



DIVISION OF
CORPORATION FINANCE

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

February 12, 2004

Philip L. Graham, Esq.
Sullivan & Cromwell LLP
1701 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-5805

Re: Wachovia Securities, Inc.—Waiver Request under Regulation A and Rule 505 of Regulation D

Dear Mr. Graham:

This is in response to your letter dated today, written on behalf of Wachovia Securities, Inc. (the "Firm"), a registered broker-dealer, and constituting an application for relief under Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D under the Securities Act of 1933. You requested relief from disqualifications from exemptions available under Regulation A and Rule 505 of Regulation D that arise by virtue of the entry today of a Commission order under Section 15(b) of the Securities Exchange Act of 1934 naming the Firm as the respondent (the "Order").

For purposes of this letter, we have assumed as facts the representations set forth in your letter. We also have assumed that the Firm will comply with the Order.

On the basis of your letter, the Commission, pursuant to delegated authority, has determined that you have made a showing of good cause under Rule 262 and Rule 505(b)(2)(iii)(C) that it is not necessary under the circumstances to deny the exemptions available under Regulation A and Rule 505 of Regulation D by reason of the entry of the Order. Accordingly, the relief described above from the disqualifying provisions of Regulation A and Rule 505 of Regulation D is hereby granted.

Sincerely,

A handwritten signature in cursive script that reads "Gerald J. Laporte".

Gerald J. Laporte
Chief, Office of Small Business Policy

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February 12, 2004

By Hand

Gerald J. Laporte, Esq.,
Chief, Office of Small Business Policy,
Securities and Exchange Commission,
450 Fifth Street, N.W., Room 3501,
Washington, D.C. 20549-0310.

Re: In the Matter of Certain Mutual Fund Breakpoint Discounts
(MHO-9791)

Dear Mr. Laporte:

We submit this letter on behalf of our client, Wachovia Securities, Inc. ("Wachovia"), in connection with a settlement agreement (the "Settlement") which arose out of an investigation by the Division of Enforcement of the Securities and Exchange Commission (the "Commission"). Wachovia below requests, pursuant to Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D of the Commission promulgated under the Securities Act of 1933 (the "Securities Act"), a waiver of any disqualification from exemptions under Regulation A and Rule 505 of Regulation D that may be applicable to Wachovia and any of its affiliates as a result of the entry of the Commission order described below. Wachovia also requests that these waivers be granted effective upon the entry of the Commission order. It is our understanding that the Division of Enforcement does not object to the grant of the requested waivers by the Division of Corporate Finance.

BACKGROUND

The staff of the Division of Enforcement engaged in settlement discussions with Wachovia in connection with the contemplated administrative proceedings arising out of the above-captioned investigation, which were brought pursuant to Section 8A of the Securities Act, and Sections 15(b)(4) and 21C of the Securities Exchange Act of 1934 ("Exchange Act"). As a result of these discussions,

Wachovia submitted an offer of settlement. In the offer of settlement, solely for the purpose of proceedings brought by or on behalf of the Commission or in which the Commission is a party, Wachovia consented to the entry of an Order of the Commission (the "Order") without admitting or denying the matters set forth therein (other than those relating to the jurisdiction of the Commission).

The Order states that during 2001 and 2002 (the "relevant period"), Wachovia, a registered broker-dealer, sold shares issued by mutual funds without providing certain customers with the reduction in the front-end loads, or sales charges, also known as "breakpoint" discounts, described in the prospectuses of the funds. According to the Order, Wachovia is estimated to have failed to give certain customers breakpoint discounts totaling approximately \$4,694,747 during the relevant period.

Under the terms of the Order, the Commission made findings, without admission or denial by Wachovia, that by failing to disclose to certain customers that they were not receiving the benefit of applicable breakpoint discounts, Wachovia violated Section 17(a)(2) of the Securities Act. Further, the Commission made findings, without admission or denial by Wachovia, that because Wachovia did not charge these customers the correct sales loads as set forth in the mutual funds' prospectuses, and also did not disclose in confirmations the remuneration Wachovia received from the sales loads charged to these customers, Wachovia violated Rule 10b-10 under the Exchange Act. Based on these findings, the Order censures Wachovia, requires Wachovia to cease and desist from committing any violations and any future violations of Section 17(a)(2) of the Securities Act and Rule 10b-10 under the Exchange Act, requires Wachovia to pay a civil penalty in the amount of \$2,347,373 to the United States Treasury, requires Wachovia to pay disgorgement and prejudgment interest thereon, which obligation shall be satisfied by compliance with the customer refund program summarized in the Order, and requires Wachovia's chief executive officer to certify in writing to the Commission staff not later than 6 months after the date of the Order that Wachovia has implemented procedures, and a system for applying such procedures, that can reasonably be expected to prevent and detect failures by Wachovia to provide appropriate breakpoint discounts for which customers are eligible on purchases of front-end load mutual funds, based on information reasonably ascertainable by Wachovia.

DISCUSSION

Wachovia understands that the entry of the Order could disqualify it and its affiliated entities from participating in certain offerings otherwise exempt under Regulation A and Rule 505 of Regulation D promulgated under the Securities Act, insofar as the Order will cause Wachovia to be subject to an order of the Commission entered pursuant to Section 15(b) of the Exchange Act. The Commission has the authority to waive the Regulation A and Rule 505 of Regulation D exemption disqualifications upon a showing of good cause that such disqualifications are not necessary under the circumstances. See 17 C.F.R. §§ 230.262 and 230.505(b)(2)(iii)(C). Wachovia requests that the Commission waive any disqualifying effects that the Order

may have under Regulation A and Rule 505 of Regulation D with respect to Wachovia or its affiliates on the following grounds:

1. Wachovia's conduct addressed in the Order does not relate to offerings under Regulation A or D.

2. Wachovia, pursuant to its Letter of Acceptance, Waiver and Consent ("AWC") submitted to the National Association of Securities Dealers (NASD) to resolve a related disciplinary action, has agreed to undertake certain remedial and corrective measures related to providing refunds to customers who did not receive appropriate breakpoint discounts. Such measures include: (a) providing written notification to each customer who purchased front-end load mutual fund shares through Wachovia, for the period specified by the AWC, that Wachovia experienced a problem delivering breakpoint discounts, and that, as a result, the customer may be entitled to a refund; (b) performing a trade-by-trade analysis of all front-end load mutual fund purchases of \$2,500 or more, for the period specified by the AWC, which review would encompass all other purchases during that same time period, regardless of dollar amount, by such customers; (c) undertaking vigorous efforts to locate each customer so identified as entitled to a refund and promptly making refunds to all customers who did not receive all applicable breakpoint; and (d) providing a report on Wachovia's refund program to the NASD.

3. The disqualification of Wachovia from the exemptions available under Regulation A and Rule 505 of Regulation D would, we believe, have an adverse impact on third parties that have retained Wachovia and its affiliates in connection with transactions that rely on these exemptions.

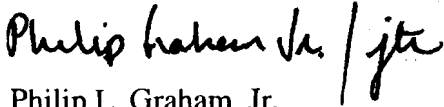
4. The disqualification of Wachovia from the exemptions available under Regulation A and Rule 505 of Regulation D would be unduly and disproportionately severe, given that: (i) the Order relates to activity which has already been addressed; and (ii) the Commission staff negotiated a settlement with Wachovia and reached a satisfactory conclusion to this matter that required Wachovia to pay a total penalty of \$4,694,747, one-half of which was paid pursuant to the NASD's order, in settlement of the matters addressed in the Order and to make the certification and comply with the customer refund program described above.

In light of the foregoing, we believe that disqualification is not necessary, in the public interest or for the protection of investors, and that Wachovia has shown good cause that relief should be granted. Accordingly, we respectfully urge the Commission, pursuant to Rule 262 of Regulation A and Rule 505(b)(2)(iii)(c) of Regulation D, to waive, effective upon entry of the Order, the disqualification provisions

in Regulation A and Rule 505 of Regulation D to the extent they may be applicable to Wachovia and any of its affiliates as a result of the entry of the Order.¹

If you have any questions regarding this request, please contact me at (212) 558-3842.

Very truly yours,


Philip L. Graham, Jr.

cc: Andrew B. Sporkin, Esq.
Division of Enforcement
Securities and Exchange Commission
450 Fifth Street, N.W., Room 8509
Washington, D.C. 20549-0805

¹ We note in support of this request that the Commission has in other instances granted relief under Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D for similar reasons. *See, e.g.*, Citigroup Global Markets Inc., f/k/a/ Salomon Smith Barney Inc., S.E.C. No-Action Letter (Oct. 31, 2003); Morgan Stanley & Co. Incorporated, S.E.C. No-Action Letter (Oct. 31, 2003); Bear, Stearns & Co. Inc., S.E.C. No-Action Letter (Oct. 31, 2003); Lehman Brothers Inc., S.E.C. No-Action Letter (Oct. 31, 2003); J.P. Morgan Securities Inc., S.E.C. No-Action Letter (Oct. 31, 2003); Merrill, Lynch, Pierce, Fenner & Smith, Incorporated, S.E.C. No-Action Letter (Oct. 31, 2003); Goldman, Sachs & Co., S.E.C. No-Action Letter (Oct. 31, 2003); U.S. Bancorp Piper Jaffray Inc., S.E.C. No-Action Letter (Oct. 31, 2003); Prudential Securities Incorporated, S.E.C. No-Action Letter (Oct. 31, 2003); Merrill Lynch & Co, Inc., S.E.C. No-Action Letter (Oct. 31, 2003); Prudential Securities Incorporated, S.E.C. No-Action Letter (pub. avail. July 10, 2003); Credit Suisse First Boston Corporation, S.E.C. No-Action Letter (pub. avail. Jan. 29, 2002); Dain Rauscher, Incorporated, S.E.C. No-Action Letter (pub. avail. Sept. 27, 2001); Legg Mason Wood Walker, Incorporated, S.E.C. No-Action Letter (pub. avail. June 11, 2001); Prudential Securities, Inc., S.E.C. No-Action Letter (pub. avail. Jan. 29, 2001).