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**Award**  
**NASD Dispute Resolution**

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In the Matter of the Arbitration Between:

**Name of the Claimant**  
Wachovia Securities, Inc., formerly known as  
First Union Securities, Inc.

**Case Number:** 02-05279

**Name of the Respondents**  
Salomon Smith Barney, Inc.  
Michael D. Porter  
Michael E. Toner

**Hearing Site:** Philadelphia, PA

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**REPRESENTATION OF PARTIES**

Claimant Wachovia Securities, Inc., formerly known as First Union Securities, Inc. ("Wachovia") was represented by Thomas B. Lewis, Esq., Stark & Stark, Lawrenceville, New Jersey.

Respondents Salomon Smith Barney, Inc. ("Smith Barney"), Michael D. Porter ("Porter") and Michael E. Toner ("Toner"), hereinafter collectively referred to as "Respondents", were represented by Gladys Xiques, Esq. and Jonathan C. Than, Esq., Lubojs & Than, LLP, New York, New York.

**CASE INFORMATION**

Statement of Claim filed on September 5, 2002.

Claimant signed the Uniform Submission Agreement on September 5, 2002.

Statement of Answer filed by Respondent Smith Barney on or about November 7, 2002.

A representative of Smith Barney signed the Uniform Submission Agreement on November 5, 2002.

Statement of Answer filed by Respondents Porter and Toner on or about November 7, 2002.

Respondent Porter signed the Uniform Submission Agreement on November 5, 2002.

Respondent Toner signed the Uniform Submission Agreement on November 5, 2002.

**CASE SUMMARY**

Claimant asserted the following causes of action: "raiding"; unfair competition; unlawful conspiracy; conversion of confidential business information and trade secrets; breach of duty of good faith and fair dealing; tortious interference with contractual rights; breach of contract; and, violations of duties of loyalty.

Unless specifically admitted in its Answer, Respondent Smith Barney denied the allegations made in the Statement of Claim and asserted the following defenses, among others: that Smith Barney was not a party to any of the contractual documents that Claimant seeks to enforce and has

conducted itself in accordance with the highest standards in the securities industry; and, that the events underlying the "raiding" claim have already been settled.

Unless specifically admitted in their Answer, Respondents Porter and Toner denied the allegations made in the Statement of Claim and asserted the following defenses, among others: that the matter at issue had already been settled and that the claims are barred by the doctrine of "unclean hands";

#### **RELIEF REQUESTED**

Claimant requested:

Compensatory Damages	amount unspecified
Punitive Damages	amount unspecified
Attorneys' Fees	amount unspecified
Other Costs	amount unspecified

Claimant also requested injunctive relief enjoining Respondents from contacting, recruiting, hiring or attempting to entice employees to leave Wachovia offices for a period of two years; and, injunctive relief enforcing the terms and conditions of Porter's Candidate Agreement.

In its Statement of Answer Respondent Smith Barney requested that the Statement of Claim be dismissed in its entirety and that it be awarded fees and costs in this proceeding.

In their Statement of Answer Respondents Porter and Toner requested that the Statement of Claim be dismissed in its entirety and that they be awarded all costs and attorney's fees.

#### **OTHER ISSUES CONSIDERED AND DECIDED**

The parties agreed that the Award in this matter may be entered in counterpart copies.

#### **AWARD**

After considering the pleadings, the testimony and evidence presented at the hearing the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. That Respondent Toner shall pay to the Claimant compensatory damages of ninety-three thousand and eighty-seven dollars and twenty cents (\$93,087.20);
2. That Respondents Smith Barney and Porter are jointly and severally liable to and shall pay to the Claimant compensatory damages of six thousand six hundred and seventy dollars (\$6,670.00);
3. Each party shall bear its respective costs, including attorney's fees, except as Fees are specifically addressed below; and,

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4. Any and all relief not specifically addressed herein, including punitive damages, is denied.

### **FEES**

Pursuant to the Code, the following fees are assessed:

#### **Filing Fees**

NASD Dispute Resolution will retain or collect the non-refundable filing fees for each claim:  
Initial claim filing fee = \$500.00

#### **Member Fees**

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, Wachovia and Smith Barney are parties.

Wachovia is assessed:

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,200.00

Smith Barney is assessed:

Member surcharge	= \$1,500.00
Pre-hearing process fee	= \$ 750.00
Hearing process fee	= \$2,200.00

#### **Forum Fees and Assessments**

The Panel has assessed forum fees for each session conducted. A session is any meeting between the parties and the arbitrator(s), including a pre-hearing conference with the arbitrator(s), that lasts four (4) hours or less. Fees associated with these proceedings are:

One (1) Pre-hearing session with Panel @ \$1,000.00	= \$1,000.00
Pre-hearing conference(s): April 7, 2003 1 session	

Four (4) Hearing sessions @ \$1,000.00	= \$4,000.00
Hearing dates September 16, 2003 two (2) sessions	
September 17, 2003 two (2) sessions	

<b>Total Forum Fees</b>	<b>= \$5,000.00</b>
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1. The Panel has assessed \$6,666.66 of the forum fees to Wachovia.
2. The Panel has assessed \$3,333.33 the forum fees to Smith Barney.

### **Fee Summary**

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**1. Claimant, Wachovia is solely liable for:**

Initial Filing Fee	= \$ 500.00
Member Fees	= \$ 4,450.00
Forum Fees	= \$ 6,666.66
Total Fees	= \$ 11,616.66
Less payments	= \$ 5,950.00
Balance Due NASD Dispute Resolution	= \$ 5,666.66

**2. Respondent Smith Barney is solely liable for:**

Member Fees	= \$ 4,450.00
Forum Fees	= \$ 3,333.33
Total Fees	= \$ 7,783.33
Less payments	= \$ 4,450.00
Balance Due NASD Dispute Resolution	= \$ 3,333.33

All balances are payable to NASD Dispute Resolution and are due upon receipt pursuant to Rule 10330(g) of the Code.

**ARBITRATION PANEL**

Allen Kilik, Esq.  
Peter A. Scarpato  
Michael J. Mazzafrro

- Public Arbitrator, Presiding Chairperson  
- Public Arbitrator, Panelist  
- Non-Public Arbitrator, Panelist

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Concurring Arbitrators' Signature(s)

Allen Kilik

Allen Kilik, Esq.  
Public Arbitrator, Presiding Chairperson

9-29-03

Signature Date

Peter A. Scarpato  
Public Arbitrator, Panelist

Signature Date

Michael J. Mazzafrro  
Non-Public Arbitrator, Panelist

Signature Date

10/06/03  
Date of Service (For NASD Dispute Resolution office use only)

Oct-03-03 10:06am From-NASD DISPUTE RESOLUTION

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