

ATTORNEY GENERAL OF THE STATE OF NEW YORK
INVESTOR PROTECTION BUREAU

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IN THE MATTER OF

WACHOVIA SECURITIES, LLC and
WACHOVIA CAPITAL MARKETS, LLC.

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:
: **Assurance No. 08-179**
:
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**ASSURANCE OF DISCONTINUANCE
PURSUANT TO EXECUTIVE LAW § 63(15)**

On April 14, 2008, the Office of the Attorney General of the State of New York (the "Attorney General"), commenced an investigation, pursuant to Article 23-A of the General Business Law (the "Martin Act"), of Wachovia Securities, LLC ("Wachovia Securities") and Wachovia Capital Markets, LLC ("Wachovia Capital Markets", collectively with Wachovia Securities, "Wachovia"), concerning Wachovia's marketing, sale and distribution of auction rate securities (the "Investigation"). This Assurance of Discontinuance ("Assurance") contains the findings of the Attorney General's Investigation and the relief agreed to by the Attorney General and Wachovia.

FINDINGS

The Attorney General finds as follows:

I. Relevant Entities

1. Wachovia Securities is a Delaware limited liability company and a wholly-owned subsidiary of Wachovia Securities Financial Holdings, LLC, which during the relevant time period was owned indirectly by Wachovia Corp. It is licensed to do business in the State of New York and its principal headquarters are located in St. Louis, Missouri. Wachovia Securities is a registered broker-dealer offering brokerage,

financial planning and investment products and services to investors across the United States.

2. Wachovia Capital Markets is a Delaware corporation and a wholly-owned subsidiary of Wachovia Corp. It is licensed to do business in the State of New York and its principal executive offices are located in Charlotte, North Carolina. Wachovia Capital Markets is a registered broker-dealer offering brokerage, financial planning and investment products and services to investors across the United States.

II. Background on Auction Rate Securities

3. Auction rate securities are long-term bonds issued by municipalities, corporations and student loan companies, or perpetual equity instruments issued by closed end mutual funds, with variable interest rates that reset through a bidding process known as a Dutch auction.

4. At a Dutch auction, bidders generally state the number of auction rate securities they wish to purchase and the minimum interest rate they are willing to accept. Bids are ranked, from lowest to highest, according to the minimum interest rate each bidder is willing to accept. The lowest interest rate required to sell all of the auction rate securities available at auction, known as the “clearing rate,” becomes the rate paid to all holders of that particular security until the next auction. The process is then repeated, typically every 7, 28 or 35 days.

5. When there are not enough orders to purchase all of the auction rate securities being sold, a “failed” auction occurs. In the event of a failed auction, investors cannot sell their auction rate securities.

6. As an underwriter of auction rate securities, Wachovia acted as the managing broker-dealer for certain issues of auction rate securities. When acting as sole manager, Wachovia was the only firm that could submit bids into the auction on behalf of its clients and/or other broker-dealers who wanted to buy and/or sell any auction rate securities. When acting as lead manager, Wachovia was the primary firm that could submit bids into the auction, while other broker-dealers were able to submit orders on behalf of their clients as well. Wachovia received revenue in connection with auction rate securities, including an underwriting fee representing a percentage of total issuance and a fee for managing the auctions.

III. Wachovia Made Misrepresentations in Connection With the Sale of Auction Rate Securities

7. Wachovia represented to its customers that auction rate securities were “money market alternatives” and “liquid investments.” It did so in marketing materials that compared auction rate securities to other money market instruments and through its sales force, which represented to investors that auction rate securities were highly liquid, safe, cash equivalent investments.

8. These representations were misleading. Auction rate securities were in fact different from cash and money market instruments. As discussed above, the liquidity of an auction rate security relied on the successful operation of the Dutch auction process. In the event of a failed auction, investors can not sell their auction rate securities and are stuck holding long-term investments, not cash equivalent securities. As discussed below, starting in the Fall of 2007, the auction rate securities market faced dislocation and an increased risk of failure.

9. Since the inception of the auction rate securities market, Wachovia submitted support bids, purchase orders for the entirety of an auction rate security issue for which it acted as the sole or lead manager. Support bids were Wachovia proprietary orders that would be filled, in whole or in part, if there was otherwise insufficient demand in an auction. When Wachovia purchased auction rate securities through support bids, auction rate securities were then owned by Wachovia and the holdings were recorded on Wachovia's balance sheet. For risk management purposes, Wachovia imposed limits on the amounts of auction rate securities it could hold in inventory.

10. Because investors could not ascertain how much of an auction was filled through Wachovia's proprietary trades, investors could not determine if auctions were clearing because of normal marketplace demand, or because Wachovia was propping up auctions through support bids. Generally, investors were also not aware that the auction rate securities market was dependent upon Wachovia's use of support bids for its operation. While Wachovia could track its own inventory as a measure of the supply and demand for auction rate securities, ordinary investors had no comparable ability to assess the operation of the market. There was no way for investors to monitor supply and demand in the market or to assess when broker-dealers may decide to stop supporting the market, which could cause its collapse.

IV. By the Fall of 2007, The Auction Rate Securities Market Faced Dislocation

11. In August 2007, the credit crisis and other deteriorating market conditions strained the auction rate securities market. Some institutional investors withdrew from the market, decreasing demand for auction rate securities. The resulting market dislocation should have been evident to Wachovia.

12. From the Fall of 2007 through February of 2008, demand for auction rate securities continued to erode. Wachovia knew or should have known of the increasing strains on the auction rate securities market, but nonetheless did not adequately disclose these increasing risks of owning or purchasing auction rate securities to its customers.

13. In February 2008, Wachovia and other firms stopped supporting the auctions. Without the benefit of support bids, the auction rate securities market collapsed, leaving investors who had been led to believe that these securities were “money market alternatives” and “liquid investments,” appropriate for managing short-term cash needs, holding long-term or perpetual securities that could not be sold at par value.

V. Violations

14. The foregoing acts and practices of Wachovia violated the Martin Act, Article 23-A of the General Business Law.

15. The foregoing acts and practices of Wachovia violated § 349 of the General Business Law.

16. The foregoing acts and practices of Wachovia violated § 63(12) of the Executive Law.

AGREEMENT

WHEREAS, Wachovia neither admits nor denies the Attorney General’s Findings set forth above;

WHEREAS, the Attorney General is willing to accept the terms of the Assurance pursuant to New York Executive Law § 63(15), and to discontinue, as described in paragraph 53 below, its Investigation of Wachovia;

WHEREAS, the parties each believe that the obligations imposed by this Assurance are prudent and appropriate;

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the parties, that:

I. Relief for Auction Rate Security Investors

A. Buybacks from Auction Rate Securities Investors

17. Wachovia will provide liquidity to Eligible Investors by buying back Eligible Auction Rate Securities that have failed at auction at least once between August 15, 2008, and the date of this Assurance, at par, in the manner described below.

1. Definitions and Buyback Offer

18. "Eligible Auction Rate Securities," for the purposes of this Assurance, shall mean auction rate securities purchased on or before February 13, 2008, into accounts maintained, at the time of purchase, at Wachovia.

19. "Eligible Investors," for the purposes of this Assurance, shall mean:

- i. Natural persons (including their IRA accounts, testamentary trust and estate accounts not managed by a bank or trust company, custodian UGMA and UTMA accounts, and guardianship accounts) who purchased Eligible Auction Rate Securities;
- ii. Charities and religious corporations with Internal Revenue Code Section 501(c)(3) status that purchased Eligible Auction Rate Securities; and
- iii. All other investors who purchased Eligible Auction Rate Securities as of February 13, 2008. Notwithstanding any other provision,

“Eligible Investors” does not include broker-dealers or banks acting as conduits for their customers.

20. Wachovia shall offer to buyback Eligible Auction Rate Securities in two tranches (“Buyback Offer”):

- i. Tranche One Offer. No later than November 10, 2008, Wachovia shall have offered to buy back at par (plus accrued and unpaid dividends or interest, if any), Eligible Auction Rate Securities for which auctions have failed at least once from August 15, 2008 to the date of this Assurance, from All Eligible Investors defined in paragraph 20(i) and (ii), and those Eligible Investors defined in paragraph 20(iii) that had less than \$10 million dollars in household value at Wachovia as of February 13, 2008, or if the customer was not a customer of Wachovia as of February 13, 2008, as of the date that the customer terminated its customer relationship with Wachovia.
- ii. Tranche Two Offer. No later than June 10, 2009, Wachovia shall offer to buyback at par (plus accrued and unpaid dividends or interest, if any), Eligible Auction Rate Securities for which auctions have failed at least once from August 15, 2008 to the date of this Assurance from all Eligible Investors who did not receive a Tranche One Offer pursuant to paragraph 20(i) above.

21. Wachovia shall have kept the Tranche One Buyback Offer open until November 24, 2008 (“Tranche One Offer Period”). Wachovia shall keep the Tranche

Two Buyback Offer open until June 25, 2009 (“Tranche Two Offer Period”). Wachovia may extend either Offer Period beyond these dates.

2. Notification and Buyback Procedures

22. Wachovia shall have undertaken its best efforts to identify and provide notice to Eligible Investors receiving a Tranche One Offer of the relevant terms of this Assurance by November 10, 2008. Wachovia shall undertake its best efforts to identify and provide notice to Eligible Investors receiving a Tranche Two Offer of the relevant terms of this Assurance by June 10, 2009. Wachovia shall undertake its best efforts to identify and provide notice of the relevant terms of this Assurance to such Eligible Investors not previously identified.

23. Eligible Investors may accept the Buyback Offer by notifying Wachovia at any time before midnight, Eastern Time, on the last day of the relevant Offer Period, or such later date and time as Wachovia may extend the Offer Period. The buyback will be conducted as follows:

- i. For Eligible Investors that received a Tranche One Offer and who accepted the Buyback Offer on or before November 24, 2008, Wachovia shall have purchased Eligible Auction Rate Securities on or before November 28, 2008; or
- ii. For Eligible Investors that receive a Tranche Two Offer and who accept the Buyback Offer on or before June 25, 2009, Wachovia shall purchase Eligible Auction Rate Securities on or before June 30, 2009.

24. No later than December 31, 2010, any Eligible Investor who for good cause (including but not limited to incapacity or failure to receive the notice provided for

in paragraph 22) did not accept the Buyback Offer pursuant to paragraph 23 above, shall be entitled to sell their Eligible Auction Rate Securities, at par, to Wachovia for (30) days after establishing such good cause, and Wachovia shall purchase such Eligible Investor's Eligible Auction Rate Securities promptly.

3. Customer Assistance

25. No later than November 10, 2008, Wachovia shall have establish: a) a dedicated toll-free telephone assistance line, with appropriate staffing, to provide information and to respond to questions concerning the terms of this Assurance; and b) a public Internet page on its Wachovia Securities' web site(s), with a prominent link to that page appearing on Wachovia Securities' relevant homepage(s), to provide information concerning the terms of this Assurance and, via an e-mail address or other reasonable means, to respond to questions concerning the terms of this Assurance. Wachovia shall maintain the telephone assistance line and Internet page through June 25, 2009.

B. Relief for Eligible Investors Who Sold Below Par

26. By November 24, 2008, Wachovia shall have undertaken its best efforts to identify any Eligible Investor who sold Eligible Auction Rate Securities below par between February 13, 2008 and November 28, 2008 and paid them the difference between par and the price at which the investor sold the Eligible Auction Rate Securities. Wachovia will undertake its best efforts to identify and pay, as soon as reasonably possible, any Eligible Investors identified thereafter who sold Eligible Auction Rate Securities below par between February 13, 2008 and November 28, 2008.

C. Reimbursement for Related Loan Expenses

27. Wachovia shall make best efforts to identify Eligible Investors who took out loans from Wachovia, between February 13, 2008 and the date of this Assurance, that were secured by Eligible Auction Rate Securities that were not successfully auctioning at the time the loan was taken out from Wachovia, and paid interest associated with the auction rate securities based portion of those loans in excess of the total interest and dividends received on the auction rate securities during the duration of the loan. Wachovia shall reimburse such customers for the excess expense, plus reasonable interest thereon. Such reimbursement shall occur no later than March 31, 2009.

D. Consequential Damages Arbitration Process

28. Wachovia shall consent to participate in a special arbitration (“Arbitration”) for the exclusive purpose of arbitrating any Eligible Investor’s consequential damages claim arising from their inability to sell Eligible Auction Rate Securities. Wachovia shall have notified Eligible Investors of the terms of the Arbitration process through the notice described in paragraph 22 above.

29. The Arbitration shall be conducted by a single public arbitrator (as defined by section 12100(u) of the NASD Code of Arbitration Procedures for Customer Disputes, eff. April 16, 2007), under the auspices of FINRA. Wachovia will pay all applicable forum and filing fees.

30. Any Eligible Investors who choose to pursue such claims in the Arbitration shall bear the burden of proving that they suffered consequential damages and that such damages were caused by their inability to access funds invested in Eligible

Auction Rate Securities. In the Arbitration, Wachovia shall be able to defend itself against such claims; provided, however, that Wachovia shall not contest liability for the illiquidity of the underlying auction rate securities position or use as part of its defense any decision by an Eligible Investor not to borrow money from Wachovia.

31. Eligible Investors who elect to use the special arbitration process provided for herein shall not be eligible for punitive damages, or for any other type of damages other than consequential damages.

32. All customers, including but not limited to Eligible Investors who avail themselves of the relief provided pursuant to this Assurance, may pursue any remedies against Wachovia available under the law. However, Eligible Investors that elect to utilize the special arbitration process set forth above are limited to the remedies available in that process and may not bring or pursue a claim relating to Eligible Auction Rate Securities in another forum.

E. Municipal Issuers

33. No later than five business days from the date of this Assurance, Wachovia shall refund to municipal issuers underwriting fees the issuers paid to Wachovia for the refinancing or conversion of their auction rate securities that occurred after February 13, 2008, where Wachovia acted as underwriter for the primary offering of the auction rate securities between August 1, 2007 and February 13, 2008.

F. Penalty and Remedial Procedures

34. Wachovia shall pay a total civil penalty of FIFTY MILLION DOLLARS (\$50,000,000), of which THREE MILLION EIGHT HUNDRED FIFTEEN THOUSAND EIGHT HUNDRED FIFTY TWO DOLLARS AND FIFTY THREE

CENTS (\$3,815,852.53), shall be paid to the State of New York, no later than March 31, 2009, and the remainder to those states and territories that enter administrative or civil consent orders approving the terms of the NASAA settlement, to address all underlying conduct relating to Wachovia's marketing and sale of auction rate securities. The payment to the State of New York shall be in the form of a certified or bank check made out to "State of New York" and mailed to: Office of the Attorney General of the State of New York, 120 Broadway, 23rd Floor, New York, New York, 10271, Attn: David A. Markowitz, Chief, Investor Protection Bureau.

35. Wachovia agrees that it shall not, collectively or individually, seek or accept, directly or indirectly, reimbursement or indemnification from unaffiliated third parties, including, but not limited to, payment made pursuant to any insurance policy, with regard to any or all of the amounts payable pursuant to paragraph 34 above.

G. Other Relief

36. Wachovia admits the jurisdiction of the Attorney General. Wachovia will cease and desist from engaging in any acts in violation of the Martin Act, General Business Law § 349 and/or Executive Law § 63(12) and will comply with the Martin Act, General Business Law § 349 and Executive Law § 63(12).

II. Other Provisions

37. The Attorney General retains the right under Executive Law § 63(15) to compel compliance with this Assurance. Evidence of a violation of this Assurance proven in a court of competent jurisdiction shall constitute prima facie proof of a violation of the Martin Act, General Business Law §349 and/or Executive Law §63(12)

in any civil action or proceeding hereafter commenced by the Attorney General against Wachovia.

38. Should the Attorney General prove in a court of competent jurisdiction that a material breach of this Assurance by Wachovia has occurred, Wachovia shall pay to the Attorney General the cost, if any, of such determination and of enforcing this Assurance, including without limitation legal fees, expenses and court costs.

39. If Wachovia defaults on any obligation under this Assurance, the Attorney General may terminate this Assurance, at his sole discretion, upon 10 days written notice to Wachovia. Wachovia agrees that any statute of limitations or other time related defenses applicable to the subject of the Assurance and any claims arising from or relating thereto are tolled from and after the date of this Assurance. In the event of such termination, Wachovia expressly agrees and acknowledges that this Assurance shall in no way bar or otherwise preclude the Attorney General from commencing, conducting or prosecuting any investigation, action or proceeding, however denominated, related to the Assurance, against Wachovia, or from using in any way any statements, documents or other materials produced or provided by Wachovia prior to or after the date of this Assurance, including, without limitation, such statements, documents or other materials, if any, provided for purposes of settlement negotiations, except as may otherwise be provided in a written agreement with the Attorney General.

40. Except in an action by the Attorney General to enforce the obligations of Wachovia in this Assurance or in the event of termination of this Assurance by the Attorney General, neither this Assurance nor any acts performed or documents executed in furtherance of this Assurance: (a) may be deemed or used as an admission of, or

evidence of, the validity of any alleged wrongdoing, liability or lack of wrongdoing or liability; or (b) may be deemed or used as an admission of or evidence of any such alleged fault or omission of Wachovia in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. This Assurance shall not confer any rights upon persons or entities who are not a party to this Assurance.

41. Wachovia shall cooperate fully and promptly with the Attorney General and shall use its best efforts to ensure that all the current and former officers, directors, trustees, agents, members, partners and employees of Wachovia (and of any of Wachovia's parent companies, subsidiaries or affiliates) cooperate fully and promptly with the Attorney General in any pending or subsequently initiated investigation, litigation or other proceeding relating to auction rate securities and/or the subject matter of the Assurance (except that such cooperation shall not extend to any investigation or litigation concerning Wells Fargo & Company's marketing or sale of auction rate securities). Such cooperation shall include, without limitation, on a best efforts basis:

- (a) production, voluntarily and without service of subpoena, upon the request of the Attorney General, of all documents or other tangible evidence requested by the Attorney General and any compilations or summaries of information or data that the Attorney General requests that Wachovia (or the Wachovia's parent companies, subsidiaries or affiliates) prepare, except to the extent such production would require the disclosure of information protected by the attorney-client and/or work product privileges;
- (b) without the necessity of a subpoena, having the current (and making all reasonable efforts to cause the former) officers, directors, trustees, agents, members, partners and employees of Wachovia (and of any of the Wachovia's parent companies, subsidiaries or affiliates) attend any Proceedings (as hereinafter defined) in New York State or elsewhere at which the presence of any such persons is requested by the Attorney General and having such current (and making all reasonable efforts to cause the former) officers, directors, trustees, agents, members, partners and

employees answer any and all inquiries that may be put by the Attorney General to any of them at any proceedings or otherwise; "Proceedings" include, but are not limited to, any meetings, interviews, depositions, hearings, trials, grand jury proceedings or other proceedings;

- (c) fully, fairly and truthfully disclosing all information and producing all records and other evidence in its possession, custody or control (or the possession, custody or control of the Wachovia parent companies, subsidiaries or affiliates) relevant to all inquiries made by the Attorney General concerning the subject matter of the Assurance, except to the extent such inquiries call for the disclosure of information protected by the attorney-client and/or work product privileges; and
- (d) making outside counsel reasonably available to provide comprehensive presentations concerning any internal investigation relating to all matters in the Assurance and to answer questions, except to the extent such presentations or questions call for the disclosure of information protected by the attorney-client and/or work product privileges.

42. In the event Wachovia fails to comply with paragraph 41 of the Assurance, the Attorney General shall be entitled to specific performance, in addition to any other available remedies.

43. The Attorney General has agreed to the terms of this Assurance based on, among other things, the representations made to the Attorney General by Wachovia, its counsel, and the Attorney General's own factual Investigation. To the extent that representations made by Wachovia or its counsel are later found to be materially incomplete or inaccurate, this Assurance is voidable by the Attorney General in its sole discretion.

44. Wachovia shall, upon request by the Attorney General, provide all documentation and information reasonably necessary for the Attorney General to verify compliance with this Assurance.

45. All notices, reports, requests, and other communications to any party pursuant to this Assurance shall be in writing and shall be directed as follows:

If to Wachovia:

Lee S. Richards, Esq.
Richards Kibbe & Orbe LLP
One World Financial Center
New York, NY 10281-1003

If to the Attorney General:

Office of the Attorney General of the State of New York
120 Broadway, 23rd Floor
New York, New York 10271
Attn: David A. Markowitz

46. This Assurance and any dispute related thereto shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.

47. Wachovia consents to the jurisdiction of the Attorney General in any proceeding or action to enforce this Assurance.

48. Wachovia agrees not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any finding in this Assurance or creating the impression that this Assurance is without factual basis. Nothing in this paragraph affects Wachovia's: (a) testimonial obligations; or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the Attorney General is not a party.

49. This Assurance may not be amended except by an instrument in writing signed on behalf of all the parties to this Assurance.

50. This Assurance constitutes the entire agreement between the Attorney General and Wachovia and supersedes any prior communication, understanding or

agreement, whether written or oral, concerning the subject matter of this Assurance. No representation, inducement, promise, understanding, condition or warranty not set forth in this Assurance has been relied upon by any party to this Assurance.

51. In the event that one or more provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

52. This Assurance may be executed in one or more counterparts, and shall become effective when such counterparts have been signed by each of the parties hereto.

53. Upon execution by the parties to this Assurance, the Attorney General agrees to conclude, pursuant to Executive Law § 63(15), this Investigation as and against Wachovia relating to its marketing and sale of auction rate securities.

54. Any payments and all correspondence related to this Assurance must reference AOD # 08-179.

WHEREFORE, the following signatures are affixed hereto on the dates set forth

below.

ANDREW M. CUOMO,

Attorney General of the State of New York

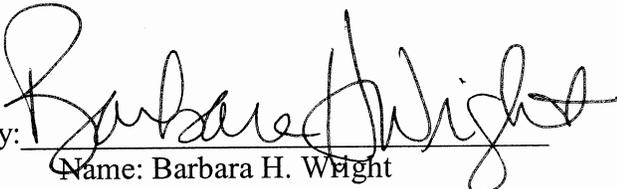
By: 

David A. Markowitz
Chief, Investor Protection Bureau

120 Broadway
23rd Floor
New York, New York 10271
(212) 416-8198

Dated: February 4, 2009

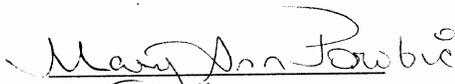
WACHOVIA CAPITAL MARKETS, LLC

By: 
Name: Barbara H. Wright
Title: Senior Vice President

ACKNOWLEDGMENT

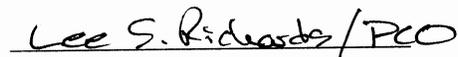
STATE OF NEW YORK)
 :SS.
COUNTY OF NEW YORK)

On this 4th day of February, 2009, before me personally came Barbara H. Wright, known to me, who, being duly sworn by me, did depose and say that she is the Senior Vice President of Wachovia Capital Markets, LLC, the entity described in the foregoing Assurance, and is duly authorized by Wachovia Capital Markets, LLC to execute the same, and that she signed her name in my presence by like authorization.


Notary Public
My commission expires:

**MARY ANN FORUBIC
NOTARY PUBLIC, STATE OF NEW YORK
No. 01PO8074507
QUALIFIED IN BRONX COUNTY
COMM. EXPIRES: 05/20/20 10**

Assurance of Discontinuance
Reviewed By: Lee S. Richards, Richards Kibbe & Orbe LLP



Attorneys for Wachovia Capital Markets, LLC.

Dated: February 4, 2009

WACHOVIA SECURITIES, LLC

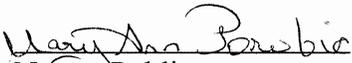
By: 

Name: Douglas R. Edwards
Title: Executive Vice President

ACKNOWLEDGMENT

STATE OF NEW YORK)
 :SS.
COUNTY OF NEW YORK)

On this 4th day of February, 2009, before me personally came Douglas R. Edwards, known to me, who, being duly sworn by me, did depose and say that he is the Executive Vice President of Wachovia Securities, LLC, the entity described in the foregoing Assurance, and is duly authorized by Wachovia Securities, LLC to execute the same, and that he signed his name in my presence by like authorization.


Notary Public
My commission expires:

**MARY ANN PORUBIC
NOTARY PUBLIC, STATE OF NEW YORK
No. 01P06074507
QUALIFIED IN BRONX COUNTY
COMM. EXPIRES: 05/20/2010**

Assurance of Discontinuance
Reviewed By: Lee S. Richards, Richards Kibbe & Orbe LLP

Lee S. Richards/PCE

Attorneys for Wachovia Securities, LLC.

Dated: February 4, 2009