

1 THE PEOPLE OF THE STATE OF CALIFORNIA  
2 BY AND THROUGH THE COMMISSIONER OF CORPORATIONS

3 In the matter of )  
4 DEUTSCHE BANK SECURITIES INC. ) FINDINGS OF FACT  
5 ) CONCLUSIONS OF LAW  
6 Respondent. ) ADMINISTRATIVE CONSENT ORDER  
7 )  
8 )  
9 )  
10 )

9 WHEREAS, Deutsche Bank Securities Inc. (“DBSI”) is a broker-dealer registered in the state  
10 of California; and

11 WHEREAS, coordinated investigations into DBSI’s activities in connection with DBSI’s  
12 marketing and sale of auction rate securities (“ARS”) have been conducted by a multistate task force;  
13 and

14 WHEREAS, DBSI has provided documentary evidence and other materials, and provided  
15 regulators with access to information relevant to their investigations; and

16 WHEREAS, Deutsche Bank AG (as parent entity of DBSI) has entered into a Settlement  
17 Term Sheet dated August 31, 2008 (the “Settlement”) with the North American Securities  
18 Administrator’s Association (“NASAA”), which recommends to NASAA members the settlement  
19 terms intended to resolve the investigation into the marketing and sale of auction rate securities by  
20 DBSI; and

21 WHEREAS, DBSI and the California Department of Corporations wish to resolve these  
22 issues in accordance with the terms of the Settlement and without the expense and delay that formal  
23 administrative proceedings would involve; and

24 WHEREAS, DBSI consents to the form and entry on this Consent Order without admitting  
25 or denying the allegations set forth herein. Accordingly, DBSI waives the following rights:

- 26 a. To be afforded an opportunity for hearing on the California Department of  
27 Corporations’ findings and conclusions of law in this Consent Order after reasonable  
28 notice within the meaning of California Corporations Code section 25532(d); and

1 b. To seek judicial review of, or otherwise challenge or contend, the validity of this  
2 Consent Order pursuant to California Corporations Code section 25609; and

3 **WHEREAS**, DBSI agrees that for purposes of this matter, or any future proceedings to  
4 enforce this Consent Order by the California Department of Corporations, this Consent Order shall  
5 have the same effect as if proven and ordered after a full hearing held pursuant to California  
6 Corporations Code section 25532(d); and

7 **WHEREAS**, the provisions set forth in this Consent Order constitute the entire agreement  
8 between the California Department of Corporations and DBSI, and shall supersede any conflicting  
9 provisions contained in the Settlement;

10 NOW, THEREFORE, the California Department of Corporations, as administrator of the  
11 California Corporate Securities Law, hereby enters this Consent Order:

12 **I.**

13 **FINDINGS OF FACT**

14 1. DBSI admits the jurisdiction of the California Department of Corporations, neither  
15 admits nor denies the findings of fact and conclusions of law contained in this Consent Order, and  
16 consents to the entry of this Consent Order by the California Department of Corporations.

17 **Auction Rate Securities**

18 2. Auction rate securities (“ARS”) as a general term refers to long-term debt or equity  
19 instruments tied to short-term interest rates that are reset periodically through an auction process.

20 3. An ARS auction is regarded as a “fail” or “failed auction” if there is not a buyer  
21 available for every ARS being offered for sale at the auction. In the event of a failed auction, the  
22 investors that wished to sell their ARS were unable to do so and would continue to hold the ARS and  
23 wait until the next successful auction to liquidate their positions.

24 4. Beginning in February 2008, the ARS market experienced widespread failed auctions  
25 (the “2008 Auction Failures”).

26 5. Common categories of ARS instruments include: auction preferred shares of closed-  
27 end funds (“Preferreds”); municipal auction rate certificates (“Municipal ARS”); and student loan-  
28

1 backed auction rate certificates (“Student Loan ARS”). The interest rates paid to ARS holders are  
2 intended to be set through a Dutch auction process.

3 6. The interest rate set at an ARS auction is commonly referred to as the “clearing rate.”

4 7. In order to determine the clearing rate, the buy bids are arranged from lowest to  
5 highest interest rate (subject to any applicable minimum interest rate). The clearing rate is the lowest  
6 interest rate at which all ARS available for sale at the auction can be sold at par value.

7 **DBSI’s Marketing and Sale of Auction Rate Securities**

8 8. DBSI (CRD #2525) is a Delaware corporation with a primary place of business  
9 located at 60 Wall Street, New York, New York.

10 9. Deutsche Bank Alex Brown (“DBAB”), a division of DBSI, provides wealth planning  
11 and brokerage services to private, institutional, and corporate clients.

12 10. The Corporate and Investment Bank (“CIB”), another division of DBSI, provides  
13 capital market financial services to institutions and corporate clients.

14 11. DBSI engaged in the marketing and sale of ARS in the state of California.

15 12. Certain DBSI agents solicited sales of ARS to clients; however, certain DBSI agents  
16 did not fully comprehend the product, auction process, or the risks.

17 13. DBSI did not provide its agents with adequate training concerning the complex  
18 characteristics of ARS and risks inherent with this type of investment.

19 14. DBSI did not create and maintain adequate written supervisory procedures to ensure  
20 its agents provided their clients with adequate disclosure of the complex characteristics of ARS and  
21 risks inherent with this type of investment.

22 15. Certain DBAB agents misrepresented the characteristics of ARS to clients. Certain  
23 DBAB agents told clients that ARS were “safe and liquid,” “cash equivalents,” and “just like money  
24 markets.”

25 16. Third-party marketing materials about ARS, which were available to DBAB agents,  
26 described certain ARS issues as a “AAA-rated source of short-term income” and a “Cash  
27 alternative.”  
28

1           17.     Certain DBAB clients maintained investment policies and objectives designed to place  
2 their money in safe and liquid investments.

3           18.     Certain DBAB agents sold ARS to these DBAB clients, despite their investment  
4 policies and objectives which sought safe and liquid investments.

5           19.     From approximately September 2003 until February 2008, DBAB categorized ARS  
6 under the heading “Other – Money Market Instruments” on clients’ monthly account statements.

7           20.     ARS, unlike money market instruments, are not short-term investments. In fact, ARS  
8 bonds may have maturities as long as 30 years and Preferreds have unlimited maturity.

9           21.     Beginning in 2003, CIB began to underwrite certain Student Loan ARS issues (“CIB  
10 SL ARS”). Because CIB had not developed a sales network for those CIB SL ARS, there were  
11 instances in which several CIB SL ARS issues were not successfully sold to institutions during the  
12 initial offering. As a consequence, CIB purchased and maintained on its books 100 percent of the  
13 outstanding ARS for several CIB SL ARS issues, which ultimately allowed the initial offerings for  
14 these issues to succeed. Despite this, CIB continued to market those CIB SL ARS to investors.  
15 Some of those CIB SL ARS remained on CIB’s books as of the 2008 Auction Failures.

16           22.     Because certain DBSI agents misrepresented the characteristics of ARS to clients and  
17 purchased ARS for clients based upon those misrepresentations, DBSI engaged in dishonest and  
18 unethical conduct in the securities business with respect to the marketing and sale of auction rate  
19 securities.

20           23.     By failing to: (i) provide adequate training to agents concerning ARS, (ii) create and  
21 maintain adequate written supervisory procedures concerning ARS, and (iii) ensure accurate  
22 disclosure of ARS characteristics to clients by its agents, DBSI failed to reasonably supervise its  
23 agents with respect to the marketing and sale of auction rate securities.

24     **Conflict of Interest**

25           24.     DBAB failed to adequately disclose to clients who purchased ARS that the firm’s  
26 roles as underwriter and broker-dealer in certain ARS issues were a conflict of interest, and this  
27 conflict may affect the auction clearing rate. As the underwriter and lead manager on four Preferred  
28

1 issues since 1992<sup>1</sup> (the “DBAB Managed Preferred”), it was in the interest of the firm to keep the  
2 clearing rates low for issuers of the DBAB Managed Preferred. As broker-dealer, the firm had a duty  
3 to provide the highest available ARS clearing rates to its clients.

4 25. DBAB issued a “price talk” document prior to each ARS auction in which it acted as a  
5 broker-dealer. This document detailed the interest rate at which DBAB believed the ARS would  
6 clear at auction. DBAB determined this rate by utilizing different factors, including the competing  
7 interests of both investors and issuers.

8 26. By failing to fully inform clients about the effect of DBAB’s conflicting roles, as  
9 underwriter and broker-dealer of ARS issues, on auction clearing rates, DBSI engaged in dishonest  
10 and unethical conduct in the securities business with respect to the marketing and sale of auction rate  
11 securities.

12 27. By failing to ensure adequate disclosure of conflicts of interest concerning ARS to  
13 clients by its agents, DBSI failed to reasonably supervise its agents with respect to the marketing and  
14 sale of auction rate securities.

#### 15 **Supporting Bids**

16 28. In every auction for the DBAB Managed Preferred, the firm submitted “supporting  
17 bids” for its own account that were sufficient to cover the entire allotment of each DBAB Managed  
18 Preferred issue. These supporting bids were customary among lead managers to prevent failed  
19 auctions and to maintain liquidity for investors. In certain instances, the supporting bids prevented  
20 failed auctions, and in others, the supporting bids were unnecessary. However, regardless of the  
21 auction outcome, these supporting bids were consistently placed by DBAB, ensuring that successful  
22 auctions occurred and liquidity was maintained.

23 29. DBAB failed to disclose to clients that, in each auction of auction rate preferred issues  
24 for which DBAB acted as lead manager, the firm placed supporting bids for the entire allotment of  
25 auction rate preferred to ensure a successful auction.

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26  
27 <sup>1</sup> These Preferred issues were Nuveen Maryland Premium Income Municipal Fund 2 (CUSIP No. W67061Q305), and  
28 Van Kampen Invest Grade (CUSIP Nos. E920929601, F920929700, and G920929809).



1 10, Ch. 3, section 260.218 of the California Code of Regulations for failure to observe high  
2 standards of commercial honor and just and equitable principles of trade.

3 2. In connection with the failure to (i) provide adequate training to agents  
4 concerning ARS, (ii) create and maintain adequate written supervisory procedures concerning  
5 ARS, (iii) ensure accurate disclosure of ARS characteristics to clients by its agents, and (iv)  
6 ensure adequate disclosure of conflicts of interest concerning ARS to clients by its agents,  
7 DBSI failed to reasonably supervise, and establish and enforce procedures necessary to detect  
8 and prevent such conduct, in violation of its duties under Title 10, Ch. 3, section 260.218.4(a)  
9 of the California Code of Regulations for failure to supervise its employees with regard to the  
10 sale of securities.

11 3. The activities set forth herein are grounds, pursuant to the California Corporate  
12 Securities Law, for the initiation of administrative proceedings; and further, pursuant to the  
13 California Corporate Securities Law, to impose such other appropriate remedial measures as  
14 may be necessary in the public interest.

15 **III.**

16 **ORDER**

17 On the basis of the Findings of Fact, Conclusions of Law, and DBSI's consent to the entry of this  
18 Consent Order,

19 **IT IS HEREBY ORDERED:**

20 1. Pursuant to California Corporate Securities Law, DBSI is assessed and shall pay an  
21 administrative monetary penalty and investigation costs in the amount of Two Million Two Hundred  
22 Ninety Five Thousand Three Hundred Seventy Five Dollars and 13 Cents \$2,295,375.13 (California's  
23 pro rata share of the \$15,000,000 total penalty that DBSI agreed to pay pursuant to the Settlement),  
24 due and payable within ten (10) days of the entry of this Consent Order to the California State  
25 Corporations Fund;

26 2. DBSI shall take or shall have taken certain measures, enumerated below, with respect  
27 to all current and former clients of DBSI that purchased "Eligible ARS", defined below, from DBSI  
28 on or before February 13, 2008 (the "Relevant Class"). For purposes of this Consent Order, "Eligible

1 ARS” shall be defined as ARS purchased from DBSI that were subject to auctions that were not  
2 continuously succeeding between February 13, 2008, and August 31, 2008;

3 3. DBSI shall have offered to purchase at par Eligible ARS, that were purchased from  
4 DBSI prior to February 13, 2008, held by: (i) all individuals; (ii) legal entities forming an investment  
5 vehicle for family members including but not limited to IRA accounts, Trusts, Family Limited  
6 Partnerships and other legal entities performing a similar function; (iii) all charities and non-profits;  
7 and (iv) small to medium-sized businesses with assets of \$10 million dollars or less with Deutsche  
8 Bank (collectively, “Individual Investors”);

9 a. DBSI shall have completed all purchases from Individual Investors who accept  
10 the offer (i) prior to November 19, 2008, by November 19, 2008, and (ii) prior to  
11 December 31, 2008, by December 31, 2008. For any Individual Investor who accepted  
12 the offer between December 31, 2008, and June 30, 2009, DBSI shall have completed the  
13 purchase within seven business days of DBSI's receipt of his or her acceptance. However,  
14 Individual Investors may have requested that DBSI purchase the Eligible ARS on the next  
15 scheduled auction date after DBSI's receipt of its acceptance, in which event DBSI shall  
16 have completed the purchase within seven business days of that auction;

17 b. DBSI shall have provided notice to customers of the settlement terms and  
18 DBSI shall have established a dedicated telephone assistance line, with appropriate staff,  
19 to respond to questions from customers concerning the terms of this Consent Order;

20 4. No later than November 19, 2008, any DBSI Individual Investor that DBSI can  
21 reasonably identify who sold auction rate securities below par between February 13, 2008, and  
22 August 31, 2008, shall have been paid the difference between par and the price at which the investor  
23 sold the auction rate securities;

24 5. DBSI shall consent to participate, at the Eligible Customer's election, in the special  
25 arbitration procedures as briefly described below. Under these procedures, the Special Arbitration  
26 Process that applies to firms that have entered into settlements with state regulators (the “State  
27 SAP”), under the auspices of Financial Industry Regulatory Authority (“FINRA”), will be available  
28 for the exclusive purpose of arbitrating any Individual Investor’s consequential damages claim:



1 a. No later than November 19, 2008, DBSI shall have notified those DBSI  
2 Individual Investors who own auction rate securities, pursuant to the terms of the  
3 Settlement, that a public arbitrator (as defined by section 12100(u) of the NASD Code of  
4 Arbitration Procedures for Customer Disputes, eff. April 16, 2007), under the auspices of  
5 FINRA, would be available for the exclusive purpose of arbitrating any DBSI Individual  
6 Investor's consequential-damages claim;

7 b. Arbitration shall be conducted by public arbitrators and DBSI will pay all  
8 applicable forum and filing fees;

9 c. Any DBSI Individual Investors who choose to pursue such claims shall bear  
10 the burden of proving that they suffered consequential damages and that such damages  
11 were caused by investors' inability to access funds consisting of investors' auction rate  
12 securities holdings at DBSI;

13 d. DBSI shall be able to defend itself against such claims; provided, however,  
14 that DBSI shall not contest in these arbitrations liability related to the sale of auction rate  
15 securities; and provided further that DBSI shall not be able to use as part of its defense a  
16 DBSI Individual Investor's decision not to borrow money from DBSI;

17 e. Individual Investors who elect to use the State SAP provided for in this Order  
18 shall not be eligible for punitive damages, or any other type of damages other than  
19 consequential damages. The State SAP will govern the availability of attorneys' fees.

20 f. All customers, including but not limited to, Individual Investors who avail  
21 themselves of the relief provided pursuant to this Consent Order, may pursue any  
22 remedies against DBSI available under the law. However, Individual Investors, that  
23 elected to utilize the special arbitration process set forth above are limited to the remedies  
24 available in that process and may not bring or pursue a claim relating to Eligible ARS in  
25 another forum.

26 6. DBSI shall endeavor to work with issuers and other interested parties, including  
27 regulatory and governmental entities, to expeditiously provide liquidity solutions for institutional  
28 investors not covered by paragraph 3 immediately above. Beginning November 19, 2008, and then

1 quarterly after that, DBSI shall submit a written report to the representative specified by NASAA  
2 (“NASAA Representative”) outlining the efforts in which DBSI has engaged and the results of those  
3 efforts with respect to DBSI institutional investors’ holdings in auction rate securities. DBSI shall  
4 confer with the NASAA Representative no less frequently than quarterly to discuss DBSI’s progress  
5 to date. Such quarterly reports shall continue until no later than December 31, 2009. Following  
6 every quarterly report, the NASAA Representative shall advise DBSI of any concerns and, in  
7 response, DBSI shall discuss how DBSI plans to address such concerns;

8 7. DBSI shall have refunded refinancing fees DBSI has received from municipal auction  
9 rate issuers that issued such securities through DBSI in the initial primary market between August 1,  
10 2007, and February 13, 2008, and refinanced those securities after February 13, 2008; and

11 8. DBSI shall have made its best efforts to identify Individual Investors who took out  
12 loans from DBSI, between February 13, 2008, and June 30, 2009, that were secured by Eligible ARS  
13 that were not successfully auctioning at the time the loan was taken out from DBSI. DBSI shall have  
14 refunded to those Individual Investors any interest associated with the auction rate securities-based  
15 portion of those loans in excess of the total interest and dividends received on the auction rate  
16 securities during the duration of the loan. Such refunds shall have occurred no later than July 31,  
17 2009.

#### 18 **GENERAL PROVISIONS**

19 9. This Consent Order concludes the investigation by the California Department of  
20 Corporations and any other action that the California Department of Corporations could commence  
21 under applicable California law on behalf of California as it relates to DBSI’s marketing and sale of  
22 ARS to DBSI’s “Individual Investors,” as defined above.

23 10. The California Department of Corporations shall refrain from taking legal action, if  
24 necessary, against DBSI with respect to its institutional investors until December 31, 2009.

25 11. The California Department of Corporations will not seek additional monetary penalties  
26 from Deutsche Bank relating to DBSI’s marketing and sale of auction rate securities.

27 12. If payment is not made by DBSI, or if DBSI defaults in any of its obligations set forth  
28 in this Consent Order, the California Department of Corporations may vacate this Consent Order, at its

1 sole discretion, upon ten (10) days notice to DBSI and without opportunity for administrative  
2 hearing.

3 13. This Consent Order is not intended to indicate that Deutsche Bank or any of its  
4 affiliates or current or former employees shall be subject to any disqualifications contained in the  
5 federal securities law, the rules and regulations thereunder, the rules and regulations of self regulatory  
6 organizations or various states' securities laws including any disqualifications from relying upon the  
7 registration exemptions or safe harbor provisions. In addition, this Consent Order is not intended to  
8 form the basis for any such disqualifications.

9 14. For any person or entity not a party to this Consent Order, this Consent Order does not  
10 limit or create any private rights or remedies against Deutsche Bank, limit or create liability of Deutsche  
11 Bank, or limit or create defenses of Deutsche Bank to any claims.

12 15. Nothing herein shall preclude California, its departments, agencies, boards, commissions,  
13 authorities, political subdivisions and corporations (collectively, "State Entities"), other than the  
14 California Department of Corporations and only to the extent set forth in paragraph 1 immediately  
15 above, and the officers, agents or employees of State Entities from asserting any claims, causes of action,  
16 or applications for compensatory, nominal and/or punitive damages, administrative, civil, criminal, or  
17 injunctive relief against Deutsche Bank in connection with the marketing and sale of ARS at DBSI.

18 16. This Consent Order shall not disqualify Deutsche Bank or any of its affiliates or  
19 current or former employees from any business that they otherwise are qualified or licensed to  
20 perform under applicable state law and this Consent Order is not intended to form the basis for any  
21 disqualification.

22 Dated this 10<sup>th</sup> day of September, 2009.

PRESTON DuFAUCHARD  
California Corporations Commissioner

23  
24 By \_\_\_\_\_  
25 ALAN S. WEINGER  
26 Deputy Commissioner  
27 Enforcement Division  
28

**CONSENT TO ENTRY OF CONSENT ORDER BY DBSI**

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

DBSI admits the jurisdiction of the California Department of Corporations, neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Consent Order; and consents to entry of this Consent Order by the California Department of Corporations as settlement of the issues contained in this Consent Order.

DBSI states that no promise of any kind or nature whatsoever was made to it to induce it to enter into this Consent Order and that it has entered into this Consent Order voluntarily.

\_\_\_\_\_ represents that he/~~she~~ is a Managing Director of DBSI and that, as such, has been authorized by DBSI to enter into this Consent Order for and on behalf of DBSI.

DBSI 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 administrative monetary penalty that DBSI shall pay pursuant to this Consent Order.

Dated this 25 day of August, 2009.

DEUTSCHE BANK SECURITIES INC.

By: \_\_\_\_\_ Title:

Managing Director

SUBSCRIBED AND SWORN TO before me this 25th day of August, 2009.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**CONSENT TO ENTRY OF CONSENT ORDER BY DBSI**

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

DBSI admits the jurisdiction of the California Department of Corporations, neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Consent Order; and consents to entry of this Consent Order by the California Department of Corporations as settlement of the issues contained in this Consent Order.

DBSI states that no promise of any kind or nature whatsoever was made to it to induce it to enter into this Consent Order and that it has entered into this Consent Order voluntarily.

Joseph Polizzotto represents that he/she is a Managing Director of DBSI and that, as such, has been authorized by DBSI to enter into this Consent Order for and on behalf of DBSI.

DBSI 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 administrative monetary penalty that DBSI shall pay pursuant to this Consent Order.

Dated this 18th day of August, 2009.

DEUTSCHE BANK SECURITIES INC.

By: \_\_\_\_\_ Title:

\_\_\_\_\_

SUBSCRIBED AND SWORN TO before me this 18th day of August, 2009.

\_\_\_\_\_

Notary Public

My commission expires: \_\_\_\_\_