

**ADMINISTRATIVE PROCEEDING  
BEFORE THE  
SECURITIES COMMISSIONER OF MARYLAND**

<b>IN THE MATTER OF:</b>	*	CASE NO. 2008-0268
	*	
WACHOVIA SECURITIES, LLC	*	
	*	
Respondent.	*	
	*	
	*	

**CONSENT ORDER**

WHEREAS, the Securities Division of the Office of the Attorney General (the "Securities Division") initiated an investigation into the activities of Wachovia Securities, LLC ("Wachovia"); and

WHEREAS, the Maryland Securities Commissioner (the "Securities Commissioner") has found that grounds exist to allege that Respondent violated the Maryland Securities Act, contained at Md. Code Ann., Corps. and Ass'ns, §§11-101 *et seq.* (2007 Repl. Vol.) (the "Securities Act"), by failing to reasonably supervise its agents within the meaning of §11-412(a)(10) of the Securities Act; and

WHEREAS, before the holding of a hearing, without trial or final adjudication of any issue of fact or law, and prior to the issuance of a final order in this proceeding, the Securities Commissioner and Respondent have reached an agreement whereby Respondent, without admitting or denying the Statement of Facts and Findings of Fact and Conclusions of Law contained herein,

consents to the terms of this Order:

**I.**

**JURISDICTION**

1. The Securities Commissioner has jurisdiction in this proceeding pursuant to Section 11-701 of the Securities Act.

**II.**

**RESPONDENT**

2. Wachovia has been registered as a broker-dealer with the SEC and FINRA (formerly “NASD, Inc.”) since 1985, and with the Securities Division since 1987.

3. Wachovia’s principal place of business is located in Richmond, Virginia. Wachovia has offices throughout Maryland.

**III.**

**STATEMENT OF FACTS**

4. This Consent Order involves Wachovia’s employment of and supervision over Milliet K. Lanham (“Lanham”), whose last employment as a broker-dealer agent and investment adviser was with Wachovia.

5. From October 18, 1989 to February 20, 1996, Lanham was registered with the Securities Division as a broker-dealer agent affiliated with Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”). From October 18, 1989 to February 20, 1996, also, Lanham was

registered with the National Association of Securities Dealers, Inc. (the “NASD”) as a general securities representative affiliated with Merrill Lynch. Lanham was involuntarily discharged from her employment at Merrill Lynch in connection with numerous customer complaints pending against her at that time. Lanham’s termination for cause was disclosed on the Central Registration Depository (the “CRD”).

6. From February 28, 1996 to October 1, 1999, Lanham was registered with the Securities Division as a broker-dealer agent affiliated with First Union Capital Markets Corp. (“First Union”), Wachovia’s predecessor. During that same period of time, Lanham was registered with the NASD as a general securities representative affiliated with First Union.

7. During the summer of 1999, while Lanham was affiliated with First Union (formerly known as Wheat, First Securities, Inc. (“Wheat, First”)), the Securities Commissioner issued a consent order against Lanham for allegedly engaging in excessive trading with respect to two separate Merrill Lynch customer accounts (the “1999 Consent Order”).

8. By the terms of the 1999 Consent Order, Lanham was ordered to pay a \$5,000 fine, to complete a continuing education module on ethics, to cease and desist from further activities in violation of §11-301 of the Securities Act, and to “in all future activities in Maryland comply fully with the Securities Act and regulations promulgated thereunder.”

9. The 1999 Consent Order also provided that for a period of two years from the date of issuance of the order, Lanham and/or Wheat, First were required to forward copies of any customer complaint or synopses of any oral complaints relating to Lanham to the Securities Division. According to the order, any customer complaints or regulatory sanctions “will result in this entire matter being reviewed by the [Securities] Division.”

10. The 1999 Consent Order was signed by Lanham, as well as by her direct supervisor, Matthew K. Glenn, on behalf of Wheat, First.

11. Notwithstanding that the 1999 Consent Order was reportable on Lanham's Form U-4, it was not disclosed on CRD until 2004, after it was brought to Wachovia's attention that the disclosure had not been made.

12. Despite her prior disciplinary history, Lanham was not subject to any special supervision while employed with Wheat, First,

13. From October 1, 1999 to December 31, 2004, Lanham was registered with the Securities Division as a broker-dealer agent affiliated with Wachovia. From October 1, 1999 to May 4, 2006, Lanham was registered with the NASD as a general securities representative affiliated with Wachovia. From October 1, 1999 to May 4, 2006, Lanham was registered with the Securities Division as an investment adviser representative affiliated with Wachovia.

14. Lanham remains employed with Wachovia, but has not been working in the securities or investment advisory business at that firm since her registrations with the Securities Division were terminated. Lanham is on long-term disability.

15. While at First Union and Wachovia, Lanham began servicing the accounts of numerous customers, including BL of Baltimore, Maryland, JJ of Alexandria, Virginia, FW of Baltimore, Maryland, and PM and KM of Gainesville, VA. In handling those accounts, Lanham engaged in numerous abusive sales practices, including excessive trading activities, unsuitable transactions, and account mismanagement.

#### BL's Account

16. BL was one of Lanham's long-time customers at First Union/Wachovia, a

musician by trade, unsophisticated in financial matters, with financial objectives of growth and income and a moderate risk tolerance.

17. In total, BL had four accounts, with approximately \$400,000 in assets as of August 2003. As of August 2003, the 12-month commissions on those accounts totaled approximately \$155,000. The total losses in the accounts equaled approximately \$60,000.

18. With respect to BL's account ending in 0888, the average equity in the accounts from January 2001 to December 2003 was between \$50,000 and \$62,200. The total purchases were between \$334,700 and \$538,300.

19. In BL's account ending in 0888, Lanham engaged in trading activities that resulted in a turnover of 6.7 for 2001, of 8.6 for 2002, and of 6.7 for 2003.

20. BL also opened a "Small Cap Account" account ending in 6284. Originally the account was a managed account. Lanham took over that account on August 20, 2002 when the managed status was closed.

21. On August 22, 2002, Lanham caused all the positions in BL's 6284 account to be liquidated and BL was charged a commission on each sale – costs that would not have been incurred had Lanham not caused the liquidation to occur after the managed status was closed.

22. BL's 6284 account was valued at approximately \$155,000 as of August 2002, and one year out, the commissions totaled approximately \$50,000, the total trades equaled approximately \$199,000, and the total losses equaled approximately \$32,000.

#### JJ's Account

23. JJ opened a Wachovia account ending in 6495 in January 2000, with Lanham as the broker-dealer agent of record. According to JJ, Lanham advised him that although his account

statements may reflect an investment objective of speculation, that was only to allow for flexibility in purchasing individual stocks, and that overall she would pursue a long-term growth investment objective.

24. In June of 2003, JJ granted Lanham discretionary authority to make trades in the account. At the same time, JJ's investment objectives were changed to "growth and aggressive." Lanham assured JJ that his portfolio was well-diversified and that the account was positioned for recovery from any downward movement.

25. In reality, for the period February 2000 to April 2002, JJ's account experienced trading losses of more than \$500,000 on assets that at their peak totaled approximately \$670,000, or a negative gain of 84.3%. The account paid nearly \$100,000 in commissions. The average turnover was 3.25.

#### FW's Account

26. FW, a long-time government employee, opened an IRA account ending in 6947 at First Union in October 1996. His investment objective was "growth." He had no investment experience per his new account form. Lanham was his broker-dealer agent of record.

27. For the period of time from October 31, 1996 to April 30, 2003, FW contributed approximately \$190,000 into his account 6947. During that period of time, FW withdrew approximately \$39,000. His total losses after fees equaled approximately \$150,000 – amounting to an almost complete evisceration of his account.

#### PM and KM's Account

28. In March 2000, PM (a software engineer) and KM (a retail store manager) opened a Wachovia account ending in 9994. Lanham was the broker-dealer agent of record. Both PM

and KM had little to no investment experience except for employee stock option plans.

29. PM and KM's investment objectives were listed as "trading and speculation," however, neither PM nor KM signed their new account form. When the account was updated in February 2002 on a form requiring PM and KM's signatures, the account objective was changed to aggressive growth.

30. Despite those stated account objectives, according to PM and KM, Lanham represented that she had an investment strategy that generated above-average returns while minimizing risk.

31. PM and KM advised Lanham that they wanted their monies invested in a manner suitable for their retirement and for their children's education. Lanham communicated to them, verbally and in writing, that she would pursue an investment strategy of "proper diversification to maximize return and minimize risk."

32. Lanham handled PM and KM's 9994 account from March 2000 to May 2002. During that time, PM and KM deposited approximately \$1,009,000 into the account. While cash withdrawals totaled approximately \$552,000, total losses after fees equaled approximately \$457,000.

33. During the time that Lanham handled PM and KM's 9994 account, the account incurred transaction fees of nearly \$95,000. The annualized net equity turnover ratio equaled 4.37 for that period. There were total active purchases of approximately \$2,561,000.

#### Evidence Of Churning And Other Abusive Sales Practices

34. According to industry standards, a securities account with an annualized turnover rate of four is cause for suspicion, and a rate of six or higher presumes churning. The broker

must exercise control over the account for there to be a viable claim of churning.

35. In each of the above cases where turnover ratios are provided, the level of trading was sufficient for there to be either a suspicion of churning or a presumption of churning, and the relevant facts showed that Lanham exercised a high degree of control over the accounts of individuals who were not experienced in the securities business, or otherwise financially sophisticated.

36. The above-referenced accounts also experienced significant losses beyond what may be associated with a market downturn. In some cases the entire account was nearly wiped out by Lanham's aggressive trading within the account. In the case of BL, Lanham caused the account to incur unnecessary fees in a manner clearly designed for Lanham's personal enrichment, to her client's detriment.

#### NASD Arbitration Actions

37. With the exception of the matter involving BL, each of the above customers initiated NASD arbitration actions against Lanham and Wachovia in connection with Lanham's handling of the referenced accounts.

38. In June 2006, without admitting or denying liability, Wachovia settled JJ's arbitration claim for \$150,000.

39. In August 2006, without admitting or denying liability, Wachovia settled PM's and KM's arbitration claim for \$285,000.

40. In September 2006, without admitting or denying liability, Wachovia settled FW's arbitration claim for \$300,000.

41. In June 2006, without admitting or denying liability, Wachovia settled an NASD



arbitration claim filed by one of Lanham's other customers, SP, who alleged that Lanham misrepresented the minimum annual management fee she would be charged with respect to her account. The firm paid \$28,000 to resolve SP's claim.

#### IV.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

42. In connection with the facts described in the Statement Of Facts contained in this Order, incorporated herein by reference, Respondent failed to reasonably supervise its agent, Milliet K. Lanham, within the meaning of §11-412(a)(10) of the Securities Act.

#### V.

#### CONSENT TO CEASE AND DESIST AND OTHER RELIEF

43. NOW, THEREFORE, IT IS HEREBY **ORDERED**, and Respondent expressly consents and agrees that:

- a. Respondent shall take the following actions:
  1. Respondent shall reevaluate its procedures, and/or create new policies and procedures, relating to the following:
    - A. Hiring employees with disciplinary history, and special supervision with respect to those employees.
    - B. Supervision of broker-dealer agents/investment adviser representatives who work off-site in a non-branch location, *i.e.*, from home or from a second home.
    - C. High-volume trading combined with significant losses within customer accounts.

- D. A customer account's transition from managed status to non-managed status, and possible abuses such as deferring large-scale securities redemptions or liquidations, or conversely significant securities purchases, within an account until immediately after the account becomes non-managed and subject to the payment of commissions on those sales or purchases.
2. Respondent shall make any changes to its compliance and/or supervisory procedures relating to (1)(A) through (C) above that it determines are necessary in light of this matter. Respondent, within 120 days of the issuance of this Order, shall submit a report to the Securities Division, documenting its evaluation and the implementation of any changes to its compliance and/or supervisory procedures pursuant to this provision.
- b. Contemporaneous with the issuance of this Consent Order, Respondent shall pay \$50,000 as a civil monetary penalty by check made payable to "Office of the Attorney General."
  - c. Contemporaneous with the issuance of this Consent Order, Respondent shall provide the Securities Division with a check for \$109,673 payable to "Office of the Attorney General," which check shall be used to pay restitution to Wachovia customer BL, with Wachovia accounts ending in 6286, 6284 and 0888, upon BL's execution of a standard release in favor of Wachovia.
  - d. Respondent shall require Lanham's former supervisor, Matthew K. Glenn, as a condition of continued employment with Wachovia, to take two continuing education courses dealing with supervision, to be completed within the next six months. Respondent shall provide proof of the completion of that course work to the Securities Division.
  - e. Respondent shall cease and desist from engaging in activities in violation of the Securities Act.
  - f. Respondent shall in all future activities in Maryland comply with the Securities Act.

## VI.

### SCOPE OF SETTLEMENT AND OTHER PROVISION

44. This Consent Order relates only to the Securities Commissioner and Respondent. This Consent Order does not waive or relinquish the Securities Commissioner's right to take any action against any other persons not affiliated with Respondent. Nor does this Consent Order prevent the Securities Commissioner from bringing any action against Respondent relating to any acts or omissions not arising out of the facts stated in this Consent Order.

45. This Consent Order shall not disqualify Wachovia, or any other person in which officers, directors, promoters and control persons of Wachovia act as an officer, director, promoter or control person (or occupying a similar status or performing similar functions) with respect to such person, from relying upon any exemption, exclusion, waiver or similar provision contained in the Securities Act or any rules, regulations, statements of policy or positions or releases issued thereunder that otherwise would be unavailable solely because of the existence of this Consent Order.

## VII.

### JURISDICTION RETAINED

46. Jurisdiction shall be retained by the Securities Commissioner for such further orders and directions as may be necessary or appropriate for the construction or enforcement of the Consent Order.

47. If Respondent fails to materially comply with any term of this Consent Order, the Securities Commissioner may institute administrative or judicial proceedings against Respondent

to seek to enforce this Consent Order, to sanction Respondent for violating an Order of the Securities Commissioner or for making a misrepresentation of material fact upon which this Order was based, and may take any other action authorized under the Securities Act or under any other applicable law, including the issuance of fines or penalties as provided by the Securities Act. In any such proceeding in which, after an opportunity for a hearing, the Securities Commissioner or the court finds that Respondent has violated this Consent Order or made any material misrepresentations in their dealings with the Securities Division, the Securities Division may also seek other sanctions for the violations that initiated this matter. For the purpose of determining those sanctions, the Statement of Facts and violations of the Securities Act set forth in this Consent Order shall be deemed admitted, and may be introduced into evidence against Respondent.

48. In the event that judicial intervention in this matter is sought by the Securities Commissioner or Respondent, subject matter jurisdiction will lie in the Circuit Court for Baltimore City pursuant to §11-702 of the Securities Act. Respondent agrees that that Court will have personal jurisdiction over Respondent, and that venue will be properly in that Court.

49. The terms of this Consent Order may only be vacated or modified by a subsequent order issued by the Securities Commissioner.

**DATE OF THIS ORDER:**

December 8, 2008

**SO ORDERED:**

**Commissioner's Signature is  
on File with Original Document**

Melanie Senter Lubin  
Securities Commissioner

**CONSENTED TO:**

\_\_\_\_\_, 2008

\_\_\_\_\_  
Wachovia Securities, LLC

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

Please print name and title:

\_\_\_\_\_  
\_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 2008, personally appeared \_\_\_\_\_, signer of the foregoing Consent Order, who did duly acknowledge his/her signature to be his/her free act and deed, and that he/she was authorized to sign on behalf of Wachovia Securities, LLC.

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

My Commission Expires: \_\_\_\_\_

Seal:

\_\_\_\_\_