

1 providing documentary evidence and other materials, and providing regulators with access to
2 information relating to the investigations; and

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

5 WHEREAS, Wachovia agrees to, among other things, reimburse certain purchasers of
6 auction rate securities, and to make certain payments at the direction of DFCS; and

7 WHEREAS, Wachovia elects to permanently waive any right to a hearing and appeal
8 under ORS 59.295, ORS 59.305, and ORS Chapter 183, with respect to this Consent Order (the
9 "Order");

10 NOW, THEREFORE, the Director of the Oregon Department of Consumer and Business
11 Services (hereinafter, "the Director"), as administrator of the Oregon Securities Law, ORS
12 Chapter 59 and OAR Chapter 441, hereby enters this Order.

13 **I.**

14 **FINDINGS OF FACT**

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

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

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1 Beginning in February 2008, the ARS market experienced widespread failed auctions.

2 3. In early 2008, Oregon investors held a total of more than \$85 million in ARS
3 funds in their accounts at Wachovia Securities. In early March 2008, Wachovia Securities'
4 investors, unable to access their ARS funds, began to submit complaints to DFCS. Since early
5 March, 2008, DFCS has received at least four investor complaints concerning the sale of ARS by
6 Wachovia Securities. Those complaints covered ARS holdings totaling nearly \$2 million
7 dollars. All four Oregon investors who filed complaints with DFCS have confirmed they
8 received their money back from Wachovia after filing their complaints

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

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

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

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





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

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

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

14 8. Wachovia and its registered securities agents were, or should have been, aware
15 that the ARS market was suffering from increasing failures and liquidity issues, and they should
16 have disclosed those facts to investors who were purchasing auction rates after such issues arose.
17 Based on these facts, Wachovia engaged in dishonest and unethical practices in the marketing
18 and sale of ARS. Pursuant to ORS 59.205(2), these practices constitute grounds to revoke
19 Wachovia’s broker-dealer license. These practices included, among other things, the following:

- 20 a. Wachovia told some ARS investors purchasing ARS after the market
21 disruptions began to occur that:
 - 22 i. ARS were cash equivalents;
 - 23 ii. ARS were completely safe; and/or
 - 24 iii. ARS were liquid at any time.
- 25 b. Wachovia was or should have been aware that the market for ARS was
26 becoming 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
3 the event that there is insufficient demand for a particular issue and an auction fails, the interest
4 rate resets to a “maximum rate” or “failure rate” as defined in the offering documents for that
5 particular issue. Typically, this maximum rate would be higher than prevailing market rates in
6 order to compensate ARS holders who are unable to sell their positions and offer an “incentive”
7 to induce buyers to return to the market although in some cases, particularly for student loan
8 auction rates, the maximum rate might be lower than the prevailing rate.

9 10. In December 2007, with the encouragement of its underwriters, the Missouri
10 Higher Education Loan Authority (“MOHELA”) sought and secured approval to waive its
11 maximum rate for certain issues of ARS. Absent such waivers, the ARS issued by MOHELA
12 would not have been allowed 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
14 higher rate for a brief period after the waiver was implemented. However, due to a feature of
15 those issues that caps the average interest rate over any given one-year period, the interest rates
16 reset to 0% after the expiration of the waiver period. The ramifications of this maximum rate
17 waiver were not explained to Wachovia Securities’ customers who subsequently purchased
18 MOHELA ARS.

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

- 22 a. that the ARS interest rates could not be reset at a level that would prevent
- 23 a failed auction absent the maximum rate waiver; and
- 24 b. that the high interest rate allowed by the waiver would expire at the end of
- 25 the waiver period unless extended by the issuer.

26 Pursuant to ORS 59.205(2), these practices constitute grounds to revoke Wachovia Securities’

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1 broker-dealer license.

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

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

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

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

19 16. Wachovia Securities failed to reasonably supervise its employees, which is
20 grounds for revocation of its broker-dealer license under ORS 59.205(13):

- 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
26 of the ARS product; and

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

3 3. Wachovia shall CEASE AND DESIST from violating the Oregon Securities Law
4 and will comply with the Oregon Securities Law.

5 4. Within ten days after the entry of this Order, Wachovia shall pay the sum of
6 \$397,234.57 (three hundred ninety-seven thousand, two hundred thirty-four dollars and fifty-
7 seven cents), to the Oregon Department of Consumer and Business Services. That sum includes
8 a civil penalty of \$377,372.84 (three hundred seventy-seven thousand, three hundred seventy-
9 two dollars and eighty-four cents) for the General Fund of the Oregon State Treasury, pursuant to
10 ORS 59.995(1), and \$19,861.73 (nineteen thousand, eight hundred sixty-one dollars and seventy-
11 three cents) for the Oregon Department of Consumer and Business Services Investor Education
12 Program Fund.

13 5. In the event another state securities regulator determines not to accept Wachovia's
14 state settlement offer, the total amount of the Oregon payment shall not be affected, and shall
15 remain at \$397,234.57 (three hundred ninety-seven thousand, two hundred thirty-four dollars and
16 fifty-seven cents).

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

24 a. Wachovia Securities and Wachovia Capital Markets, as agents for one or
25 more affiliated companies and not as principal, certify they have made an offer to buy the
26 Eligible ARS from Individuals Investors, as defined below, who are in the Relevant

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1 Class. Wachovia Securities and Wachovia Capital Markets certify that they commenced
2 this buy back no later than November 10, 2008 and concluded no later than November
3 28, 2008. For purposes of this Order, Individual Investors includes natural persons,
4 individual retirement accounts and the following entities or accounts:

5 i. Accounts with the following owners:

- 6 1. non-profit charitable organizations; and
- 7 2. religious corporations.

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

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

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

1 2009.

2 7. Wachovia certifies that as of November 28, 2008, Wachovia has paid any investor
3 in the Relevant Class who sold ARS below par between February 13, 2008 and August 15, 2008
4 and whom Wachovia could reasonably identify, the difference between par and the price at
5 which the investor sold the ARS.

6 8. Wachovia certifies that it has notified all investors in the Relevant Class of the
7 provisions of this Order as provided in paragraphs 9 and 10.

8 9. As part of Wachovia's general obligation to notify all investors in the Relevant
9 Class pursuant to paragraph 8, above, Wachovia certifies that, as of November 10, 2008 it has
10 mailed the Required Notification, defined below, to all investors in the Relevant Class that held
11 ARS positions in a Wachovia account as of August 31, 2008. For purposes of the Order,
12 "Required Notification" means a notice that includes general statements and information specific
13 to each investor, including:

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

24 10. Wachovia certifies that as of November 10, 2008, Wachovia has mailed the
25 Required Notification to all investors in the Relevant Class that transferred ARS positions to a
26 firm other than Wachovia, prior to the date of this Order, if the initial purchase of the Eligible



1 ARS was on or after January 1, 2003 unless the ARS has been redeemed in full by the issuer.

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

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

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

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

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

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

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

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





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

6 15. If Wachovia defaults in any of its obligations set forth in this Order, the Director
7 may vacate this Order, at her sole discretion, upon 10 days notice to Wachovia and without
8 opportunity for administrative hearing or may refer this matter for enforcement as provided in
9 ORS 59.205(3), ORS 59.255(1), and ORS 59.995(1).

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

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

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

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

1 disqualification.

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

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

9
10 Dated this 29th day of June, 2009.

11 CORY STREISINGER, Director
12 Department of Consumer and Business Services

13
14 

15 David C. Tatman, Administrator
16 Division of Finance and Corporate Securities

17 **CONSENT TO ENTRY OF ORDER BY WACHOVIA**

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

21 Wachovia Securities admits the jurisdiction of the Director and Wachovia Capital Markets
22 consents to the jurisdiction of the Director for purposes of this Order. Neither Wachovia Securities
23 nor Wachovia Capital Markets admits nor denies the Findings of Fact and Conclusions of Law
24 contained in this Order; and each consents to entry of this Order by the Director as settlement of the
25 issues contained in this Order.

26 Wachovia states that no promise of any kind or nature whatsoever was made to it to induce



1 it to enter into this Order and that it has entered into this Order voluntarily.

2 Doug Kelly represents that he is Executive VP of Wachovia Securities, LLC and that, as
3 such, has been authorized by Wachovia Securities, LLC to enter into this Order for and on behalf of
4 Wachovia Securities, LLC.

5 Barbara Wright represents that she is Senior VP of Wachovia Capital Markets, LLC and
6 that, as such, has been authorized by Wachovia Capital Markets, LLC to enter into this Order for
7 and on behalf of Wachovia Capital Markets, LLC.

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

11 Dated this 18th day of June, 2009.

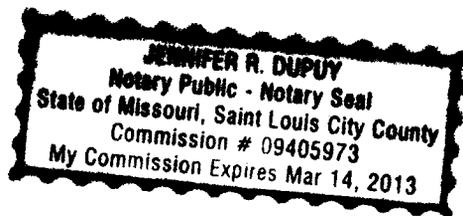
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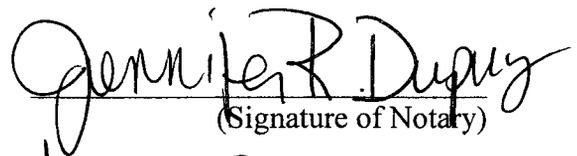
13
14 By: 
15 Doug Kelly

16 Title: Executive VP

17 SUBSCRIBED AND SWORN TO before me this 18 day of June, 2009.

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350 Winter Street NE, Suite 410
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(Signature of Notary)
Jennifer R Dupuy
(Printed Name of Notary Public)

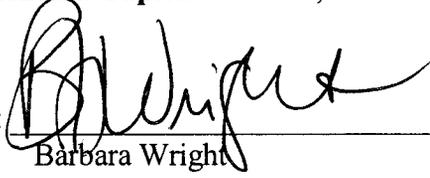
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My commission expires: 3/14/2013



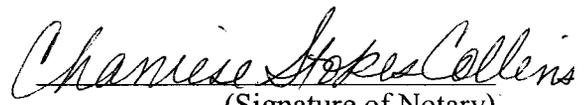
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Wachovia Capital Markets, LLC

By: 
Barbara Wright

Title: Senior VP

SUBSCRIBED AND SWORN TO before me this 17th day of June, 2009.


(Signature of Notary)

Chaniese Stokes Collins
(Printed Name of Notary Public)

Notary Public for the State of: North Carolina

My commission expires: June 10, 2011

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