



**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

IN RE WACHOVIA PREFERRED SECURITIES
AND BOND/NOTES LITIGATION

Master File No. 09 Civ. 6351 (RJS)

ECF Case

**ORDER PRELIMINARILY APPROVING
PROPOSED SETTLEMENTS AND PROVIDING FOR NOTICE**

WHEREAS, a consolidated class action is pending in this Court entitled *In re Wachovia Preferred Securities and Bond/Notes Litigation*, Master File No. 09 Civ. 6351 (S.D.N.Y.) (RJS) (the “Bond/Notes Action” or “Action”);

WHEREAS, Lead Bond/Notes Plaintiffs Orange County Employees’ Retirement System, Louisiana Sheriffs’ Pension and Relief Fund, and Southeastern Pennsylvania Transportation Authority, individually and on behalf of the proposed Settlement Class (as hereinafter defined); defendants Wachovia Corporation (“Wachovia”), Wachovia Capital Trust IV, Wachovia Capital Trust IX, Wachovia Capital Trust X, Wachovia Capital Markets, LLC, Wells Fargo Securities, LLC, A.G. Edwards & Sons, Inc., Wells Fargo & Company (as successor-in-interest to Wachovia), G. Kennedy Thompson, Peter M. Carlson, Ross E. Jeffries, Jr., David M. Julian, Mark C. Treanor, Donald K. Truslow, Thomas J. Wurtz, John D. Baker, II, Robert J. Brown, Peter C. Browning, John T. Casteen, III, Jerome A. Gitt, William H. Goodwin, Jr., Maryellen C. Herringer, Robert A. Ingram, Donald M. James, Mackey J. McDonald, Joseph Neubauer, Timothy D. Proctor, Ernest S. Rady, Van L. Richey, Ruth G. Shaw, Lanty L. Smith, John C. Whitaker, Jr., and Dona Davis Young (collectively, the “Wachovia Defendants”); and defendant KPMG LLP (“KPMG” and together with the Wachovia Defendants, the “Settling Defendants”) have entered into a Stipulation and

Agreements of Settlement dated August 5, 2011 (the “Stipulation”), which is subject to review by the Court under Rule 23 of the Federal Rules of Civil Procedure, and which, together with the exhibits thereto, sets forth the terms and conditions of the following two settlements (collectively, the “Settlements”):

(1) The Wachovia Settlement, consisting of a settlement between (a) Lead Bond/Notes Plaintiffs, individually and on behalf of the proposed Settlement Class, and (b) the Wachovia Defendants, which provides for the proposed settlement of the claims asserted in the Bond/Notes Action against the Wachovia Defendants and the Underwriter Defendants on the merits and with prejudice, upon the terms and conditions set forth in the Stipulation; and

(2) The KPMG Settlement, consisting of a settlement between (a) Lead Bond/Notes Plaintiffs, individually and on behalf of the proposed Settlement Class, and (b) KPMG, which provides for the proposed settlement of the claims asserted in the Bond/Notes Action against KPMG on the merits and with prejudice, upon the terms and conditions set forth in the Stipulation.

WHEREAS, Lead Bond/Notes Plaintiffs have made an application, pursuant to Rule 23 of the Federal Rules of Civil Procedure, for an order preliminarily approving the Settlements in accordance with the Stipulation, certifying the Settlement Class for purposes of settlement only, and approving notice to the Settlement Class as more fully described herein;

WHEREAS, the Court having read and considered the Stipulation and the exhibits thereto, including the proposed (a) Notice; (b) Claim Form; (c) Summary Notice; and (d) Judgment and the submissions relating thereto, and finding that substantial and sufficient grounds exist for entering this Order; and

WHEREAS, unless otherwise defined herein, all capitalized words contained herein shall have the same meanings as they have in the Stipulation;

NOW THEREFORE, IT IS HEREBY ORDERED:

1. **Settlement Class Certification** – Pursuant to Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure and for purposes of settlement only, the Bond/Notes Action is hereby certified as a class action on behalf of all Persons who purchased or otherwise acquired Bond Class Securities during the Settlement Class Period, and were damaged thereby (the “Settlement Class”). Excluded from the Settlement Class are all Defendants in the Action and their respective current or former Section 16 Officers, directors, partners, Immediate Family members, affiliates, legal representatives, heirs, successors or assigns, and any entity in which any Defendant has or had a controlling interest, and any Person who has entered into a tolling agreement in connection with this Action and his, her or its respective current or former Section 16 Officers, directors, partners, Immediate Family members, affiliates, legal representatives, heirs, successors or assigns, and any entity in which any such Person has or had a controlling interest, provided that any Investment Vehicle shall not be deemed an excluded Person by definition. Also excluded from the Settlement Class are any Persons who timely and validly request exclusion from the Settlement Class in accordance with the requirements set forth in the Notice to be sent to Settlement Class Members pursuant to this Order.

2. **Settlement Class Findings** – The Court finds, for purposes of settlement only, that each of the prerequisites for certifying the Action as a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure has been satisfied in that: (a) the number of Settlement Class Members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class which predominate over any individual questions;

(c) the claims of the Lead Bond/Notes Plaintiffs are typical of the claims of the Settlement Class; (d) Lead Bond/Notes Plaintiffs and Lead Bond/Notes Counsel have and will fairly and adequately represent the interests of the Settlement Class; and (e) a class action is superior to other available methods for the fair and efficient adjudication of the Action.

3. The Court hereby finds and concludes that pursuant to Rule 23 of the Federal Rules of Civil Procedure and for purposes of settlement only, Lead Bond/Notes Plaintiffs Orange County Employees' Retirement System, Louisiana Sheriffs' Pension and Relief Fund, and Southeastern Pennsylvania Transportation Authority, are adequate class representatives and certifies them as class representatives on behalf of the Settlement Class and Lead Bond/Notes Counsel are hereby appointed as co-lead counsel for the Settlement Class.

4. **Preliminary Approval of the Settlements** – The Court hereby preliminarily approves both the Wachovia Settlement and the KPMG Settlement, as embodied in the Stipulation, as being fair, reasonable and adequate, and in the best interests of Lead Bond/Notes Plaintiffs and the other Settlement Class Members, subject to further consideration at the Settlement Hearing to be conducted as described below.

5. **Settlement Hearing** – The Court will hold a settlement hearing (the “Settlement Hearing”) on November 14, 2011 at 4:00 p.m. at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, Courtroom 21C, New York, NY 10007-1312, for the following purposes: (a) to determine whether each proposed Settlement, on the terms and conditions provided for in the Stipulation, is fair, reasonable and adequate, and should be approved by the Court; (b) to determine whether a Judgment substantially in the form attached as Exhibit B to the Stipulation should be entered dismissing the Action with prejudice against the Released Defendants; (c) to determine whether the proposed Plan of Allocation for the proceeds of each Settlement is fair and

reasonable and should be approved; (d) to determine whether the motion by Lead Bond/Notes Counsel for an award of attorneys' fees and reimbursement of Litigation Expenses should be approved; and (e) to consider any other matters that may properly be brought before the Court in connection with the Settlements. Notice of the Settlements and the Settlement Hearing shall be given to Settlement Class Members as set forth in Paragraph 7 of this Order.

6. The Court may adjourn the Settlement Hearing and approve the proposed Settlements with such modifications as the affected Settling Parties may agree to, if appropriate, without further notice to the Settlement Class.

7. **Retention of Claims Administrator and Manner of Notice** – Lead Bond/Notes Counsel are hereby authorized to retain The Garden City Group, Inc. (the "Claims Administrator") to supervise and administer the notice procedure as well as the processing of Claims as more fully set forth below. Notice of the Settlements and the Settlement Hearing shall be given by Lead Bond/Notes Counsel as follows:

(a) not later than August 30, 2011 (the "Notice Date"), the Claims Administrator shall cause a copy of the Notice and the Claim Form, substantially in the forms attached hereto as Exhibits 1 and 2, respectively (the "Notice Packet"), to be mailed by first-class mail to Settlement Class Members at the addresses set forth in the records of Wachovia or its transfer agent(s), or who otherwise may be identified through further reasonable effort;

(b) not later than August 18, 2011, Wachovia shall provide or cause to be provided to the Claims Administrator (at no cost to the Settlement Fund, Bond/Notes Plaintiffs, Bond/Notes Plaintiffs' Counsel or the Claims Administrator) its security holder lists (consisting of security holder names and addresses), in electronic form identifying all Persons who held any of the Bond Class Securities during the Settlement Class Period;

(c) not later than September 14, 2011, the Claims Administrator shall cause the Summary Notice, substantially in the form attached hereto as Exhibit 3, to be published once in the national editions of *The Wall Street Journal* and *The New York Times* and once in the *Financial Times* and to be transmitted once over the *PR Newswire*; and

(d) not later than November 7, 2011, Lead Bond/Notes Counsel shall serve on Settling Defendants' Counsel and file with the Court proof, by affidavit or declaration, of such mailing and publication.

8. **Approval of Form and Content of Notice** – The Court (a) approves, as to form and content, the Notice, the Claim Form, and the Summary Notice, attached hereto as Exhibits 1, 2, and 3, respectively, and (b) finds that the mailing and distribution of the Notice and Claim Form and the publication of the Summary Notice in the manner and form set forth in Paragraph 7 of this Order (i) is the best notice practicable under the circumstances, (ii) constitutes notice that is reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of the Action, of the effect of the proposed Settlements (including the Releases contained therein) and of their right to object to any aspect of the proposed Settlements (namely, to any aspect of the Wachovia Settlement, the KPMG Settlement, or of both), exclude themselves from the Settlement Class and appear at the Settlement Hearing; (iii) constitutes due, adequate and sufficient notice to all Persons entitled to receive notice of the proposed Settlements; and (iv) satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure, due process, the Private Securities Litigation Reform Act of 1995, 15 U.S.C. § 77z-1(a)(7), the Rules of the Court, and all other applicable law and rules. The date and time of the Settlement Hearing shall be included in the Notice and Summary Notice before they are mailed and published, respectively.

9. **Nominee Procedures** – Brokers and other nominees who purchased or acquired Bond Class Securities during the Settlement Class Period for the benefit of another Person shall forward the Notice Packet to all such beneficial owners within ten (10) calendar days after receipt thereof, or send a list of the names and addresses of such beneficial owners to the Claims Administrator within ten (10) calendar days of receipt thereof in which event the Claims Administrator shall promptly mail the Notice Packet to such beneficial owners. Upon full compliance with this Order, such nominees may seek reimbursement of their reasonable expenses actually incurred in complying with this Order by providing the Claims Administrator with proper documentation supporting the expenses for which reimbursement is sought. Such properly documented expenses incurred by nominees in compliance with the terms of this Order shall be paid from the Settlement Fund, with any disputes as to the reasonableness or documentation of expenses incurred subject to review by the Court.

10. **Participation in the Settlements** – Settlement Class Members who wish to participate in the Settlements and to be eligible to receive a distribution from the Net Settlement Fund must complete and submit a Claim Form in accordance with the instructions contained therein. Unless the Court orders otherwise, all Claim Forms must be postmarked no later December 28, 2011. Notwithstanding the foregoing, Lead Bond/Notes Counsel may, at their discretion, accept for processing and payment late claims provided such acceptance does not materially delay the distribution of the Net Settlement Fund to the Settlement Class. By submitting a Claim, a person or entity shall be deemed to have submitted to the jurisdiction of the Court with respect to his, her or its Claim and the subject matter of the Settlements.

11. Each Claim Form submitted must satisfy the following conditions: (i) it must be properly completed, signed and submitted in a timely manner in accordance with the provisions of

the preceding paragraph; (ii) it must be accompanied by adequate supporting documentation for the transactions reported therein, in the form of broker confirmation slips, broker account statements, an authorized statement from the broker containing the transactional information found in a broker confirmation slip, or such other documentation as is deemed adequate by Lead Bond/Notes Counsel or the Claims Administrator; (iii) if the person executing the Claim Form is acting in a representative capacity, a certification of his, her or its current authority to act on behalf of the Settlement Class Member must be included in the Claim Form to the satisfaction of Lead Bond/Notes Counsel or the Claims Administrator; and (iv) the Claim Form must be complete and contain no material deletions or modifications of any of the printed matter contained therein and must be signed under penalty of perjury.

12. Any Settlement Class Member that does not timely and validly submit a Claim Form or whose claim is not otherwise approved by the Court: (a) shall be deemed to have waived his, her or its right to share in the Net Settlement Fund; (b) shall forever be barred from participating in any distributions therefrom; (c) shall be bound by the provisions of the Stipulation and the Settlements and all proceedings, determinations, orders and judgments in the Action relating thereto, including, without limitation, the Judgment or Alternative Judgment, if applicable, and the Releases provided for therein, whether favorable or unfavorable to the Settlement Class; and (d) will be barred from commencing, maintaining or prosecuting any of the Released Bond/Notes Claims against each and all of the Released Defendant Persons, as more fully described in the Stipulation and Notice. Notwithstanding any of the foregoing, Lead Bond/Notes Counsel may accept late submitted Claims for processing so long as the distribution of the Net Settlement Fund to Authorized Claimants is not materially delayed thereby.

13. **Exclusion From the Settlement Class** – Any member of the Settlement Class who wishes to exclude himself, herself or itself from the Settlement Class must request exclusion in writing within the time and in the manner set forth in the Notice, which shall provide that: (a) any such request for exclusion from the Settlement Class must be mailed or delivered such that it is received no later October 25, 2011, to: *In re Wachovia Preferred Securities and Bond/Notes Litigation*, EXCLUSIONS, c/o GCG, Inc., P.O. Box 9804, Dublin, Ohio 43017-5704; and (b) that each request for exclusion must (i) state the name, address and telephone number of the person or entity requesting exclusion; (ii) state that such person or entity “requests exclusion from the Settlement Class in *In re Wachovia Preferred Securities and Bond/Notes Litigation*, Master File No. 09 Civ. 6351 (RJS)”; (iii) state the number of each Bond Class Security (in terms of shares or face value of notes) that the person or entity requesting exclusion purchased/acquired during the Settlement Class Period, as well as any sales/dispositions during the Settlement Class Period or thereafter through the close of trading on the day before the date of execution of the Stipulation, as well as the dates and prices of each such purchase/acquisition and sale; and (iv) be signed by the person or entity requesting exclusion or an authorized representative. A request for exclusion shall not be effective unless it provides all the required information and is received within the time stated above, or is otherwise accepted by the Court. Any request for exclusion that complies with these terms shall be treated as a request for exclusion from the Settlement Class in connection with both Settlements, as Settlement Class Members are not permitted to opt out of one Settlement and participate in the other Settlement.

14. Any person or entity who or which timely and validly requests exclusion from the Settlement Class, in compliance with the terms stated in this Order, and is excluded from the Settlement Class shall not be a Settlement Class Member, shall not be bound by the terms of the

Settlements or the Stipulation, and shall have no right to receive any payment out of the Net Settlement Fund.

15. Any Settlement Class Member who or which does not timely and validly request exclusion from the Settlement Class in the manner stated in this Order: (a) shall be deemed to have waived his, her or its right to be excluded from the Settlement Class; (b) shall be forever barred from requesting exclusion from the Settlement Class in this or any other proceeding; (c) shall be bound by the provisions of the Stipulation and the Settlements and all proceedings, determinations, orders and judgments in the Action, including, but not limited to, the Judgment or Alternative Judgment, if applicable, and the Releases provided for therein, whether favorable or unfavorable to the Settlement Class; and (d) will be barred from commencing, maintaining or prosecuting any of the Released Bond/Notes Claims against any of Released Defendant Persons, as more fully described in the Stipulation and Notice.

16. **Appearance and Objections at Settlement Hearing** – Any Settlement Class Member who does not request exclusion from the Settlement Class may enter an appearance in the Action, at his, her or its own expense, individually or through counsel of his, her or its own choice, by filing with the Clerk of Court and delivering a notice of appearance to representative Lead Bond/Notes Counsel, Counsel for the Wachovia Defendants and/or Counsel for KPMG, as applicable, as set forth in paragraph 17 below, such that it is received no later than October 25, 2011, or as the Court may otherwise direct. Any Settlement Class Member who does not enter an appearance will be represented by Lead Bond/Notes Counsel.

17. Any Settlement Class Member who does not request exclusion from the Settlement Class may file written objections to any aspect of the proposed Settlements (namely, any aspect of the Wachovia Settlement, the KPMG Settlement, or both), the proposed Plan of Allocation, and/or

the motion for an award of attorneys' fees and reimbursement of Litigation Expenses and appear and show cause, if he, she or it has any cause, why the proposed Settlements, the proposed Plan of Allocation and/or the motion for attorneys' fees and reimbursement of Litigation Expenses should not be approved; *provided, however*, that no Settlement Class Member shall be heard or entitled to contest the approval of the terms and conditions of any aspect of the proposed Settlements, the proposed Plan of Allocation, and/or the motion for attorneys' fees and reimbursement of Litigation Expenses unless that person or entity has filed written objections with the Court and served copies of such objections on the designated representative Lead Bond/Notes Counsel and on counsel for the relevant Settling Defendants at the addresses set forth below such that they are received no later than October 25, 2011.

<u>Representative Lead Bond/Notes Counsel</u>	<u>Counsel for the Wachovia Defendants</u>	<u>Counsel for KPMG</u>
William C. Fredericks, Esq. Bernstein Litowitz Berger & Grossmann LLP 1285 Avenue of the Americas New York, NY 10019	Douglas H. Flaum, Esq. Israel David, Esq. Fried, Frank, Harris, Shriver & Jacobson LLP One New York Plaza New York, New York 10004	John K. Villa, Esq. Williams & Connolly LLP 725 Twelfth Street, N.W. Washington, D.C. 20005

18. Any objections, filings and other submissions by the objecting Settlement Class Member (a) must contain a statement of his, her or its objections, as well as the specific reasons for each objection, including the legal and evidentiary support the Settlement Class Member wishes to bring to the Court's attention; and (b) must include documents sufficient to prove membership in the Settlement Class, as defined above in Paragraph 1, including the number (in terms of shares or face value of notes) of each Bond Class Security that the objecting Settlement Class Member purchased/acquired during the Settlement Class Period, as well as sales of such securities during the Settlement Class Period or thereafter through the close of trading on the day before the date of execution of the Stipulation, along with the dates and prices of each such purchase and sale.

19. Any Settlement Class Member who does not make his, her or its objection in the manner provided herein shall be deemed to have waived his, her or its right to object to any aspect of the proposed Settlements, the proposed Plan of Allocation, and the motion for attorneys' fees and reimbursement of Litigation Expenses and shall forever be barred and foreclosed from objecting to the fairness, reasonableness or adequacy of the Settlements, the Plan of Allocation or the requested attorneys' fees and Litigation Expenses, or from otherwise being heard concerning the Settlements, the Plan of Allocation or the requested attorneys' fees and Litigation Expenses in this or any other proceeding.

20. **Stay** – Unless otherwise ordered by the Court, the Court stays all proceedings in the Action other than proceedings necessary to carry out or enforce the terms and conditions of the Stipulation. Pending final determination of whether the Settlements should be approved, the Court enjoins Lead Bond/Notes Plaintiffs, Additional Bond/Notes Plaintiffs and all other Settlement Class Members from commencing, prosecuting or asserting any claim against any of the Released Defendant Persons that is a Released Bond/Notes Claim or that would be barred pursuant to paragraph 34 of the Stipulation.

21. **Settlement Administration Fees and Expenses** – All reasonable costs incurred in identifying and notifying Settlement Class Members as well as in administering the Settlements shall be paid as set forth in the Stipulation without further order of the Court.

22. **Settlement Fund** – The contents of the Settlement Fund held by the New York branch of Citibank, N.A. (which the Court approves as the Escrow Agent), shall be deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as they shall be distributed pursuant to the Stipulation and/or further order(s) of the Court.

23. **Taxes** – Lead Bond/Notes Counsel are authorized and directed to prepare any tax returns and any other tax reporting form for or in respect of the Settlement Fund, to pay from the Settlement Fund any Taxes owed with respect to the Settlement Fund, and to otherwise perform all obligations with respect to Taxes and any reporting or filings in respect thereof without further order of the Court in a manner consistent with the provisions of the Stipulation.

24. **Termination** – The Court finds that the Settlements set forth in the Stipulation (i) between Lead Bond/Notes Plaintiffs and the Wachovia Defendants and (ii) between Lead Bond/Notes Plaintiffs and KPMG, respectively, were negotiated separately and independently from each other, and that accordingly either Settlement may and shall proceed separately if one Settlement is terminated for reasons that do not affect the other Settlement. If either of the Settlements is terminated, or is not approved, or the Effective Date as to one of the Settlements does not occur, this Order shall become null and void as to that Settlement only, and shall be without prejudice to the rights of Lead Bond/Notes Plaintiffs, the Settlement Class Members and the affected Defendants, all of whom shall be restored to their respective positions in the Action, as provided for in the Stipulation.

25. **Use of this Order** – Neither this Order nor either of the proposed Settlements (including the Stipulation or any of its respective terms, or any aspect of any of the negotiations, discussions and proceedings in connection with the negotiation of and/or efforts to consummate the Stipulation or either of the Settlements): (a) shall be offered in evidence or used for any other purpose in this or any other proceeding in any court, administrative agency, arbitration forum, or other tribunal other than as may be necessary to enforce the terms of this Order and/or the respective proposed Settlements; (b) shall be described as, construed as, interpreted as or offered against the Settling Defendants as evidence of and/or deemed to be evidence of any presumption, concession, or

admission by Settling Defendants as to any liability, negligence, fault, wrongdoing on their part or the validity of any claim by Lead Bond/Notes Plaintiffs or the merits of any of their defenses; and (c) shall be described as, construed as, interpreted as, or offered against Lead Bond/Notes Plaintiffs or any Settlement Class Member as evidence of any infirmity in the claims of Lead Bond/Notes Plaintiffs and the Settlement Class, or as evidence that the damages recoverable from the respective Settling Defendants would not have exceeded the Total Settlement Amount or the individual Settlement Amounts.

26. **Supporting Papers** – Lead Bond/Notes Counsel shall file and serve papers in support of the proposed Settlements, the Plan of Allocation, and Lead Counsel’s motion for an award of attorneys’ fees and reimbursement of Litigation Expenses no later than October 10, 2011; and reply papers, if any, shall be filed and served no later than November 7, 2011.

27. The Court retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlements.

SO ORDERED.

Date: August 9, 2011
New York, New York



RICHARD J. SULLIVAN
UNITED STATES DISTRICT JUDGE