

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF NEW YORK**

WACHOVIA SECURITIES, LLC, a Delaware  
Corporation,

Plaintiff,

v.

MICHAEL C. CHRYS, a Natural Person,

Defendant.

CIVIL ACTION NO.

**COMPLAINT  
(INJUNCTIVE RELIEF SOUGHT)**

Plaintiff Wachovia Securities, LLC ("Wachovia"), by its undersigned attorneys, alleges:

**Preliminary Statement**

1. This action is for a temporary restraining order and a preliminary injunction to maintain the status quo pending resolution of an arbitration proceeding between Wachovia, defendant Michael C. Chrys ("Chrys" or "Defendant") and his new employer, Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch") that concurrently is being filed with FINRA Dispute Resolution.<sup>1</sup>

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<sup>1</sup> The Financial Industry Regulatory Authority ("FINRA") was created in July 2007 through the consolidation of the National Association of Securities Dealers, Inc. (the "NASD") and the member regulation, enforcement and arbitration functions of the New York Stock Exchange. Wachovia has the express right to seek temporary injunctive relief before a court of competent jurisdiction pending the outcome of arbitration before a full panel of duly-appointed arbitrators pursuant to Rule 13804 of the NASD Code of Arbitration Procedure for Industry Disputes. A true and correct copy of Rule 13804 is annexed as Exhibit B to the accompanying

2. The immediate action and concurrent arbitration arise out of the departure of Defendant from Wachovia on September 19, 2008 and his subsequent employment with Merrill Lynch, Pierce, Fenner & Smith, Inc. ("Merrill Lynch"), a direct competitor of Wachovia.

3. Chrys was a financial consultant in Wachovia's Latham, New York branch office until his abrupt resignation, after which he immediately commenced employment with Merrill Lynch in its Clifton Park, New York branch office. In addition, on September 19, 2008, the same day as Chrys' resignation, David Martin ("Martin"), a financial consultant in training, and Tracy Rashford ("Rashford"), a sales assistant, also abruptly resigned from Wachovia and joined Chrys at Merrill Lynch. In connection with his resignation, Chrys violated his fiduciary duty, duty of loyalty, and also breached his common-law and contractual obligations owed to Wachovia.

4. Specifically, prior to his resignation, Chrys misappropriated Wachovia's confidential and proprietary documents and files, including but not limited to files for union accounts that he serviced while at Wachovia. Moreover, shortly before his resignation from Wachovia, Chrys had the Information Technology department at Wachovia copy all of his emails from his Wachovia email account onto a "jump" drive, which allows computer files to be saved, stored and transported to another computer. These emails contain information and documents

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Declaration of William Jackowski, dated September 26, 2008 (the "Jackowski Decl.").

that are confidential and proprietary and contain Wachovia trade secrets, including confidential reports and statements of Wachovia clients. On information and belief, Defendant has taken and is using the information at Merrill Lynch.

5. The Protocol for Broker Recruiting (the "Protocol"), to which both Wachovia and Merrill Lynch are signatories, regulates: (a) the type of client information registered representatives may take with them when they move from one Protocol-signatory firm to another, and (b) the solicitation of clients by registered representatives after their resignation. A true and correct copy of the Protocol is attached to the Jackowski Decl. as Exhibit A. Chrys, however, has not complied with the terms and requirements of the Protocol and therefore it is inapplicable to this matter.

6. The Protocol states that when a registered representative leaves one Protocol-signatory firm for another, the registered representative is permitted to "take **only** the following account information: client name, address, phone number, email address and account title of the clients that they serviced at the firm ("the Client Information") and ***are prohibited from taking any other documents and information***" (emphasis added).

7. At the very least, Wachovia's investigation, which is ongoing, has discovered the following probable violations of the Protocol:

- Improper removal of the complete files for Wachovia union accounts that Defendant serviced while at Wachovia;
- The improper copying and retention of all of Defendant's emails on his Wachovia email account which contained documents and information beyond that permitted by the Protocol;

8. Moreover, the Protocol does not permit a departing registered representative to delete or alter information on the employer's internal computer system. Specifically, on information and belief, Defendant has:

- deleted from Wachovia's computer system shared files relating to union accounts he serviced while at Wachovia, which included essential reports that were generated by Wachovia's Institutional Sales Department for service of these accounts;
- deleted spreadsheets and reports detailing Wachovia's clients' mutual fund activity; and
- the contact telephone numbers on file for some of the Wachovia clients that Defendant served are incorrect and, on information and belief, may have been altered by Defendant.

9. In addition, nothing in the Protocol permits Defendant to violate his fiduciary and contractual duties owed to Wachovia

10. To prevent continued irreparable harm arising from this course of misconduct, Wachovia seeks immediate injunctive relief (in the form of a temporary restraining order and a preliminary injunction) barring Defendant from using Wachovia's confidential and proprietary information and trade secrets to solicit Wachovia clients and personnel and from using and/or having Wachovia's confidential business and customer information, pending resolution of Wachovia's claims against Defendant in a related arbitration.

#### **Jurisdiction and Venue**

11. The Court has jurisdiction in this action pursuant to 28 U.S.C. §1332(a) in that, as alleged below, plaintiff Wachovia, on the one hand, and Defendant Chrys, on the other hand, are citizens of different states, and the matter

in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

12. Venue is proper in this judicial district pursuant to 28 U.S.C. §1391(a), in that a substantial part of the events giving rise to the claims occurred in Albany County, New York.

#### **The Parties**

13. Plaintiff Wachovia is a national broker-dealer, serving individual and institutional clients throughout the country. Wachovia is a limited liability company organized under the laws of the state of Delaware with its principal place of business located in St. Louis, Missouri. Wachovia's sole member is Wachovia Securities Financial Holdings, LLC, which is a limited liability company organized under the laws of the state of Delaware with its principal place of business located in St. Louis, Missouri. Ultimately, the majority shareholder of the interest in Wachovia is Wachovia Corporation, a corporation organized under the laws of the state of North Carolina with a principal place of business in Charlotte, North Carolina and a minority interest is held by Prudential Financial, Inc., a New Jersey corporation with a principal place of business in New Jersey.

14. Defendant Chrys is an individual who at all times relevant herein was employed and/or conducted business in Albany County, New York and was and is a citizen of New York. Chrys was previously employed by Wachovia as the as a financial advisor in its Latham, New York branch office.

15. In connection with his status as a registered representative of Wachovia, Defendant executed a Form U-4 Uniform Application for Securities Industry Registration or Transfer. By executing the Form U-4, Defendant agreed to submit to arbitration disputes, claims and controversies arising between himself and Wachovia.

#### **Factual Allegations**

16. Chrys became a Wachovia employee in or about July 2003 when Wachovia merged with the Prudential Securities Division of Prudential Financial, Inc. Chrys was employed by Prudential beginning in or about March 2000. From July 2003 until July 2007, Defendant was employed in Wachovia's Saratoga Springs branch office. From July 2007 until his resignation on September 19, 2008, Defendant was a financial consultant in Wachovia's Latham, New York branch office.

17. While at Wachovia, Chrys worked closely with Martin, a financial consultant in training, and Rashford, a sales assistant. On September 19, 2008, the same date as Chrys' resignation, Martin and Rashford also resigned from Wachovia and immediately joined Chrys at Merrill Lynch. Chrys and his team generated on annualized basis approximately \$1,900,000 in revenues and managed approximately \$250 million in Wachovia assets.

#### **Wachovia's Confidentiality Policies**

18. All Wachovia employees, including Defendant, were bound by Wachovia's Associates Guide. The Associates Guide contains various provisions

which require Wachovia employees to maintain the confidentiality of Wachovia's business information and the information of its clients. A true and accurate copy of Wachovia's Associates Guide is annexed to the Jackowski Decl. as Exhibit C. Specifically, Section 4.A.6, titled "Confidential and Proprietary Information," provides that the "Maintenance of the confidentiality of client and proprietary information is the responsibility of every Associate."

19. Further, the Associates Guide provides in Section 4.A.6.a., titled "Client Information," that:

the Firm is responsible for protecting client information. Thus, all client records, including the names and addresses, at all times remain the property of the Firm and may not be removed, reproduced or copied in any format without the approval of the Firm. Associates may not offer for sale or otherwise divulge the Firm's client lists or related information . . .

It is inappropriate to access client information outside the scope of an Associate's specific responsibility. Associates may not divulge information concerning a client's finances, investment objectives, transactions or any other personal financial information to any other person or entity unless the information is divulged:

- At the direction of the client;
- To other Associates when essential to servicing the client accounts;
- In conjunction with supervisory review or compliance activities; or
- As permitted by law.

20. The Associates Guide also requires that employees not divulge Wachovia proprietary information. Provision 4.A.6.b., "Firm Information," provides that:

Associates may not divulge [Wachovia] proprietary information to any unauthorized person. [Wachovia] views as proprietary information all documentation, records, data and information necessary to its business or used in connection with its day-to-day operations. While not an exhaustive list, the proprietary information is considered to include:

- Client information,
- Internal procedures,
- Technology,
- Internal marketing and dealer information,
- Operating results,
- Compensation and relationships with Associates, and
- Any other information disclosure of which could adversely affect [Wachovia].

21. Section 6.A.f of the Associates Guide makes clear that access to client information is authorized for Wachovia business purposes only, and that it “is inappropriate to access client information outside the scope of the Associate’s specific responsibilities.”

22. In consideration for the Defendant entering into an employment relationship with Wachovia, Wachovia provided Defendant with significant benefits, including substantial compensation, office and support facilities, fully-paid health insurance, securities registration, insurance licensing, underwriting, research, brokerage operations, and participation in the company 401(k) plan.

#### **Wachovia’s Confidential Information**

23. During the course of his employment, Defendant had access to highly confidential Wachovia customer files and other sensitive business and financial information that are confidential and proprietary to Wachovia. Wachovia’s customer records contain confidential financial information regarding each client,

including client identity, address, telephone numbers, transactional history, tax information, personal financial data, banking information and investment objectives, among other data.

24. A critical factor to Wachovia's continued success is the close relationship with its customers and financial advisors. Wachovia has built the loyalty of its customer base through many years of effort and a sizable financial investment in building its name and goodwill. Wachovia spends substantial resources in terms of time, effort and money annually to provide programs and support to its financial consultants, including Defendant, to enable them to use to obtain and build relationships with its customers.

25. Wachovia's customer lists and other records are not available from other sources and have been created and updated for a period of years based on Wachovia's relationship with its clients.

26. Wachovia has invested substantial corporate resources to develop and to maintain such information. These resources include supplies, equipment, television advertising, print advertising and other miscellaneous marketing activities. Wachovia has also expended significant resources to service the customers that were assigned to Defendant. These resources include execution costs for securities transactions, costs for staff and equipment to perform securities research and analysis, and other services. Wachovia has borne the entire expense of these services and activities as well, with no financial contribution from Defendant.

27. The trade secret information that Defendant has misappropriated was entrusted to Wachovia by its customers with the expectation that it would remain confidential and would not be disclosed to third parties. Defendant had access to this information solely by virtue of his employment by Wachovia. Wachovia and Defendant are obliged to maintain the confidentiality of this information. For its part, Wachovia took numerous steps to protect the confidentiality of this information. Defendant was fully aware of, and responsible for, complying with Wachovia's internal policies regarding confidentiality. Moreover, every year Wachovia conducts an annual compliance interview to ensure, among other things, that the confidentiality of Wachovia's records is maintained. As a condition of his employment with Wachovia, Defendant -- like all other Wachovia registered representatives -- acknowledged that he was familiar with Wachovia's internal policies regarding confidentiality of customer records. Wachovia has implemented numerous other policies to ensure the confidentiality of its customer information. For example, access to the Wachovia computer network by financial advisors is password-protected.

#### **Defendant's Resignation and Wrongdoing**

28. On September 19, 2008, Defendant resigned from Wachovia and immediately commenced employment with Merrill Lynch. In addition, on September 19, 2008, the same day as Chrys' abrupt resignation, Martin and Rashford resigned from Wachovia and immediately joined Chrys at Merrill Lynch, a direct Wachovia competitor. On information and belief, Merrill Lynch provided

Defendant with significant financial inducements including guaranteed loans and other incentives in exchange for his agreement to solicit Wachovia customers and employees to leave Wachovia for Merrill Lynch.

29. Defendant misappropriated Wachovia's highly confidential and trade secret information relating to the Wachovia clients he serviced while employed at Wachovia. As noted above, the Protocol regulates: (a) the type of client information registered representatives may take with them when they move from one Protocol-signatory firm to another, and (b) the solicitation of clients by registered representatives after their resignation. The Protocol permits a departing registered representative to take only basic client account information, such as client name, address, phone number, email address and account title for the clients that they serviced while at the firm. The departing registered representative is prohibited from taking any other information. The Protocol also requires that, upon resignation, the departing registered representative must leave a list of all the client information that the registered representative is taking with him and the list "also shall include the account numbers for the clients serviced by the RR." While Defendant did leave a purported Protocol list upon his resignation, the list did not include client account numbers, in violation of the terms and conditions of the Protocol.

30. On information and belief, Defendant has taken documents and information well beyond the "Client Information" that a broker is permitted to retain under the Protocol, making the Protocol inapplicable to the instant matter.

31. Specifically, Wachovia's preliminary investigation has revealed that Defendant has improperly removed the complete original client account files for union accounts that Defendant serviced while at Wachovia. In addition, shortly before his resignation, Defendant had Wachovia's Information Technology department save all of the emails from his Wachovia email account on a "jump" drive, which allows computer files to be saved, stored and transported to another computer. The information in Defendant's emails consisted of documents and information well beyond the information permitted to be taken by the Protocol, including reports and statements for Wachovia clients. Wachovia has conducted an exhaustive search of its offices and have been unable to locate the jump drive or the original client account files for many of the union accounts that Defendant serviced while at Wachovia. On information and belief, Defendant has taken and is using the information at Merrill Lynch.

32. Moreover, the Protocol does not permit a departing registered representative to delete or alter information on the employer's internal computer system. Specifically, on information and belief, Defendant has deleted from Wachovia's computer system shared files relating to union accounts he serviced while at Wachovia, which included essential reports that were generated by Wachovia's Institutional Sales Department for service of these accounts. In addition, on information and belief, prior to his resignation, Defendant improperly deleted from Wachovia's computer system spreadsheets and reports detailing the mutual fund activity for many of Wachovia's clients. Wachovia's investigation has

also revealed that Defendant may have altered the contact telephone numbers on file for some of the Wachovia clients that he serviced while at Wachovia, thus preventing Wachovia from being able to contact these customers upon his resignation.

33. In addition, nothing in the Protocol permits Defendant to violate his fiduciary and contractual duties owed to Wachovia, which he has done by the misconduct described above.

34. On information and belief, Defendant is using the confidential Wachovia documents and information removed from Wachovia in violation of the Protocol to solicit Wachovia customers. On information and belief, Defendant has provided the documents and/or the information contained therein to Merrill Lynch for the purpose of preparing a mass solicitation mailing to most, if not all, of Wachovia's clients whom he serviced. This is a further violation of the Protocol which permits registered representatives only "to provide another firm with information relating to the [registered representative's] business, other than account statements, so long as that information does not reveal client identity."

35. Moreover, Wachovia's clients have informed it that on or about September 24, 2008, Defendant attended a trustees meeting which involved the trustees for some of Wachovia's union and pension accounts. On information and belief, at the meeting, Defendant presented a consolidated report concerning pension and health/welfare funds to the trustees on behalf of his new employer, Merrill Lynch. On information and belief, this report was derived from and

contained confidential and proprietary Wachovia data that Defendant had access to solely due to his employment with Wachovia and he is prohibited from using or disclosing this information outside of Wachovia business activities.

36. Unless Defendant's misconduct is immediately restrained and enjoined, other competitors of Wachovia will be encouraged to engage in the same kind of illegal behavior, which will cause Wachovia severe and permanent damage.

37. Defendant's misconduct, as described above, constitutes at a minimum, breach of contract, breach of fiduciary duty and duty of loyalty, misappropriation of trade secrets, tortious interference, conversion, and unfair competition. Unless Defendant's conduct is immediately restrained and enjoined, other financial consultants of Wachovia will be encouraged to engage in the same reprehensible conduct. This misconduct is highly disruptive to Wachovia's ability to conduct business in a stable manner and to maintain Wachovia's goodwill with its customers and employees.

38. By seeking to pirate away Wachovia's documents and its clients and employees, Defendant has caused and will continue to cause irreparable injury to Wachovia. Defendant's wrongdoing has caused and will continue to cause irreparable harm to Wachovia by causing:

- (a) Loss of personnel;
- (b) Injury to Wachovia's reputation and goodwill in the Albany, New York area;
- (c) Present economic loss, which is unascertainable at this time, and future economic loss, which is now incalculable;

- (d) Disclosure of trade secrets, employee lists, and other proprietary and confidential business and customer information; and
- (e) Loss of Wachovia's clients' and employees' confidence and trust, and loss of business reputation.

**FIRST CLAIM FOR RELIEF**  
**(Breach of Contract)**

39. Wachovia realleges and incorporates herein by reference the allegations of paragraphs 1 through 38 hereof.

40. Defendant breached his contract with Wachovia by misappropriating Wachovia's confidential and proprietary client information and by utilizing such information to solicit Wachovia's customers to transfer their accounts from Wachovia to Merrill Lynch, a direct Wachovia competitor. By pirating away Wachovia's clients and proprietary and confidential information, Defendant seeks to convert to his benefit Wachovia's protectable interests.

41. As a direct and proximate result of the Defendant's breach of his contracts, Wachovia has sustained and will continue to sustain irreparable injury, the damages from which cannot now be calculated. Accordingly, Wachovia is entitled to a temporary restraining order and a preliminary injunction.

**SECOND CLAIM FOR RELIEF**  
**(Misappropriation of Trade Secrets and Confidential Information)**

42. Wachovia realleges and incorporates herein by reference the allegations of paragraphs 1 through 41 hereof.

43. Wachovia's confidential and proprietary business and customer information derives substantial, independent economic value from not being generally known to the public or to Wachovia's competitors, who could obtain economic value from the information. Wachovia expended substantial financial and human resources to develop this information, which cannot be easily acquired or replicated by others, from among the literally millions of actual or potential individual investors in the marketplace. Further, Wachovia has taken substantial efforts to maintain the secrecy of its confidential and proprietary financial, business, and customer information, including but not limited to restricting access to such information, designating such information as confidential and requiring employees to abide by confidentiality provisions. Accordingly, Wachovia's confidential and proprietary business and customer information constitutes trade secrets pursuant to New York law.

44. As a direct and proximate result of the Defendant's misappropriation of Wachovia's trade secrets, Wachovia has sustained and will continue to sustain irreparable injury, the damages from which cannot now be calculated. Accordingly, Wachovia is entitled to a temporary restraining order and a preliminary injunction.

**THIRD CAUSE OF ACTION**  
**(Breach of Fiduciary Duty)**

45. Wachovia realleges and reincorporates herein by reference the allegations contained in paragraphs 1 through 44 hereof.

46. As an employee of Wachovia, Defendant owed Wachovia a fiduciary duty of trust and loyalty.

47. Defendant's fiduciary duties required him at all times to, among other things, act in Wachovia's best interests and maintain the confidentiality of Wachovia's trade secrets and other confidential and proprietary business and customer information. Defendant's fiduciary duties required him at all times to refrain from, among other things, (a) soliciting Wachovia's clients to leave Wachovia and join him at a competitor company, and (b) taking Wachovia's proprietary and confidential customer information with him to a competing company.

48. Defendant breached his fiduciary duties to Wachovia by engaging in the conduct alleged above.

49. As a direct and proximate result of Defendant's breach of fiduciary duty, Wachovia has sustained and will continue to sustain irreparable injury, the damages from which cannot now be calculated. Accordingly, Wachovia is entitled to a temporary restraining order and a preliminary injunction.

**FOURTH CAUSE OF ACTION**  
**(Breach of Duty of Loyalty)**

50. Wachovia realleges and incorporates herein by reference the allegations of paragraphs 1 through 49 hereof.

51. By virtue of his position with Wachovia, Defendant owed Wachovia a duty of undivided loyalty during the term of his employment.

Defendant's duty of loyalty prohibited him from competing with Wachovia or assisting a competing business during the course of his employment with Wachovia. Defendant's duty of loyalty also included a duty to act toward Wachovia fairly, honestly and in good faith; to maintain the confidentiality of Wachovia's trade secrets and other confidential and proprietary business and customer information; and to refrain from any act or omission calculated or likely to injure Wachovia.

52. Defendant breached his duty of loyalty to Wachovia by engaging in the conduct alleged above (and incorporated herein) prior to the termination of his employment with Wachovia.

53. Defendant knew and intended, or knew and recklessly or negligently disregarded, that his acts had the purpose and/or effect of disrupting and harming Wachovia's business.

54. As a direct and proximate result of Defendant's breach of his duty of loyalty, Wachovia has sustained and will continue to sustain irreparable injury, the damages from which cannot now be calculated. Accordingly, Wachovia is entitled to a temporary restraining order and a preliminary injunction.

**FIFTH CAUSE OF ACTION**  
**(Intentional Interference with Actual  
and Prospective Economic Advantages)**

55. Wachovia realleges and incorporates herein by reference the allegations of paragraphs 1 through 54 hereof.

56. Wachovia has developed and maintains advantageous actual and prospective business relationships with its employees and clients that promise a continuing probability of future economic benefit to Wachovia.

57. Wachovia is informed and believes, and on that basis alleges, that Defendant knew or reasonably should have known about Wachovia's advantageous actual and prospective business relationships with its employees and clients.

58. Wachovia is informed and believes, and on that basis alleges, that Defendant has intentionally, maliciously and improperly interfered with and continues to interfere with Wachovia's relationships with its employees and clients by, among other things, directly and/or indirectly attempting to induce Wachovia employees and clients to sever their relationships with Wachovia and to induce them to do business with Merrill Lynch.

59. There was no privilege and justification for Defendant's conduct. Moreover, Defendant's actions also constitutes wrongful conduct above and beyond the act of interference itself, including misappropriation of trade secrets, breach of contract, unfair competition, breach of the Defendant's fiduciary duty, and breach of their duty of loyalty.

60. Defendant's conduct was willful and malicious.

61. As a direct and proximate result of the Defendant's tortious interference with actual and prospective business relationships, Wachovia has sustained and will continues to sustain irreparable injury, the damages from which

cannot now be calculated. Accordingly, Wachovia is entitled to a temporary restraining order and a preliminary injunction.

**SIXTH CAUSE OF ACTION**  
**(Negligent Interference with Actual and  
Prospective Economic Advantages)**

62. Wachovia realleges and incorporates herein by reference the allegations of paragraphs 1 through 61 hereof.

63. Wachovia entrusted Defendant with confidential information for use solely in performing his duties as an employee of Wachovia. As an employee of Wachovia, Defendant occupied a position of great trust and confidence. Defendant thereby owed Wachovia a fiduciary duty to deal with Wachovia in good faith and with loyalty. Defendant was also obligated to use due care so as not to interfere with Wachovia's business relationships, including those with its employees and clients.

64. Defendant, in breach of his duty of due care, on information and belief, has attempted to induce Wachovia clients to leave Wachovia.

65. Wachovia is informed and believes, and on that basis alleges, that Defendant was fully aware that his failure to use ordinary care could subject Wachovia to the loss of clients.

66. As a direct and proximate result of the Defendant's negligent interference with actual and prospective business relationships, Wachovia has sustained and will continue to sustain irreparable injury, the damages from which

cannot now be calculated. Accordingly, Wachovia is entitled to a temporary restraining order and a preliminary injunction.

**SEVENTH CAUSE OF ACTION**  
**(Conversion)**

67. Wachovia realleges and incorporates herein by reference, the allegations of paragraphs 1 through 66 hereof.

68. At all times, Wachovia was, and still is, entitled to the immediate and exclusive possession of its trade secrets and other proprietary information, and all physical embodiments thereof, as alleged above.

69. Wachovia is informed and believes that Defendant possesses Wachovia's trade secrets and other confidential and proprietary business and financial information, including but not limited to confidential client information, and converted them for use of Defendant and those acting in concert with him.

70. The continued retention of Wachovia's personal property by Defendant constitutes conversion.

71. As a direct and proximate result of the Defendant's conversion, Wachovia has sustained and will continue to sustain irreparable injury, the damages from which cannot now be calculated. Accordingly, Wachovia is entitled to a temporary restraining order and a preliminary injunction.

**EIGHTH CAUSE OF ACTION**  
**(Unfair Competition)**

72. Wachovia realleges and incorporates herein by reference the allegations of paragraphs 1 through 71 hereof.

73. Defendant's conduct as set forth above and incorporated herein is unlawful, unfair, fraudulent and deceptive, and constitutes unfair competition.

74. As a direct and proximate result of Defendant's unfair competition, Wachovia has sustained and will continue to sustain irreparable injury, the damages from which cannot now be calculated. Accordingly, Wachovia is entitled to a temporary restraining order and a preliminary injunction.

WHEREFORE, Wachovia respectfully requests that a judgment be entered in its favor against Defendant as follows:

A. In support of all claims for relief, a temporary and preliminary injunction lasting until such time as FINRA Dispute Resolution renders an award in the underlying dispute, enjoining and restraining the Defendant, directly or indirectly, and whether alone or in concert with others, including any director, officer, agent, employee and/or representative of Merrill Lynch, from:

(a) using, disclosing or transmitting for any purpose any confidential or proprietary information belonging to or concerning Wachovia, its customers or employees, including but not limited to the (i) names, addresses, social security numbers, phone numbers, financial information, investment objectives and account information of Wachovia's clients; (ii) the names, salaries, production and other business information regarding Wachovia's brokers and employees; and (iii) other confidential information, trade secrets and commercially sensitive materials of Wachovia; and

(b) using or disclosing Wachovia's confidential and proprietary business and customer information to solicit or assist in soliciting, directly or indirectly, Wachovia

clients for the purpose of inviting, encouraging, or requesting the transfer of any accounts from Wachovia;

B. ORDERING the Defendant, and all those acting in concert with him, including but not limited to the directors, officers, employees and agents of Merrill Lynch, to return to Wachovia or its counsel all records, documents and/or business and financial information in whatever form (whether original, copied, computerized or handwritten), pertaining to Wachovia's customers, employees and business, and to purge all documents and information derived therefrom from the possession, custody and control of Defendant and Merrill Lynch within twenty-four hours of notice to Defendant or his counsel of the terms of this Order; provided, however, that any information so purged first shall be first printed and returned to Wachovia in its native form pursuant to this paragraph.

C. Such other and further relief as the Court deems just and proper.

Dated: September 29, 2008

PADUANO & WEINTRAUB LLP

By:                     /s/                      
           Anthony Paduano (105102)  
 1251 Avenue of the Americas  
 Ninth Floor  
 New York, New York 10020  
 (212) 785-9100

Attorneys for Plaintiff  
Wachovia Securities, LLC

## CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

(b) County of Residence of First Listed Plaintiff Mecklenburg  
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

**DEFENDANTS**

County of Residence of First Listed Defendant \_\_\_\_\_  
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☐ 3 Federal Question (U.S. Government Not a Party)  
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |  | PTF                        | DEF                        |
|---|----------------------------|----------------------------|--|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation   | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights <b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☐ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

Brief description of cause:

**VII. REQUESTED IN COMPLAINT:**

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No

**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

**FOR OFFICE USE ONLY**

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44****Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553  
Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.