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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

SECURITIES AND EXCHANGE COMMISSION,	:	Case No.
	:	
Plaintiff	:	
	:	COMPLAINT FOR
v.	:	VIOLATIONS OF THE
	:	FEDERAL SECURITIES
WACHOVIA BANK, N.A., now known as Wells	:	LAWS
Fargo Bank, N.A., successor by merger,	:	
	:	
Defendant.	:	

Plaintiff, the United States Securities and Exchange Commission (“Commission”), 701 Market Street, Suite 2000, Philadelphia, Pennsylvania 19106, alleges as follows against defendant, Wachovia Bank, N.A., now known as Wells Fargo Bank, N.A., successor by merger (“Wachovia”), with its principal place of business at 101 North Phillips Avenue, Sioux Falls, South Dakota 57104, and with a nationwide system of bank branches, including multiple office locations in New Jersey.

SUMMARY

1. This case involves various fraudulent bidding practices by Wachovia involving the temporary investment of proceeds from the sale of tax-exempt municipal securities in certain

reinvestment instruments by state and local governmental entities in the United States (“Municipalities”). As described below, Wachovia’s fraudulent practices and misrepresentations affected the prices of the reinvestment instruments, deprived the municipalities of a conclusive presumption that their reinvestment instruments were purchased at fair market value, and/or jeopardized the tax-exempt status of the underlying securities, thereby injuring numerous Municipalities. During an eight-year period, Wachovia rigged at least 58 transactions concerning the reinvestment of proceeds from the sale of over \$9 billion of underlying municipal securities, generating millions of dollars in ill-gotten gains.

2. From at least 1997 through at least 2005 (the “relevant time period”), Wachovia engaged in fraudulent practices and made misrepresentations in connection with the bidding of certain municipal reinvestment instruments. In these tainted transactions, Wachovia placed bids, which constituted offers to provide the reinvestment products to the Municipalities, and in this role was known as a “Provider.”

3. Wachovia at times, (a) won bids because it obtained advance information concerning competing Providers’ bids, typically from a “Bidding Agent,” who acted on behalf of the Municipalities and collected bids from Providers offering to provide the reinvestment products (“Last Looks”); (b) won bids set up in advance by the relevant Bidding Agent to enable Wachovia to win because the Bidding Agent deliberately obtained off-market non-winning bids from other Providers (“Set-Ups”); and (c) facilitated Set-Ups that benefited other Providers by deliberately submitting purposely non-winning bids, including, but not limited to, “Courtesy Bids” (types of purposely non-winning bids submitted in order to satisfy particular tax regulations) to Bidding Agents.

4. As a result of the aforementioned fraudulent misconduct during the relevant time period, Wachovia illicitly won bids for at least 29 municipal reinvestment instruments, and submitted at least 29 purposely non-winning bids. Wachovia made material misrepresentations by, among other things, executing false certifications to the effect that the bids were the product of a bona fide solicitation, i.e., they were competitive and not tainted by undisclosed consultations, agreements, or payments and reflected fair market value for the purchase of the reinvestment instrument.

5. By engaging in the misconduct described herein, Wachovia violated Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C § 77q(a).

JURISDICTION AND VENUE

6. The Commission brings this action pursuant to Section 20(b) of the Securities Act [15 U.S.C. § 77t(b)]. The Commission seeks a permanent injunction against Wachovia, enjoining it from engaging in the acts, transactions, practices, and courses of business alleged in this Complaint, disgorgement of all ill-gotten gains, prejudgment interest, civil money penalties, and such other and further relief as the Court may deem just and appropriate.

7. This Court has jurisdiction over this action pursuant to Section 20(b), 20(d) and 22(a) of the Securities Act [15 U.S.C. §§ 77t(b), 77t(d), 77v(a)]. Wachovia, in the offer and sale of securities, directly or indirectly, made use of the means or instruments of transportation or communication in interstate commerce or the mails with respect to the acts, transactions, practices, or courses of business alleged herein.

8. Venue in this District is proper pursuant to Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)]. Certain of the acts, transactions, practices and courses of conduct constituting the violations of law alleged herein occurred within the District of New Jersey. Wachovia has

multiple locations in, and transacts business within, the District of New Jersey. Moreover, certain of the offers and sales constituting the violations of law alleged herein occurred within the District of New Jersey. For example, as set forth below, in Transaction Two, Wachovia fraudulently offered and sold a municipal reinvestment instrument to a New Jersey authority, and made misrepresentations that were provided to the New Jersey authority.

DEFENDANT

9. Wachovia was, from 2002 through 2008, a federally-chartered bank with its principal place of business in Charlotte, North Carolina, and wholly-owned by Wachovia Corporation, a publicly-traded company listed on the New York Stock Exchange. At all relevant times, Wachovia operated and acted by and through its agents and employees. Wachovia had a nationwide system of bank branches, including multiple office locations in New Jersey.

10. In October 2008, Wells Fargo & Co. agreed to acquire Wachovia Corporation, and in March 2010 Wachovia merged with Wells Fargo Bank, N.A., making Wells Fargo Bank, N.A. its successor by merger. The misconduct alleged herein is limited to Wachovia as it existed prior to October 2008.

FACTS

A. Background

11. Municipalities from time to time publicly offer and sell tax-exempt bonds and notes to finance various capital projects such as schools, highways, and hospitals, or to refinance existing bonds or notes. In addition, municipalities issue tax-exempt securities for the benefit of third-party conduit borrowers, such as hospitals, colleges and universities, and certain industrial corporations. When these municipal securities are sold, portions of the proceeds are often not spent immediately. Instead, the proceeds are temporarily invested pending their use for the

original purpose of the securities offering. Such proceeds are typically invested in financial instruments tailored to meet municipalities' specific collateral and spend-down needs, such as guaranteed investment contracts ("GICs"); repurchase agreements ("Repos"); and forward purchase agreements ("FPAs").

12. GICs, Repos, and FPAs constitute securities or contracts to buy, sell, or loan securities. The GICs, Repos, and FPAs at issue in this action were bid in connection with the sale of the underlying municipal securities. These instruments are often sold by major financial institutions, including broker-dealers, commercial banks, investment banks, insurance companies, and financial services companies (collectively "Providers").

13. GICs are typically contracts providing for the repayment of principal and a fixed rate of interest on the amount invested for a specified period of time that permit the investing Municipality to withdraw funds as needed. GICs are generally uncollateralized and issued by special purpose entities that obtain "guarantees" in the form of insurance policies from highly rated insurance companies. Repos are contracts that provide for the purchase by Municipalities of U.S. government securities from entities such as Wachovia, under which the seller also agrees to buy back, or repurchase, those securities in accordance with the needs of the Municipality at specified prices on one or more future dates. FPAs similarly are contracts for the purchase by Municipalities of U.S. government securities from entities such as Wachovia, but instead of being repurchased by the seller, the underlying U.S. government securities are selected so as to mature on future dates in accordance with the needs of the Municipality to use such proceeds.

14. In order to preserve the tax-exempt status of municipal securities under the relevant tax regulations [26 C.F.R. § 1.148-5(d)(6)], generally these investments must be purchased at fair market value. Typically, Municipalities establish fair market value through a

competitive bidding process as set forth in the tax regulations. Among other things, these detailed tax regulations require the Municipality issuing the municipal securities to make a bona fide solicitation for the purchase of investments. This requires, in part, that all prospective Providers bidding on certain types of investments must be given an equal opportunity to bid, that all prospective Providers bidding on an investment make detailed written representations concerning the bidding process, and that similar written certifications are provided by the winning Provider (“Provider Certificates”). A failure to comply with these bidding requirements for certain types of investments creates a rebuttable presumption that the investment was not purchased at fair market value. Conversely, for certain types of investments, compliance with these detailed bidding regulations creates a conclusive safe harbor for establishing the fair market value of the reinvestment instruments.

15. In situations where the tax-exempt status of the underlying municipal securities was not at issue, Municipalities also at times use the competitive bidding process and require Providers to make similar representations and certifications of a fair process to ensure that the Municipalities receive the best prices for the instruments at issue and to avoid the appearance of affording any particular entity favored treatment.

B. The Fraudulent Conduct

16. From at least 1997 through at least 2005, Wachovia engaged in fraudulent practices in connection with the bidding of investment instruments – including GICs, Repos, and FPAs. Wachovia, among other things, submitted bids that it knew were set-up in advance for it to win; submitted bids with the aid of advance information from the Bidding Agents regarding the competing Providers’ bids; and submitted purposely non-winning bids.

17. Wachovia's bids for the reinvestment instruments were submitted by members of its Municipal Derivatives Marketing Group (the "Desk"), who were referred to as marketers. Certain Wachovia marketers knowingly participated in the fraudulent bidding for certain municipal reinvestment instruments, including a marketer who, during the relevant time period, variously served as Vice-President, Director and Managing Director of Wachovia.

18. Wachovia rigged bids with the assistance of a number of different Bidding Agents for the reinvestment of the proceeds of municipal securities through a variety of mechanisms, including providing Last Looks.

19. Bidding Agents afforded Wachovia Last Looks in order to allow Wachovia:

- a. to formulate its original bid with the use of information concerning the prices, price levels, rates, conditions or other information related to the bids of competing Providers;
- b. to revise a losing bid upwards so that Wachovia would win the bid; and/or
- c. to lower a previously submitted winning bid to a level at which Wachovia would win the bid with additional profit (which, those involved often described as "not leaving money on the table").

20. Wachovia, certain Bidding Agents, and certain other Providers also rigged bids by deliberately obtaining off-market, purposely non-winning bids, including Courtesy Bids, so that the favored Providers could win the transactions. Wachovia knew that Bidding Agents rigged bids in advance for Wachovia to win by drafting the bid specifications to favor Wachovia; by limiting the pool of prospective bidders; and by including less competitive firms in the pool of prospective bidders.

21. In exchange for this improper, preferential treatment, and in furtherance of the fraudulent schemes, Wachovia steered additional business towards Bidding Agents who participated in the bid rigging scheme, and provided purposely non-winning bids to allow other Providers to win bids in ostensibly competitive bidding processes.

22. Wachovia falsely represented or certified in its bid submissions and its Provider's Certificates that, among other things, its bids were arms-length bids; Wachovia had not consulted with any other potential Provider about its bids; its bids were determined without regard to any other formal or informal agreement that Wachovia had with the Municipality or any other person (whether or not in connection with the bond issue); and/or that its bids were not submitted solely as a courtesy to the Municipality or any other person for purposes of satisfying the requirements that (a) the Municipality receive at least three bids from disinterested Providers that the Municipality solicited under a bona fide solicitation and (b) at least one of the three bids received was from a reasonably competitive Provider.

23. Wachovia knew that these false representations and Provider's Certificates were forwarded to the Bidding Agents, who were the agents of the Municipalities, and often to the Municipalities themselves, by means or instruments of transportation or communication in interstate commerce, usually telephone calls and subsequent facsimile transmissions.

C. Representative Fraudulent Transactions

24. Wachovia engaged in fraudulent bidding practices on at least 58 occasions during the relevant time period through Last Looks, Set-Ups, and the submission of purposely non-winning bids. The following examples illustrate the conduct described above.

Transaction One

25. Transaction One was a Set-Up. In June 2002, a Massachusetts Municipality

publicly offered \$1.8 billion principal amount of purportedly tax-exempt municipal securities. Among other items, this financing required the bidding of a \$1.465 billion FPA. Bidding Agent A acted as Bidding Agent on behalf of the Massachusetts Municipality. Bidding Agent A had previously rigged a transaction on behalf of the Massachusetts Municipality in October 2001 by providing a Last Look to Provider A, thereby allowing it to win the transaction over Wachovia, which had submitted the second best bid. Bidding Agent A then promised the Wachovia representative that Wachovia would win the bidding for Transaction One. Bidding Agent A also communicated to Provider A that Transaction One was going to be rigged for the benefit of Wachovia.

26. In order to comply with the relevant tax regulations, the bidding process for the \$1.465 billion FPA was structured such that the firm providing the earliest maturity date won the right to provide all of the investments. Bidding Agent A assisted Wachovia by providing it with details of the potential investment structure as early as February 2002. Moreover, Bidding Agent A waited until the night before the bids were due to circulate to the other potential providers the request for bids, which impeded the ability of those other bidders to submit meaningful or competitive bids.

27. On the morning of the bid, representatives of Provider A and Wachovia discussed with each other over the telephone how Wachovia planned to bid. Provider A then submitted a bid with a maturity date of early October 2010, which represented a bid level slightly off what Provider A thought was a fair price. The representative of Bidding Agent A receiving Provider A's bid was surprised, and informed Provider A that its bid was too aggressive. In response, Provider A's representative made a quick call to the Wachovia's representative's cell phone. After that call to Wachovia's representative and within 5 minutes of the submission of its

original bid, Provider A submitted a revised, less competitive bid with a maturity date of January 15, 2011, which Bidding Agent A was willing to accept.

28. Bidding Agent A also obtained purposely non-winning bids from two other, non-competitive, banks for this bid, telling them the level at which they should bid to be “safely back” such that they would be unlikely to win. The investment was awarded to Wachovia with a bid date of January 1, 2011.

29. In the Provider’s Certificate, Wachovia falsely certified that it had not been afforded the opportunity to review offers from other providers, it did not consult with any other provider, and the bid was determined without regard to any formal or informal agreement with any other person.

Transaction Two

30. Transaction Two was a Set-Up, in which Wachovia was permitted to lower its bid, thereby avoiding leaving money on the table. In June 2005, Bidding Agent B bid out a \$7.7 million FPA for the investment of amounts to be held in a debt service reserve fund for a New Jersey authority. This transaction was structured such that all of the interest to be earned on this investment would be paid as a single up-front fee, with the bidder providing the highest up-front fee winning the bid.

31. An hour before bids were scheduled to be submitted, a Wachovia representative, then a Managing Director, learned from a representative of Bidding Agent B that a competitor had misread the bid specifications and was backing off from his earlier bid indication. The Wachovia representative reassured the representative of Bidding Agent B that Wachovia would still bid at its earlier bid indication of \$3.5 million, but paused, and added “unless that is going to prove embarrassing.” Bidding Agent B’s representative quietly responded that it “might.” The

Wachovia representative then asked about a bid of \$3 million, and after being told that bid wouldn't work, explained again "I don't want to be embarrassed, that's all. 3.25, 3.3, is that about right?" Bidding Agent B's representative told the Wachovia representative that he thought the first number (\$3.25 million) would be about right, and the Wachovia representative finished the conversation by informing Bidding Agent B's representative that he would be at the \$3.2 million "something" level. The Bidding Agent B representative agreed to let the Wachovia representative know if that would cause any problems "either way."

32. The bidding then had to be postponed, but Bidding Agent B's representative confirmed with Wachovia's representative that Wachovia's bid was going to be \$3.3 million. At the last minute another bidder suggested he would bid \$5.25 million, but as the Bidding Agent B representative explained it to Wachovia's representative, he warned the other Provider that his number was a little high, and he should check his numbers to make sure the 5 wasn't a 2, so as to make sure he wasn't "overpaying."

33. The investment was awarded to Wachovia at its bid of \$3.3 million.

34. In its bid submission, Wachovia falsely certified in writing that it had not been afforded the opportunity to review offers from other providers before making its bid. Wachovia also made the same false certification as part of the Provider's Certificate at closing.

CLAIM FOR RELIEF

Violation of Section 17(a) of the Securities Act

35. The Commission re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 34, as if the same were fully set forth herein.

36. As set forth above, Wachovia, in the offer or sale of securities, by the use of means or instruments of transportation or communication in interstate commerce or by the mails,

directly or indirectly (a) employed devices, schemes or artifices to defraud; (b) obtained money or property by means of untrue statements of material facts or omissions of material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon purchasers of securities.

37. Wachovia knowingly executed false bidding documents and Provider Certificates to the effect that its bids were the product of a bona fide solicitation, i.e., they were competitive and not tainted by undisclosed consultations, agreements, or payments and reflected fair market value for the purchase of the reinvestment instrument.

38. By reasons of the foregoing, Wachovia violated, and unless enjoined will continue to violate, Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)].

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that this Court enter a final judgment:

I.

Permanently restraining and enjoining Wachovia from violating, directly or indirectly, Section 17(a) of the Securities Act [15 U.S.C. § 77q];

II.

Ordering Wachovia to disgorge all illegal profits that it obtained as a result of the fraudulent conduct described in this Complaint, together with prejudgment interest thereon;

III.

Imposing civil monetary penalties on Wachovia pursuant to Section 20(d)(2) of the Securities Act [15 U.S.C. § 77t(d)(2)]; and

IV.

Granting such other and further relief as the Court shall deem just and proper.

Respectfully submitted,

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Certification

Pursuant to Local Rule 11.2, I certify that the matter in controversy alleged in the foregoing Complaint is not the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding.

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