this action since the parties have reached a good faith settlement.

16. In connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, Defendant: (i) agrees to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice; (ii) will accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iii) appoints Defendant's undersigned attorney as agent to receive service of such notices and subpoenas; (iv) with respect to such notices and subpoenas, waives the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the Commission reimburses Defendant's travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v) consents to personal jurisdiction over Defendant in any United States District Court for purposes of enforcing any such subpoena.

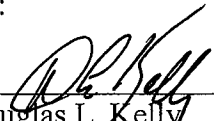
17. Defendant agrees that the Commission may present the Judgment to the

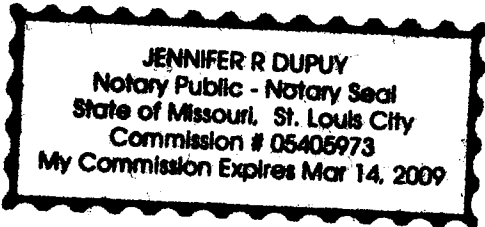
Court for signature and entry without further notice.

18. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Judgment.

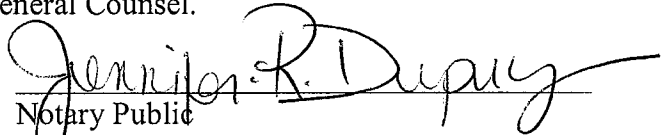
Wachovia Securities, LLC

By:


  
\_\_\_\_\_  
Douglas L. Kelly  
General Counsel  
One North Jefferson  
St. Louis, MO. 63103



On January 27, 2009, Douglas L. Kelly, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent with full authority to do so on behalf of Wachovia Securities LLC as its General Counsel.

  
\_\_\_\_\_  
Notary Public  
Commission expires:

Approved as to form:

  
Lee Richards III  
Richards Kibbe & Orbe LLP  
One World Financial Center  
New York, NY 10281-1003  
Attorney for Wachovia Securities, LLC