Commonwealth of Kentucky
Office of Financial Institutions

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SECURITIES

In the Matter of	)	
	)	
Wachovia Capital Markets, LLC	)	FINDINGS OF FACT
301 South College Street	)	CONCLUSIONS OF LAW
Charlotte, North Carolina,	)	CONSENT ORDER
	)	
RESPONDENT	)	

WHEREAS, Wachovia Capital Markets, LLC is a broker-dealer registered in the Commonwealth of Kentucky; and

WHEREAS, a coordinated investigation into activities of Wachovia Capital Markets, LLC and its predecessors, in connection with certain potential conflicts of interest that research analysts were subject to during the period of January 1, 1999, through December 31, 2002, have been conducted by a multi-state task force (collectively, the "State Regulators"); and

WHEREAS, Wachovia Capital Markets, LLC has advised the State Regulators of its agreement to resolve the investigations relating to its research practices; and

WHEREAS, Wachovia Capital Markets, LLC has adopted policies and procedures designed to ensure compliance with all legal and regulatory requirements regarding research analyst independence, including applicable securities laws, regulations and rules of the Securities Exchange Commission, NASD, and New York Stock Exchange; and

WHEREAS, Wachovia Capital Markets, LLC has demonstrated that its organizational structure and some of its policies were already consistent with many of the new structural reforms outlined in the December 2002 Research

Analyst Global Settlement agreement-in-principle, and Wachovia Capital Markets, LLC voluntarily began implementing additional policies and procedures in January 2003 consistent with those structural reforms and completed that implementation by November 2003; and

WHEREAS, in November 2002, Wachovia Corporation contracted to upgrade the e-mail retention technology, including content filtering and internal archiving platforms, of its subsidiaries and business units, including Wachovia Capital Markets, LLC, and its predecessors, which upgrade is in the process of being implemented; and

WHEREAS, Wachovia Capital Markets, LLC, elects to permanently waive any right to a hearing and appeal under KRS 292.470(3) and KRS 292.490 with respect to this Consent Order (the "Order");

NOW, THEREFORE, the Executive Director of the Office of Financial Institutions, as administrator of the Securities Act of Kentucky, KRS Chapter 292, hereby enters this Order:

FINDINGS OF FACT

I. JURISDICTION

1. Wachovia Capital Markets, LLC, (CRD No. 126292) is currently and, at all times relevant to this Order, was registered in the Commonwealth of Kentucky as a broker-dealer. As used in this Order, the term "WCM" refers collectively to Wachovia Capital Markets, LLC and its predecessors.

2. The Office of Financial Institutions has jurisdiction over this matter pursuant to the Securities Act of Kentucky.

3. This action concerns the period of January 1, 1999, to December 31, 2002 (the "Relevant Period"). During the Relevant Period, WCM engaged in both research and investment banking activities as described below.

II. BACKGROUND

4. Wachovia Corporation, formerly known as First Union Corporation ("First Union"), is a diversified financial services company that provides banking, asset management, wealth management, and corporate and investment banking products and services.

5. First Union formed First Union Capital Markets Corp. in 1994. Following the formation of First Union Capital Markets Corp., First Union determined to expand its capital markets business through a series of acquisitions, including Wheat First Butcher Singer in January 1998, Bowles Hollowell Connor & Co. in April 1998, EVEREN Capital Corporation in October 1999 and Forum Capital Markets, LLC, in June 2000. In conjunction with the acquisition of EVEREN Securities, Inc., First Union Capital Markets Corp. merged with and into EVEREN Securities, Inc., EVEREN's broker-dealer subsidiary, and changed its name to First Union Securities, Inc. In September 2001, First Union merged with the former Wachovia Corporation. First Union was the surviving entity in the merger. Following completion of the merger, First Union changed its name to Wachovia Corporation and, thereafter, the former Wachovia Securities, Inc., merged with First Union Securities, Inc., and First Union Securities, Inc., the survivor of that merger, changed its name to Wachovia Securities, Inc. Wachovia Capital Markets, LLC was formed in connection with

Wachovia Corporation's July 2003 joint venture with Prudential Financial, Inc. in which the retail brokerage operations of Wachovia Securities, Inc. and Prudential Securities Inc. were combined. Wachovia Capital Markets, LLC is the entity that was created at that time to operate Wachovia Corporation's institutional brokerage and capital markets businesses.

6. Wachovia Corporation consists of four business divisions, including Corporate Investment Banking ("CIB"). CIB provides lending, capital markets, treasury and financial advisory services for corporate and institutional customers. CIB's business activities are conducted through several Wachovia Corporation subsidiaries including, but not limited to, WCM.

7. Several divisions of CIB including, but not limited to, Investment Banking, Fixed Income and Equity Capital Markets operate, in whole or in part, through WCM. Equity Research, Equity Trading, Institutional Sales and the Equity Capital Markets Desk are the four departments within Equity Capital Markets. The Equity Capital Markets Division, in its present form, was started in 2000.

8. From July 1999 through December 1999, the head of Equity Research directly reported to one of the managers of Investment Banking. At all other times during the Relevant Period, the management of the Equity Research Department reported to the head of the Equity Capital Markets Division, who in turn reported to the managers of CIB. In 1999, Investment Banking was the term used to describe the business unit engaged in Investment Banking activity, as

well as sales, trading, principal investing and other non-investment banking activities.

A. The Investment Banking Function at WCM

9. The Investment Banking Division of CIB at WCM provides financial advice and transactional services to corporate clients regarding, among other things, equity and debt offerings, business combinations and other financing transactions.

10. During the Relevant Period, the Equity New Business Committee and the Equity Commitment Committee approved WCM's participation as an underwriter or as a member of a selling syndicate in IPOs or secondary offerings. Prior to the approval, the committees received written presentations from the group working on the proposed transaction, setting forth the pertinent information regarding the issuer and the level of WCM's participation in the transaction.

B. The Role of Research Analysts at WCM

11. During the Relevant Period, WCM's Equity Research Department employed approximately 40 Research Analysts to provide research coverage on a broad range of industry sectors and to publish periodic reports on selected companies within those sectors. Equity Research Analysts at WCM ("Research Analysts") were responsible for reviewing the performance of the selected companies, evaluating their business prospects, and providing analyses and projections concerning the investment opportunity presented by the company, commonly referred to as providing research coverage.

C. Research Ratings at WCM

12. During the Relevant Period, WCM used several systems to rate the investment opportunity of the companies on which research was published ("Covered Company"):

a. From August 1999 through September 2000, WCM used a five-tier system under which companies were classified as follows, from most to least positive:

> **1 Buy** – Expectations of at least a 20% total return or more in the next 12 months. This rating is for our best ideas both for the short and long terms.
>
> **2 Outperform** – Expectations of a 10%-20% total return in one year or more. We believe this stock is a good one for a longer period; we are confident about its fundamentals.
>
> **3 Hold** – Potential upside of 10%, but the potential downside is also 10% within a 12-month period.
>
> **4 Underperform** – Expectations that the stock could drop by more than 10% in the near term. This rating implies that this stock will not only underperform the market, but it also could drop significantly in price. Ideally, this stock is viewed as a "source of funds."
>
> **5 Sell** – This is an outright sale due to fundamental risk or dramatic industry changes.

b. In October 2000, WCM implemented a four-tier rating system using the following ratings:

> **1 Strong Buy** Expectations of at least a 20% total return or more in the next 12 months. This rating is for our best ideas both for the short and long terms.
>
> **2 Buy** Expectations of a 10-20% total return in one year or more. We believe this stock is a suitable holding for a longer period; we have a high degree of confidence in the company's fundamentals.
>
> **3 Market Perform** Potential upside is 10% as is the potential downside within a 12 month period. Stock will likely perform in line with the Market.

4 Underperform Expect that stock price could decline by more than 10% over the next 12 months. This stock should be viewed as a source of funds.

c. In February 2002, WCM removed all reference to percentages in the definitions of the ratings, which were changed to the following:

Strong Buy: We believe noticeable upside potential exists. We have high visibility on estimates, and confidence in the company's business model and management's execution abilities. A near-term catalyst should be able to drive the stock higher.

Buy: We believe the stock is attractively valued. The company has sound or improving fundamentals that should allow it to outperform the broader market.

Market Perform: We believe the stock may be mispriced. The company may have issues affecting fundamentals that may take some time (perhaps a quarter or more) to resolve or there is a misunderstanding of the company's business fundamentals or growth prospects. (The Street may be too upbeat about the long-term prospects.)

Underperform: We believe the stock is noticeably mispriced relative to the soundness of the company's fundamentals and long-term prospects. The company has significantly weak fundamentals or a flawed business model.

d. In May 2002, WCM modified the definitions of the two lowest rating categories as follows:

Hold: We believe the stock is fairly valued at the current price. The company may have issues affecting fundamentals that could take some time to resolve. Alternatively, company fundamentals may be sound, but this is fully reflected in the current stock price. *Do not accumulate additional shares*

Sell: We believe the stock is overpriced relative to the soundness of the company's fundamentals and long-term prospects. The company has significantly weak fundamentals or a flawed business model. *Sell*

(emphasis in original) Thereafter, WCM adopted a three tier system (Outperform, Market Perform and Underperform), which is in place today.

13. WCM's Research Analysts virtually never used the lowest rating in WCM's stock rating system. During the Relevant Period, WCM publicly stated its rating system had either four or five categories. However, WCM Research Analysts rarely used the "4" or "5" rating. Of 2,038 ratings between January 1, 1999, and July 2, 2002 analyzed during the investigation, only 16 (.79%) were "4" rated and only 2 (.10%) were "5" rated.

14. Some Research Analysts discussed the timing of ratings changes. For example, under areas of development in his 2000 performance evaluation, one Research Analyst stated "In the past, we've been first with meaningful news and 'talked down' stocks without formally changing ratings."

15. Although institutional clients were the primary target audience, research reports authored by the Research Analysts and disseminated by WCM were accessible by certain clients through internal websites for clients and to non-clients through First Call, Bloomberg, and subscription services.

III. THE RELATIONSHIP BETWEEN THE INVESTMENT BANKING DIVISION AND EQUITY RESEARCH DEPARTMENT OF WCM CREATED POTENTIAL CONFLICTS OF INTEREST FOR RESEARCH ANALYSTS

16. During the Relevant Period, certain practices at WCM created potential conflicts of interest for the firm's Research Analysts which arose from the inherent tension between the Research Analyst's obligation to provide independent research regarding covered companies and the involvement of the Research Analysts in various aspects of its investment banking business.

Periodically, some Research Analysts at WCM identified potential investment banking opportunities in their respective industry sectors, including initial public offerings ("IPOs").

A. Analysts Participated in Investment Banking Activities

17. Certain Research Analysts supported the efforts of investment bankers at WCM. On occasion, the Investment Banking Division promoted WCM's research coverage to issuers for whom WCM was seeking to act as an underwriter for investment banking transactions.

18. A number of performance evaluations for WCM Research Analysts, and their Associates,[1] assessed the subject's involvement in investment banking activities for the evaluation year. Some performance evaluations established goals for assistance to investment banking in the following year. Examples include, but are not limited to:

a. One Research Analyst, in evaluating the performance of an Associate, stated the Associate "could have accomplished even more without excessive burdens from investment banking." According to the Associate's self-evaluation:

> Corporate finance placed significant demands on our time; reviewing pitches, answering inquiries to assist in developing presentations, editing transaction documents and providing support on positioning pieces. Additional staffing may be necessary if we continue to ramp up the banking business, which can sometime [sic] leave us overwhelmed to the detriment of our research effort.

[1] Associates assist the Research Analyst in gathering information on the covered companies in writing reports. Associate positions provide training for becoming a Research Analyst and many Associates at WCM openly discussed what they needed to improve in order to "move to the next level" of becoming a Research Analyst.

b. Another Research Analyst established increased "interaction with investment banking" as a goal for 2002. To accomplish this goal, the Research Analyst promised he would be "available for pitches as necessary" and have "flexibility regarding the companies I chose to cover."

c. On a self-evaluation, an Associate Analyst stated "in response to the marketing trip with JILL, I investigated the dilutive effects of a secondary offering and followed up with investment banking to inform [an investment banker for WCM] of the potential for a follow-on in the next year."

d. Another Associate Analyst stated he had exceeded expectations based in part on his "significant involvement in pitching for new equity business and working on the efforts once the business was won."

e. A Research Analyst stated that his "extensive relationship base" had proven critical to (a) institutional sales, (b) research and (c) investment banking. The Research Analyst also noted his "frequent role of assisting investment bankers accessing the tax exempt/institutional equity market for joint venture capital."

f. Under the section entitled "Areas for Development," one Research Analyst commented "[t]ime management skills are always a challenge in equity research given the obligations to writing, research, sales and banking."

g. A Research Analyst established "[p]articipate in additional corporate finance transactions" as a goal for 2001. The Analyst pledged "to play a crucial part in gaining lead manager status" in investment banking deals which were pending at the time.

h. In evaluating the performance of his Associates, one Research Analyst observed his industry sector "seems to be one of the busiest, both in demands from sales/trading as well as banking."

i. In response to a question regarding areas for development in the upcoming year, a Research Analyst included, among other areas, to "[c]ontinue to work closely with Corporate Finance counterparts [to] execute identified projects and pursue new opportunities with a focus on quality."

j. An Associate Analyst identified increasing "investment banking exposure" as one of several areas for development. The Associate went on to state, "I hope to be given the opportunity to work with banking teams on deal pitches when possible, the IPO process or M&A opportunities."

k. In evaluating his performance for 2001, a new Research Analyst stated

> On the investment banking side, I feel like I have built strong relationships with both private and public companies. I have been aggressive at getting out to meet with companies, both public and private, and to continue the dialogue on an ongoing basis. I have worked hard to build a strong relationship with my investment banking counterparts.

l. In discussing the year's performance, one Research Analyst discussed his involvement with investment banking, citing, as an example, participation in the NetScreen initial public offering. According to the Analyst, he "created a large portion of the NetScreen pitch" and worked closely with company management "in preparing a pro-forma operating model and in preparing the roadshow presentation."

19. Some Research Analysts at WCM organized or participated in meetings where investment banking business was solicited. For example:

a. In March 2000, a Research Analyst asked the manager of Equity Capital Markets if he was available to attend a "pitch/dinner" with the executives of a private company. According to the Analyst, the company was close to making an IPO filing and WCM had a chance for the lead position on the transaction. The Analyst stated "[w]e have had to cancel two meetings, so we need to put on the big push. (Cancellations relate to 7 signed up deals so far this year, including 3 org meetings in the last week.)" When the manager was unable to attend the meeting, the Analyst asked for a recommendation of a substitute for the meeting to "fill your large shoes"; the substitutes suggested included a member of Research Management, whom the Analyst invited to the meeting.

b. In August 2001, one WCM Research Analyst recommended that the Analyst and the investment bankers in the sector discuss a potential secondary offering in the sector, adding "I would be happy to beg and plead" with the executives of the company being solicited.

c. In a December 2001 e-mail message, a member of Research Management congratulated Research Analysts who had been involved in recent investment banking deals. Each Research Analyst was asked to provide two to three points that made WCM stand out on the deal "either in [WCM's] performance on the deal [or WCM's] positioning on the cover." The Research manager indicated the information would be used in an upcoming research conference call "as [a] learning experience for the research department." As an

example of what was expected, the manager said of one Research Analyst's impact on a deal:

> 1) He visited the company several times in the 12 month [sic] prior to the bake-off, 2) he wrote about the company in industry reports and notes on public company competitors that he covers, and 3) he exhibited an expertise in this sector of security that exceeded that of even the lead manager.

20. Investment banks, including WCM, competed to be selected by issuers as underwriters for investment banking transactions. Issuers selected underwriters based on presentations by the competing investment banks, during which the investment banks described their qualifications, outlined a selling strategy, and offered investment banking and other services to the issuer. As part of these presentations, investment banks, including WCM, often provided issuers with a "pitchbook" describing the credentials of their investment bankers and services that the investment bankers could provide.

21. The pitchbooks prepared and used by WCM's Investment Banking Division to solicit investment banking business frequently referenced the Research Department of WCM and the WCM Research Analyst who covered the issuer's industry sector. One or more of the following was found in a number of pitchbooks:

a. The Research Analyst for the company's sector was identified under the heading, "Transaction Team," along with the investment bankers who were soliciting the business, as well as staff from the institutional sales and equity syndication responsible for the marketing and pricing of the transaction;

b. Equity Research Analysts were referred to in a chart labeled "Provides a Full Array of Investment Banking Products";

c. The growth in WCM's Research Department was cited, along with the Trading Desk, as support for the statement that WCM was "Building a dominant investment banking platform for growing companies"; and

d. "Sales/sales trading/research/banking alignment" was listed as one of seven "core competencies" of WCM's Equity Capital Markets Division, along with "focused, in-depth research" and other characteristics.

22. Memoranda on prospective investment banking deals submitted to the Equity Commitment Committee and Equity New Business Committee for approval were put together by the investment bankers responsible for soliciting the business. On some memoranda, the Research Analyst for the issuer's industry sector was listed as a member of the transaction team and/or as a submitter of the memoranda.

23. Some pitchbooks implied that, if WCM was selected as an underwriter on the investment banking transaction, the issuer would receive research coverage from WCM. Examples include, but are not limited to:

a. Inclusion of time lines which indicated when the Research Analyst would initiate coverage and stated the Analyst would issue follow-up research reports as necessary.

b. Notations to past favorable coverage by the Research Analyst and emphasis of its enthusiastic support for the issuer.

c. References to the WCM Research Analyst's ratings for the issuer's industry sector, highlighting favorable comparisons to the ratings of analysts from other investment banks. For example, one pitchbook stated the WCM Research Analyst "continues her emphatic support of the wireless sector with stronger ratings on covered companies than her peers."

d. Identification of the Research Analyst's history of ratings.

e. Inclusion of charts showing the historical price and volume of the issuer's stock. When such information was not available, the WCM pitchbooks used historical price and volume information for other companies in the issuer's industry. The price and volume charts given to prospective investment banking clients noted the dates that WCM had published research reports, along with other news events.

24. Specific instances where the pitchbook for an investment banking solicitation emphasized that WCM's equity research was related to its investment banking activities include, but are not limited to:

a. Under the topic "RAPIDLY EXPANDING HEALTHCARE INVESTMENT BANKING PRACTICE", a December 2000 pitchbook for a transaction involving Natus stated, among other things, "Hired an additional six Healthcare equity research analysts in the last 12 months" and "Dedicated research analysts work closely with corporation finance professionals to help meet client needs."

b. A January 2000 pitchbook for a presentation to E-PLUS listed WCM's Research Department, with other departments, under the heading "SOLID INVESTMENT BANKING PLATFORM."

c. An August 2001 pitchbook for a presentation to Alamosa Personal Communications Services stated "[WCM] has built a full service investment banking platform," which included "Proactive research coverage in equity" markets. The pitchbook further stated that WCM had "committed significant capital and resources," including equity research, towards the success of Alamosa.

25. Certain communications between WCM's Research Analysts and supervisors in Investment Banking demonstrate that some Research Analysts attempted to promote WCM's investment banking and suggest that the Research Analysts believed that they would benefit if WCM received investment banking mandates. For example:

a. In August 2001, one Research Analyst contacted the head for WCM's Investment Banking industry group in the Analyst's sector, to suggest a change in investment bankers assigned to Nextel Partners and AirGate. At the time, the Analyst covered both companies with "Strong Buy" ratings.

i. The Analyst suggested the change due to "the slip up with Nextel Partners which we all have belabored over the past few weeks and some recent developments with AirGate."

ii. With regard to Nextel Partners, the Analyst alluded to a recent "mix-up" between the WCM banker and the company, stating "Obviously, you

know I was very frustrated with that situation given that I was clearly told by the CFO that we would have been in the deal had that never happened."

iii. The Analyst also referenced recent difficulties between AirGate and the WCM banker assigned to the company. The Analyst informed the investment banking group head:

> AirGate plans to do a secondary sometime in the first half of 2002. I feel I have a good enough relationship with that management team to hopefully win them over (I will beg if needed) and try & get us in the deal. The treasurer seemed to imply to [the WCM investment banker] that if a relationship manager change would be put in place – it may help our case.

iv. The Analyst concluded the e-mail message by saying:

> I hope you do not think I am budding [sic] in where I should not be, it is just I obviously have a vested interest in getting both deals done. In my mind, my team has devoted the effort from the research side and we are now getting penalized for something we had no control over or involvement with in the first place.

b. In November 1999, a Research Analyst sent an e-mail message to a senior member of Investment Banking Management, praising the work of the investment banker working in the Analyst's industry sector.

i. The Analyst informed the investment banking manager that "[w]e seem to be identifying several opportunities a week as well as traveling to a pitch a week."

ii. According to the Analyst, he had been concerned before starting with WCM that he would not have "adequate support on the banking side. This has proven not to be the case. [The investment banker] has proven to be far more focused, responsive and productive than any banking

counterpart that I ever worked with at [a previous employer]. . . . [The investment banker] has been, and will be crucial to monetizing my research franchise."

iii. After identifying investment banking transactions which were completed, in process, or "in pursuit for 2000",[2] the Analyst concluded by saying "We both remain focused on jointly developing a credible, sustainable and highly profitable [sector] franchise. We look for our economics to only improve further as the FUSI institutional brand, particularly in this space, takes hold."[3]

26. Supervisors at WCM expected Research Analysts to be supportive of investment banking. For example:

a. According to an article in SmartMoney magazine entitled "What's an Analyst to Do?" in June of 2000, a member of Equity Capital Markets Management is quoted as saying that "[m]ost [banks] would say, 'our analysts are here just to do great research and follow companies,' but that's not the reality. They have a lot of responsibilities – and investment banking is becoming more essential."

b. In the article referenced in paragraph 26(a), a Research Analyst at WCM is quoted as saying that "[i]t's a fact of life. I've got three different hats to wear. There's the research, but then there's the banking and marketing. I've got an obligation to all three." In the article, the Analyst estimated that research-

[2] The Analyst stated these were "More than I can count."
[3] References by Research Analysts to "space" mean the industry sector which the analyst covers.

related tasks occupied only one-third of the Analyst's time, and the rest was spent on banking and marketing.

B. Some WCM Pitchbooks Prepared by WCM's Investment Banking Division Referenced Past Research in the Context of Seeking Future Business

27. In a pitch to one company in October 2000, WCM listed the services that it had provided to the company as:

> Significant capital commitment since the Company's IPO
>
> #1 Trader of [the company's] Stock
>
> Strong Buy equity coverage[4]
>
> Institutional and retail distribution capabilities equal to that of Wall Street firms[.]

WCM contrasted these services with the benefit WCM had received from the company saying:

> but . . .
>
> ➢ Only $800,000 in equity fees since Company's IPO, behind, Donaldson, Lufkin & Jenrette Securities Co., J.P. Morgan Securities, Inc., Bear, Stearns & Co. Inc., PaineWebber Inc., and Banc of America Securities
>
> ➢ No lead mandate[.]

[4] The evidence does not indicate that the prior research ratings were influenced by Investment Banking.

28. In an October 2000 pitch to another company, WCM again contrasted services provided to the company and the benefits WCM received from the company. According to the pitch, WCM delivered:

$200 million of total capital commitment

#1 trader of [the company's] Stock

Strong Buy equity coverage[5]

Institutional and retail distribution capabilities equal to that of Wall Street firms

Willingness to provide access to retail brokers as mezzanine loan origination source

Open to potential bought deal in 2001[.]

These services were contrasted with the benefits WCM had received from the company, which were listed as:

- Only $700,000 in equity fees since Company's IPO, behind Merrill Lynch & Co., Banc of America Securities, U.S. Bancorp Piper Jaffray, Inc., William Blair & Company, and A.G. Edwards & Sons, Inc.
- No lead mandate[.]

C. On Occasion, Investment Banking Concerns Were Considered in WCM's Decisions Whether to Initiate or Continue Research Coverage

29. The decision to initiate or continue research coverage of certain companies was influenced, at least in part, by whether those companies were actual or prospective investment banking clients of WCM. For example, in

[5] The evidence does not indicate that the prior research ratings were influenced by Investment Banking.

evaluating the performance of one Research Analyst, a member of Research Management noted that the Analyst was "very flexible in adding coverage where investment banking has had a sense of urgency."

30. In the article referenced in paragraph 26(a), a WCM Research Analyst discussed her "Strong Buy" rating of Ask Jeeves during a time of significant price decline. The Analyst remained bullish on the company's prospects and was quoted as saying that "[i]t's 'positioned to be the most profitable business model in our group.'" Further, according to the Analyst, early in the freefall in the price of Ask Jeeves stock, its CFO told her that the company was unhappy with its investment bank and was "looking to create new relationships." However, WCM was not included as an underwriter on the Ask Jeeves secondary offering. According to the article, the Analyst said "I've done a lot of marketing of this stock and invested a lot of time. Ask Jeeves choosing to go elsewhere with the deal has definitely been the biggest disappointment."

31. Each Research Analyst at WCM was required to prepare an annual Business Plan, for internal use. These Business Plans were sometimes discussed during the annual performance evaluation. In the Business Plan, each Research Analyst was required to: (a) give an account of the approach that the Research Analyst had to the industry sector they covered, (b) identify significant trends within that sector, and (c) set forth coverage plans for the upcoming year. According to a member of Research Management, the function of the Business Plan was to require each Research Analyst to identify those stocks under consideration for coverage over the next twelve months, to compel the Research

Analyst to set forth and commit to specific actions to take in order to procure additional business from institutional investors, and to inform WCM what the Research Analyst thought "the level of activity of investment banking is going to be in that space" for the next year.

32. During the Relevant Period, the Business Plan included a section entitled Coverage Plans, which asked the Research Analyst to provide a rationale for issuing research coverage for companies. Some Research Analysts completed the Coverage Plan section by citing the investment banking potential of the companies as a reason for research coverage. The following are some examples of comments by Research Analysts in their Coverage Plans:

a. One WCM Research Analyst stated he intended to "[a]dd 1-2 names in 2001, reflecting investment/real estate banking relationships" in one sector and to "[a]dd 2-3 names, reflecting investment/real estate banking need to retain coverage of this sector after [another Analyst's] departure." The Research Analyst listed eight companies that were being considered as additions to his coverage list, and ranked each company according to its importance to Research and to Investment Banking. A review of the Analyst's initiation of coverage reveals the following:

1) WCM initiated coverage on three companies that Investment Banking ranked as higher in importance than Research, one of which had been previously covered by WCM.

2) WCM did not initiate coverage on any company Research ranked highest as a target for coverage that was not previously covered;

Investment Banking ranked each of these companies as lower in importance.

b. Another Research Analyst stated "Before committing to any specific direction, I need to understand what my investment banking situation is so I can work closely with the lead banker to develop a plan which we both believe we can successfully execute."

c. One Research Analyst at WCM stated that any new company for which he would initiate coverage in 2001 should (1) have "a strong management team," (2) be "uniquely positioned in a market niche that has good underlying fundamentals," (3) be "under-followed," and (4) include "an opportunity to provide corporate finance."

d. Another Research Analyst at WCM identified three specific companies which he was considering for coverage, each of which was expected to do an equity offering. The Analyst stated "the bulk of our focus going forward will be on small, under-followed, value names, where we have an existing relationship and the company has a near-term (6-12 months) need to tap the capital markets. I have been working closely with our [sector] corporate finance head . . . to develop this list of names."

e. One Research Analyst identified several companies for which coverage would be dropped because "These are not attractive stocks and have little investment banking potential."

f. After identifying the companies for which coverage would be initiated, a Research Analyst noted that his list of companies on which he planned to initiate coverage had "the full support of banking."

g. In identifying planned coverage initiations for 2002, another Research Analyst stated, "[w]e plan to role [sic] out 3-4 stocks in 2002 to add mid-stream natural gas companies to our coverage and further support our corporate finance effort." The Analyst identified another company as a potential addition "based on investment banking requests."

33. In some instances, investment bankers participated in discussions about adding or dropping coverage on companies covered by WCM's Research Analysts. For example:

a. In preparation for a meeting in October 2000 to review the list of companies covered by WCM, a member of Research Management told Research Analysts, in an e-mail message, "[b]e prepared to answer why we are covering it (banking client, banking prospect, institutional importance)." The manager further instructed the analysts to "Make sure you and your banker have discussed this in advance. You will be on at the same time. The committee is the 'tie breaker' (i.e., you want to drop a stock and the banker does not)."

b. Following the October 2000 screening meeting, the same manager sent a follow-up e-mail to the Research Analysts which instructed "[p]lease do not take any action as it relates to dropping stocks that were discussed during the screening process. Instead, we must first finalize communication with investment banking."

c. Following screening meetings in May and June 2001, a member of Research Management sent an e-mail message to the Research Analysts which stated "[c]ontinue to appreciate that there is a hard dollar cost and opportunity cost to every stock that we follow, and that your mandate as an analyst is to continually look for companies that can be monetized from an institutional and/or investment banking perspective."

d. In an e-mail message in October 2001, one Research Analyst informed members of Research Management about plans to initiate coverage on AT&T Wireless, UbuiquiTel and US Cellular.

i. With regard to US Cellular, the Analyst stated "we actually used to follow the name but dropped it (mostly because of my bankers)."

ii. With regard to AT&T Wireless, the Analyst specifically noted there was "no real banking opportunity" from the company.

e. In the SmartMoney article referenced in paragraph 26(a), a WCM Research Analyst described initiating coverage on Marketwatch despite the Analyst's own reservations about the rapid cash consumption the company was showing after the Analyst's Investment Banking partner told her that it was a good one to cover because "there's a real opportunity on the banking side."

f. Also, in the SmartMoney article referenced in paragraph 26(a), the same Research Analyst described a situation with the initiation of coverage on CNet. According to the Analyst, the investment banker in the sector asked "why I would take up a research spot with a company with a billion in cash and no need for investment banking." The investment banker commented in the article "We

have these kinds of conversations all the time, about many companies," and acknowledged that a Research Analyst has to cover bellwether stocks in a sector, even if the potential for banking business with those companies is slim.

34. The annual Business Plan prepared by analysts included a section "New Equity Business" where analysts were asked "What stocks that you are *recommending* are the most likely to raise equity in the next 12 months? What are your plans to insure that we are involved in these deals (i.e., fresh company reports, non-deal roadshow with senior management, sponsored investor visits, etc.)." [emphasis in original] Examples of responses from analysts in this section include, but are not limited to:

a. In a 2001 Business Plan, one Research Analyst for WCM claimed "EMI approached me for advise [sic] on listing in the U.S. and doing a secondary in conjunction with that listing. They made it clear that they would need my research since there are few that knew the music business well."

b. Another Research Analyst identified two companies which he expected would need capital and stated the Analyst was "scheduling non-deal roadshows with both companies. In addition, the publishing of a comprehensive industry report will highlight both companies as well managed leaders in their respective market niches with favorable financial characteristics to other strategic information providers." According to the Analyst, that fact, combined with an effort by WCM to demonstrate its distribution capabilities and breadth of services, would leave WCM "well positioned for significant participation in any capital market transactions by either firm."

c. With regard to a company for which WCM was involved in an IPO, one Research Analyst stated "I have stayed visible with management in an effort to potentially **improve our position** relative to the other underwriters." [emphasis in original] On another company with the potential for investment banking business, the Analyst stated he planned "on **initiation of coverage** to gain visibility." [emphasis in original]

d. Another Research Analyst noted that equity issues were not an important source of revenue in his sector, but went on to say "[i]f there is a fee event associated with any of my companies, I'll do whatever it takes to make sure we participate in a meaningful way. Conversely, If [sic] we are getting paid in ways above and beyond equity, and it's due to my coverage/efforts, I expect to get credit for it."

e. One Research Analyst noted "planned new coverage will be on companies that offer good investment opportunity and are capital intensive businesses. These companies will have potential for investment banking penetration if our bankers also establish relationships."

f. Another Research Analyst referenced a company which had done an IPO with WCM as co-manager and which the Analyst said was the most likely to raise equity in the upcoming year, noting "Given the potential business and because I like the story a lot, I have been actively writing on the company (recently upgrading the stock)."

g. A Research Analyst noted his efforts on two specific companies. The Research Analyst also stated "[w]e plan to pick up coverage of a number of companies that have investment banking potential in 1Q01."

h. In a 2002 Business Plan, one Research Analyst stated that he intended to initiate coverage of a new sector, which was described as having the potential to be "a very valuable source of revenue for Wachovia from both a commissions and banking standpoint." Later in the plan, under "New Equity Business," the Analyst stated that the investment banking group "believes there are real opportunities for banking assignments if Wachovia can provide research coverage of the sector."

35. In an informal business plan for the second half of 2000 and first half of 2001, a Research Analyst commented:

> Like most research analysts, I would like to have an equal amount of 'banking related' names and pure research/institutional ideas on my coverage list. By doing this, I believe it will allow me to establish credibility with the buy side and institutional sales force while, at the same time, generate corporate finance fees for the firm.

D. Investment Banking Input was a Factor in Decisions Regarding Participation at Certain WCM's Research Conferences

36. In an e-mail to Equity Research and the industry group heads in investment banking regarding a conference in 2000, a member of Research Management stated, "[w]e would now like each industry group (banking and research together) to take the names they submitted and complete one final review to ensure that the top 5 names reflect the companies you would like to invite." [emphasis in original]

37. One Research Analyst identified 12 companies as possible presenters at a Research conference. His e-mail forwarding the list to the member of Research Management responsible for determining the final list of presenters identified 11 of the 12 companies as Investment Banking's clients.

38. In commenting about a specialty conference planned by a Research Analyst during 1999, a member of Research Management told a member of Investment Banking Management: "I think this is a great idea. So do the corporate finance bankers, who also believe it would pay for itself quickly."

39. In his 2000 performance evaluation, one Research Analyst stated he planned on hosting a specialty conference for his sector during the first quarter of 2001, noting he would "need support from banking and Equity Capital Markets to produce a successful conference."

E. Investment Banking Was a Factor in Determining Some Research Analysts' Compensation

40. During the Relevant Period, participation in investment banking activities was a factor in determining the total compensation awarded to some WCM Research Analysts.

41. Research Analysts at WCM received set salaries plus annual bonuses; the bonuses accounted for the majority of their total compensation. The compensation of some Research Analysts was set by the terms of individual employment contracts, which generally included a guaranteed minimum incentive. When the bonus amount was not set by contract, the amount of each Research Analyst's bonus was determined by Research Management.

a. For the years 2000 and 2001, members of Research Management created Equity Research Performance Summaries for each Research Analyst, which showed, among other items, the revenue generated for WCM from equity investment banking fees and equity commissions on the companies that the Research Analyst covered.

b. According to a November 2000 e-mail, year-end bonuses for Research Analysts were to be based on institutional votes, sales force ranking, commission volume, stock picking and investment banking fees.

c. In November 2000, members of Research Management asked the Research Analysts to provide information regarding closed investment banking deals, which included the amount of the fee earned and the "Degree of Involvement/Participation (H, M, L)" by the Research Analyst in each deal.

d. For the year 2000, summaries were prepared by Research Management which ranked the Research Analysts by commissions, banking & other fees, and total revenue.

e. For the years 2001 and 2002, members of Research Management created Equity Research Performance Summaries for each Research Analyst, which showed, among other items, the revenue, both equity investment banking fees and equity commissions, generated for WCM from Covered Companies. Research Management also gathered information for 2001 and 2002 for all investment banking activity as well as retail and institutional sales.

42. Prior to 2000, some Research Analysts at WCM expected to receive a portion of the management fee earned by WCM on each investment

banking transaction in which the analyst participated. According to a member of Research Management at the time, "[i]f an analyst was a finder on a deal, on an IPO, they [sic] would get 15 percent of the management fee. If they [sic] worked on the deal, they'd [sic] get 10 percent of the management fee." This Research manager also testified that a similar formula existed to compensate Research Analysts on secondary offerings in which WCM participated. These amounts were paid to the Research Analysts as part of the year-end bonuses; year-end bonuses also included a share of commissions earned on both retail and institutional sales (1% and 5% of the commissions respectively). The manager testified that these amounts were not paid to Research Analysts while they were subject to guaranteed compensation agreements.

43. The bonuses paid in early 1999 to WCM Research Analysts that related to their work in 1998 were approved by the heads of what was then called Investment Banking. In 1999, Investment Banking was the term used to describe the business unit engaged in Investment Banking activity, as well as sales, trading, principal investing and other non-investment banking activities.

44. The 1999 Incentive Compensation Program For Equity Capital Markets provided:

> Subject to approval from the President/Head of Capital Markets, in consultation with the Co-Heads of Investment Banking, a subjectively determined Bonus pool will be established for utilization by all Equity Capital Markets organizations. The Co-heads of Investment Banking will allocate the resulting total incentive dollars to the appropriate groups within Equity Capital Markets, and work with the various equity group managers to determine the allocation of incentive award monies within the respective groups.

This Incentive Compensation Program was not executed due to changes in the management structure of Equity Capital Markets at the end of 1999.

F. Participation in Investment Banking was a Factor in Evaluating the Performance of Some WCM Research Analysts

45. During the Relevant Period, WCM's process for annual performance evaluations of employees required the employees to perform a self-evaluation and the employee's manager to evaluate the employee on the same criteria. Some performance evaluations of Research Analysts and their Associates, as well as Research Management, considered investment banking activity, among other things, as a criterion for assessing whether the employee had fulfilled the job requirements.

Research Analysts

46. For the year 2000, 46 of 52 evaluations for Research Analysts contained comments by managers of Research. Twenty-three of the forty-six evaluations (50%) discussed investment banking. Comments by the managers include:

a. Under areas for development, analysts were told to take a "Proactive approach to investment banking."

b. Research Management commented that one Research Analyst was "Very flexible in adding coverage when investment banking had a sense of urgency."

47. Forty-two performance evaluations for 2000 included a self-evaluation by the Research Analyst. Thirty-four of the forty-two evaluations

(80%) contained comments relating to the analysts' investment banking activities. Examples of comments from the analysts' self-evaluations include, but are not limited to:

a. One Research Analyst responded to the question "How have the employee's performance/business results compared to the accountabilities/ expectations established at the beginning of the review period?" by declaring "my performance has exceeded expectations, both in a quantitative and qualitative way, particularly given the meaningful contribution to First Union's equity issuance calendar in the early stages."

b. Another Research Analyst stated "my banker and I have generated a good [amount] of fees for the firm." The Analyst identified goals for 2001, which included "increase banking fees by at least 20%."

c. In citing reasons for feeling positive about his performance during 2000, one Research Analyst stated, "[i]n a tough market, we were productive on the banking front. I helped FUSI win co-manager roles with 20%+ economics in HAKI secondary offering and VVVV IPO." The Analyst identified several other deals on which WCM had been co-manager. Under areas of development, the Research Analyst stated "I need to raise my profile with public and private companies that we don't cover. This will lead to more invitations for banking business."

d. Under quantitative and qualitative goals for 2001, one WCM Research Analyst stated as a goal to "Work with banking to give them ideas of companies to pitch and [to] pitch with them."

48. For the year 2001, 36 of 42 performance evaluations for Research Analysts contained comments by Research Management. On 31 out of the 36 evaluations (86%), the manager discussed investment banking. In doing so, the manager used phrases such as:

- "Proven ability to win and execute quality business";
- "Has shown ability to monetize research franchise through quality IB business";
- "Deal performance has met/exceeded expectations."

In some instances, the manager commented that the Research Analyst was "Supportive of the broader CIB effort," adding the caveat that "deal performance has been below expectations" or "capital raising in sector remains lackluster."

49. Forty of the forty-two evaluations for 2001 contained self-evaluations by the subject Research Analyst. In assessing their own performance in 2001, 32 of these 40 evaluations (80%) included comments regarding investment banking activities. Examples of comments by the analysts include, but are not limited to:

a. In the self-assessment for areas for development, one Research Analyst wrote:

> I believe I was negative[ly] impacted by the First Union/ Wachovia brand (lack of) in the largest banking deal this year.... Bulge bracket bias runs deep during market downturns, and I believe we received little support from executive management to brake [sic] down those barriers. We understand that the executive management of JP Morgan put on an aggressive campaign to be added as one of the four underwriters of the KCIN deal. Hopefully, the successful hiring of a rainmaking head of tech banking will resolve this issue (but the new org structure may hurt those efforts). Through aggressive research and relationship building post-IPO,

> we believe we are well-positioned for a run at some form of "co" slot in the future.

b. In assessing her own performance, another Research Analyst wrote:

> Banking has been somewhat disappointing; ... [I]n two specific examples (AirGate and Nextel Partners), we were told we were not included in investment banking deals due to an 'issue' or problem with the First Union bankers. This hurt the most as we were clearly told by the CFO in both these companies that there was no problem with the reseach [sic] effort and we would have been on the deal had these banking issue [sic] not come up.

c One Research Analyst complained "it has been difficult to formulate a cohesive strategy with investment banking for additional coverage."

d. A Research Analyst noted that, on the positive side of his performance, he had "[w]orked closely with banking to identify and market to both public and private companies" and said he "[e]stablished close relationship with Marvell, which is on the firm's investment banking focus list." In assessing his strengths, the Analyst wrote "I believe my industry contacts continue to make my job easier both with respect to equity research and investment banking. I have been able to leverage these contacts into both making the right call on individual stocks as well as being able to identify potential banking business."

e. As a specific goal for improving performance in the upcoming year, one Research Analyst recognized that, if he wanted to advance, he would need to break from the patterns followed in his first years as an Analyst. The Research Analyst stated that he "sought to implement the procedures and methodology put in place in equity research to the letter. I am pleased with the results." The Analyst also stated: "Rather than following companies that

corporate finance believes are prospects, I need to develop the ability and credibility within the industry." The Analyst stated that he would "work to develop a strong partnership with the new investment banking structure in Charlotte, and insure that my product compliments their business" and do his "best to help investment banking enhance its client relationships."

50. Annual Business Plans were prepared by the Research Analysts. The Business Plan format included a section in which Research Analysts were asked to identify 2 to 3 things needed from a resource standpoint or things the analyst would change that would noticeably improve their business. Research Analysts sometimes commented that they wanted or needed an investment banker or increased investment banking resources in their sector. One Research Analyst stated he wanted "Support from senior management on IPO pitches to demand business."

51. In March 2000, a member of Research Management wrote a memorandum to a Research Analyst regarding the Analyst's possible promotion from Director to Managing Director (the highest title for a Research Analyst). In addressing the Analyst's compliance with criteria for promotion, the Research manager stated "[I]f you were to deliver a co-lead or lead managed deal to the firm sometime this year (as you suggested you might) it would certainly solidify this view [that the Analyst met many of the criteria for promotion], assuming of course that you continued to function at your current high level."

Associates

52. Evaluations of certain Associates also made reference to investment banking. Examples of such references include, but are not limited to:

a. In the performance evaluation for 2000, one Research Analyst identified four "Areas for Development" for her Associate, including "Get more involved in investment banking pitches."

b. In a self-evaluation, an Associate Analyst identified flexibility as one of her strengths. The Associate stated, "I have supported [the Research Analyst] and my other 'customers' at every turn and have abandoned projects in which I had invested much time and energy to focus and concentrate on the priority project of the moment." The Associate stated she assisted with priority projects, including, among other things, "helping corporate finance in their pitchbook development."

c. Under quantitative and qualitative goals for the upcoming year, an Associate Analyst listed "Grow my contact list as well as improve upon the current year's investment banking business in my space."

d. Another Associate Analyst was instructed by the Research Analyst to have "more interaction with investment banking" during the upcoming year. The Associate Analyst was told "to go on at least six banking calls" during that year.

Research Management

53. Performance evaluations of members of Research Management for 2001 mentioned investment banking. For example:

a. One Research manager was praised for exceeding expectations for 2001. According to the supervisor conducting the manager's evaluation,"[t]hroughout 2001, changes were made in our research department to better create a balance to support our insti'l [sic] ranking as well as investment banking." The manager's supervisor identified "Increased integration and support for evolving investment banking platform" as an area which the manager needed to develop.

b. In assessing his own performance for 2001, one of the Research Managers commented that, as part of Research Management, he was "responsible for . . . the success of our analysts' involvement in investment banking." The manager further stated "Our interaction and support of investment banking increased in 2001" and commented that Research Management "continue[d] to work closely with [Investment Banking Management] and his team. They rely heavily on us for input, views on strategic direction and personnel assessment."

c. In a 2001 performance evaluation, a member of Research Management was complimented for having "Begun stronger communication and strategy with IB." "Support and communication for IB management" was identified as an area that the Research manager needed to develop. In a personal evaluation, the Research-manager stated that he planned on "Spending

more time understanding investment banking's strategic objectives and spending more time in Charlotte."[6]

IV. WCM FAILED REASONABLY TO SUPERVISE ITS RESEARCH ANALYSTS

54. During the Relevant Period, WCM's management failed to maintain and enforce adequate policies, procedures and systems reasonably designed to manage the potential conflicts of interest outlined above. Among other things, this failure to supervise gave rise to and perpetuated the above-described violative conduct.

V. WCM FAILED TO MAINTAIN AND PRODUCE IN A TIMELY MANNER CERTAIN BOOKS AND RECORDS REQUIRED BY THE SECURITIES ACT OF KENTUCKY

A. WCM Did Not Have Adequate Systems or Procedures in Place to Ensure that All Electronic Mail Communications Were Maintained and Were Readily Accessible

55. On October 16, 2002, WCM was required to produce, pursuant to a larger request for access to its books and records: "The electronic mail files, including incoming, outgoing, draft and deleted files, for [six specified Research Analysts], wherever stored, from January 1, 1999, through October 16, 2002, including all electronic files and attachments thereto." The request was later modified to request the electronic mail files for the six analysts for the following dates: January 1, 1999; April 10, 2002; and the last day of each quarter from

[6] During the Relevant Period, Investment Banking was headquartered in Charlotte; Equity Research and Equity Capital Markets were headquartered in Baltimore. No research analysts were located in Charlotte.

January 1, 1999 through the date of production. WCM produced compact discs containing a total of 71 e-mail folders[7] pursuant to the request. Of the 90 folders that should have been produced (taking into account dates for which the identified analysts were not employed by WCM), 19 e-mail folders (20% of the requested folders) could not be produced.

56. On January 10, 2003, State Regulators requested the e-mail folders for the six identified Research Analysts for the 15th day of each month beginning January 1999 through June 2000. WCM produced compact discs containing e-mail folders for 42 days, some of which had been produced previously. Of the 87 folders which should have been produced (taking into account dates for which the identified analysts were not employed by WCM) 37 e-mail folders (42% of the folders requested) were not produced initially.[8]

57. WCM represented to the State Regulators that, if the e-mail folders for a particular day could not be restored, it attempted to restore the next closest date but, in many instances, the closest available date was a date for which the e-mail folder had already been provided.

58. On February 24, 2003, the State Regulators requested information, in the form of an affidavit, regarding the difficulties encountered by WCM during the production of the electronic mail files. The information provided by WCM in response to the affidavit request was not fully responsive.

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[7] For purposes of this Order, "e-mail folder" refers to the file produced by WCM for a specified analyst retrieved from a back-up tape for a specific date. The folder contained e-mail messages sent and received through the e-mail address assigned to a particular analyst; WCM represented that the folder would also contain all messages deleted by the analyst during a period of seven days prior to the date of the back-up tape from which the folder was pulled. In addition, a folder may contain an address book of contact information for frequent correspondents, calendar entries, and a journal of activities, depending on the set-up for the particular analyst.

[8] Six of the missing folders subsequently were produced on December 2, 2003.

59. Through the affidavit, WCM provided several explanations for its inability to produce the e-mail folders, including representations that some tapes were not readable by the tape drive, some tapes contained no data, some tapes could not be located by the outside storage facility, or computer catalogs of the back-up tapes could not be located on the server. The State Regulators attempted to obtain additional information from WCM's affiant regarding the provided explanations for the production problems; however, the affiant did not have sufficient personal knowledge about the search procedures and document production of electronic mail folders to provide all of the specific information requested. WCM contends the information could have been obtained from other WCM employees.

60. As a result of these failures, WCM did not maintain readily accessible books and records as required by the Securities Act of Kentucky.

B. WCM Failed to Maintain an Organized System to Locate and Retrieve Tapes which Purportedly Contained the Back-up for the Electronic Mail System

61. WCM did not maintain, and/or could not produce upon request, documents showing which tapes containing the daily back-ups of the electronic mail systems were transferred to its third party storage facility.

62. According to an affidavit provided by WCM, in some instances, the computer catalog for the software used to backup the electronic mail system contained no reference to a back-up having been done for a particular date. This catalog was used to identify back-up tapes to be retrieved for purposes of

compliance with previously described requests throughout the course of the investigation. Based on the information provided, no reference in the catalog exists for more than 25% of the time period covered by the January 10, 2003 request.

63. The failure to maintain records regarding the transfer of tapes to the storage facility and the failure of the computer catalog to have a reference to all back-ups was a significant contributing factor in WCM's inability to retrieve tapes necessary to fully respond to the requests.

CONCLUSIONS OF LAW

1. The Commonwealth of Kentucky has jurisdiction over this matter pursuant to the Securities Act of Kentucky, KRS Chapter 292 and the administrative regulations promulgated pursuant to the Act, 808 KAR 10.

2. WCM failed to reasonably supervise its agents or employees, in violation of 808 KAR 10:030 § 2 and KRS 292.330(13)(a)9.a.

3. WCM failed to preserve for a period of three years, and/or preserve in an accessible place for two years, all internal and external electronic communications relating to the business of WCM in violation of KRS 292.330(12)(a) and 808 KAR 10:320.

4. This Order is necessary and appropriate in the public interest and for the protection of investors, and is consistent with the purposes fairly intended by the policy and the provisions of the Securities Act of Kentucky.

ORDER

On the basis of the Findings of Fact, Conclusions of Law, and Respondent WCM's consent to the entry of this Order, for the sole purpose of settling this matter, prior to a hearing and without admitting or denying any of the Findings of Fact or Conclusions of Law,

IT IS HEREBY ORDERED:

1. This Order concludes the Investigation by the Office of Financial Institutions and any other action that the Office of Financial Institutions could commence under the Securities Act of Kentucky on behalf of the Commonwealth of Kentucky as it relates to Respondent WCM, or any of its affiliates, and their current or former officers, directors, and employees, arising from or relating to the subject of the Investigation, including certain research and investment banking practices at WCM and the failure by WCM to maintain all electronic communications during the Relevant Period, provided, however, that excluded from and not covered by this paragraph are any claims by the Office of Financial Institutions arising from or relating to enforcement of the Order provisions contained herein.

2. WCM will cease and desist from violating 808 KAR 10:030 § 2 and KRS 292.330(13)(a)9.a. of the Securities Act of Kentucky in connection with the research practices referenced in this Order, and will comply with 808 KAR 10:030 § 2 and KRS 292.330(13)(a)9.a. of the Securities Act of Kentucky in connection with the research practices referenced in this Order.

3. This Consent Order shall become final upon entry.

4. As a result of the Findings of Fact and Conclusions of Law contained in this Order, WCM shall pay assessments as follows:

a. $164,138.00 to the Commonwealth of Kentucky as a civil monetary penalty pursuant to KRS 292.500(14) and $85,000.00 as a contribution to the Kentucky Council on Economic Education which amount constitutes the Commonwealth of Kentucky's proportionate share of the state settlement amount of Twenty Million Dollars ($20,000,000) for failing to supervise its employees in connection with potential conflicts of interest between Equity Research and Investment Banking, which shall be payable to the Commonwealth of Kentucky and the Kentucky Council on Economic Education within ten (10) business days of the date on which this Order becomes final;

b. $20,554.00 to the Commonwealth of Kentucky as a civil monetary penalty pursuant to KRS 292.500(14) which amount constitutes the Commonwealth of Kentucky's proportionate share of the state settlement amount of One Million Six Hundred Fifty Thousand Dollars ($1,650,000) for failing to preserve certain books and records required by KRS 292.330(12)(a) and 808 KAR 10:320, which shall be payable to the Kentucky State Treasurer within ten (10) business days of the date on which this Order becomes final;

c. $37,371.00 which amount constitutes the Commonwealth of Kentucky's portion of the state settlement amount of Three Million Dollars ($3,000,000) to be used for investor education paid to the Kentucky

Investor Education Fund (the "Fund") of the Investor Protection Trust, Attn: Don Blandin, IPT, Suite 300, 919 Eighteenth Street NW, Washington, DC 20006-5517;

i. This payment shall be made within ninety (90) days of the date on which this Order becomes final by check or wire transfer to the Investor Protection Trust for credit to the Investor Protection Trust Account, together with a cover letter identifying WCM as a respondent in this action and the payment designated for the Investor Education Fund - Kentucky. The firm shall simultaneously transmit photocopies of its payment and letter to the Kentucky Office of Financial Institutions. By making this payment, the firm relinquishes all legal and equitable right, title, and interest in such funds, and no part of the funds shall be returned to the firm. The Fund shall be administered in accordance with the terms of the Investor Education Plan.

ii. The Fund shall be used to support programs designed for the purpose of investor education and research and education with respect to the protection of investors, and to equip investors with the knowledge and skills necessary to make informed investment decisions and to increase personal financial literacy. The Investor Protection Trust, in cooperation with NASAA, has established an investor education plan designed to achieve these purposes.

iii. No principal or income from the Fund shall:

1) inure to the general fund or treasury of any State; or

2) be utilized to pay the compensation or expenses of state officials or state employees except such expenses as are necessary to fulfill the purposes of the Fund.

iv. Monies in the Fund may also be used to pay any taxes on income earned by such Fund. WCM shall provide the Investor Protection Trust with relevant information and otherwise cooperate with the Investor Protection Trust in fulfilling the Fund's obligations under applicable law.

v. All fees, costs, and expenses incurred by the Investor Protection Trust in connection with and incidental to the performance of its duties under this Order, including the fees, costs, and expenses of any persons engaged to assist it and all administrative fees, costs, and expenses related to the investor education plan shall be paid out of the Fund;

d. The total amount to be paid by WCM to state securities regulators and the Investor Education Fund of the Investor Protection Trust may be

reduced due to the decision of any state securities regulator not to accept the state settlement offer. In the event another state securities regulator determines not to accept WCM's state settlement offer, the amount of the Commonwealth of Kentucky payment and the portion of the payment to the Investor Education Fund of the Investor Protection Trust, if any, shall not be affected, and shall remain as stated in this Order.

5. If payment is not made by WCM, the Office of Financial Institutions may vacate this Order, at its sole discretion, upon 10 days notice to WCM and without opportunity for administrative hearing and WCM agrees that any statute of limitations applicable to the subject of the Investigation and any claims arising from or relating thereto are tolled from and after the date of this Order.

6. WCM agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification, including, but not limited to payment made pursuant to any insurance policy, with regard to any civil monetary penalty that WCM shall pay pursuant to this Order. WCM further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal or local tax for any civil money penalty that WCM shall pay pursuant to this Order. WCM understands and acknowledges that these provisions are not intended to imply that the Commonwealth of Kentucky would agree that any other amounts WCM shall pay pursuant to this Order may be reimbursed or indemnified (whether pursuant to an insurance policy or otherwise) under applicable law or may be the basis for any tax deduction or tax credit with regard to any state, federal or local tax.

7. This Order is not intended by the Office of Financial Institutions to subject any Covered Person to any disqualifications under the laws of the United States, any state, the District of Columbia or Puerto Rico, including, without limitation, any disqualifications from relying upon the state or federal registration exemptions or safe harbor provisions. "Covered Person" means WCM or any of its affiliates and their current or former officers, directors, employees, or other persons that would otherwise be disqualified as a result of the Orders (as defined below).

8. This Order and the order of any other State in related proceedings against WCM (collectively, the "Orders") shall not disqualify any Covered Person from any business that they otherwise are qualified, licensed or permitted to perform under applicable law of the Commonwealth of Kentucky and any disqualifications from relying upon this state's registration exemptions or safe harbor provisions that arise from the Orders are hereby waived.

9. For any person or entity not a party to this Order, this Order does not limit or create any private rights or remedies against WCM including, without limitation, the use of any e-mails or other documents of WCM or of others regarding research practices or limit or create liability of WCM or limit or create defenses of WCM to any claims.

10. Nothing herein shall preclude the Commonwealth of Kentucky, its departments, agencies, boards, commissions, authorities, political subdivisions and corporations, other than the Office of Financial Institutions and only to the extent set forth in paragraph 1 above, (collectively, "State Entities") and the

officers, agents or employees of State Entities from asserting any claims, causes of action, or applications for compensatory, nominal and/or punitive damages, administrative, civil, criminal, or injunctive relief against WCM in connection with certain research and/or banking practices at WCM.

11. This Order and any dispute related thereto shall be construed and enforced in accordance, and governed by, the laws of the Commonwealth of Kentucky, without regard to any choice of law principles.

12. The parties represent, warrant and agree that they have received independent legal advice from their attorneys with respect to the advisability of executing this Order.

13. WCM 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 Order or creating the impression that this Order is without factual basis. Nothing in this Paragraph affects WCM's: (i) testimonial obligations or (ii) right to take legal or factual positions in defense of litigation or in defense of a claim or other legal proceedings in which the Office of Financial Institutions is not a party.

14. This Order shall be binding upon WCM and its successors and assigns. Further, with respect to all conduct subject to Paragraph 2 above and all future obligations, responsibilities, undertakings, commitments, limitations, restrictions, events, and conditions, the terms "WCM" and "WCM's" as used here shall include WCM's successors and assigns (which, for these purposes, shall include a successor or assign to WCM's investment banking and/or equity

research operations, and in the case of an affiliate of WCM, a successor or assign to WCM's investment banking or equity research operations).

15. WCM, through its execution of this Consent Order, voluntarily waives their right to a hearing on this matter and to judicial review of this Consent Order under KRS 292.330(13)(f), Chapter 13B, and/or KRS 292.490.

Dated this 17th day of October, 2006.

By: _____
Keith H. Talley, Sr., Deputy Executive Director
Office of Financial Institutions
Commonwealth of Kentucky

CONSENT TO ENTRY OF
ORDER BY
WACHOVIA CAPITAL MARKETS, LLC

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

2. WCM admits the jurisdiction of the Office of Financial Institutions of the Commonwealth of Kentucky, neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Order; and consents to entry of this Order by the Executive Director of the Office of Financial Institutions as settlement of the issues contained in this Order.

3. WCM states that no promise of any kind or nature whatsoever was made to it to induce it to enter into this Order and that it has entered into this Order voluntarily. Charles S. Neal represents that he is a vice-president of WCM and that, as such, has been authorized by WCM to enter into this Order for and on behalf of WCM.

4. WCM understands that the Commonwealth of Kentucky may make such public announcement concerning this Order and the subject matter thereof as the Commonwealth of Kentucky may deem appropriate.

Dated this 11th day of September, 2006.

Wachovia Capital Markets, LLC

By: Charles S. Neal
Charles S. Neal

Title: _____
Vice-President

SUBSCRIBED AND SWORN TO before me this 11th day of September, 2006.

Sharon D. Hedgecoth
Notary Public

My Commission expires: 2/24/08