

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

3 In the matter of)
4 RBC Capital Markets Corporation)
5 One Liberty Plaza)
6 165 Broadway)
7 New York, NY)
Respondent.)

ADMINISTRATIVE CONSENT ORDER

8
9 WHEREAS, RBC Capital Markets Corporation (“RBC”), a subsidiary of Royal Bank of
10 Canada, and formerly known as RBC Dain Rauscher Inc., is doing business as RBC Wealth
11 Management. RBC is a broker-dealer registered in the state of California; and

12 Coordinated investigations into RBC’s activities in connection with RBC’s marketing and
13 sale of auction rate securities (“ARS”) have been conducted by a multi-state task force; and

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

16 RBC has advised regulators of its agreement to resolve the investigations relating to its
17 marketing and sale of ARS to certain investors; and

18 RBC agrees, among other things, to reimburse certain purchasers of ARS; and

19 RBC elects to waive permanently any right to a hearing and appeal under California
20 Corporations Code sections 25532(d) and 25609, with respect to this Consent Order (the “Order”);

21 NOW, THEREFORE, the California Corporations Commissioner hereby enters this Order.

22 I. FINDINGS OF FACT

23 1. RBC admits the jurisdiction of the California Department of Corporations, neither admits nor
24 denies the Findings of Fact and Conclusions of Law contained in this Order, and consents to the entry
25 of this Order by the California Department of Corporations.

26 2. RBC and its subsidiaries and affiliates including Ferris, Baker Watts, LLC (formerly known
27 as Ferris Baker Watts, Inc.) and J.B. Hanauer & Co. have engaged in the sale of ARS in the state of
28 California.

1 **Auction Rate Securities**

2 3. Auction rate securities are long-term bonds issued by municipalities, corporations and student
3 loan companies, or perpetual equity instruments issued by closed end mutual funds, with variable
4 interest rates that reset through a bidding process known as a Dutch auction.

5 4. At a Dutch auction, bidders generally state the number of auction rate securities they wish to
6 purchase and the minimum interest rate they are willing to accept. Bids are ranked, from lowest to
7 highest, according to the minimum interest rate each bidder is willing to accept. The lowest interest
8 rate required to sell all of the auction rate securities available at auction, known as the “clearing rate,”
9 becomes the rate paid to all holders of that particular security until the next auction. The process is
10 then repeated, typically every 7, 28 or 35 days.

11 5. When there are not enough orders to purchase all of the auction rate securities being sold, a
12 “failed” auction occurs. In the event of a failed auction, investors cannot sell their auction rate
13 securities.

14 6. As an underwriter of auction rate securities, RBC also acted as the managing broker-dealer for
15 certain issues of auction rate securities. When acting as sole manager, RBC was the only firm that
16 could submit bids into the auction on behalf of its clients and/or other broker-dealers who wanted to
17 buy and/or sell any auction rate securities. When acting as lead manager, RBC was the primary firm
18 that could submit bids into the auction, while other broker-dealers were able to submit orders on
19 behalf of their clients as well. RBC received revenue in connection with auction rate securities,
20 including an underwriting fee representing a percentage of total issuance and a fee for managing the
21 auctions.

22 **RBC Made Misrepresentations to Certain Investors in Connection With the Sale of Auction**
23 **Rate Securities**

24
25 7. RBC represented to many of its customers that auction rate securities were highly liquid,
26 safe, cash alternative investments.

27 8. These representations were misleading as to certain investors. Auction rate securities were in
28 fact different from cash and money market funds. As discussed above, the liquidity of an auction rate

1 security relied on the successful operation of the Dutch auction process. In the event of a failed
2 auction, investors cannot sell their auction rate securities and are stuck holding long-term
3 investments, not cash-equivalent securities. As discussed below, starting in the Fall of 2007, the
4 auction rate securities market faced dislocation and an increased risk of failure.

5 9. Since the inception of the auction market, RBC submitted support bids, purchase orders for
6 the entirety of an auction rate security issue for which it acted as the sole or lead broker. Support bids
7 were RBC proprietary orders that would be filled, in whole or in part, if there was otherwise
8 insufficient demand in an auction. When RBC purchased auction rate securities through support
9 bids, those auction rate securities were then owned by RBC and the holdings were recorded on
10 RBC's balance sheet. For risk management purposes, RBC imposed limits on the amounts of
11 auction rate securities it could hold in inventory.

12 10. Because many investors could not ascertain how much of an auction was filled through RBC
13 proprietary trades, investors could not determine if auctions were clearing because of normal
14 marketplace demand, or because RBC was making up for the lack of demand through support bids.
15 Generally, investors were also not aware that the auction rate securities market was dependent upon
16 RBC's use of support bids for its operation. While RBC could track its own inventory as a measure
17 of the supply and demand for auction rate securities, ordinary investors had no comparable ability to
18 assess the operation of the market. There was no way for investors to monitor supply and demand in
19 the market or to assess when broker-dealers might decide to stop supporting the market, which could
20 cause its collapse.

21 **By the Fall of 2007, The Auction Rate Securities Market Faced Dislocation**

22 11. In August 2007, the credit crisis and other deteriorating market conditions strained the auction
23 rate securities market. Some institutional investors withdrew from the market, decreasing demand for
24 auction rate securities.

25 12. The resulting market dislocations should have been evident to RBC. RBC support bids filled
26 the increasing gap in the demand for auction rate securities, sustaining the impression that the market
27 was functioning. As a result, RBC's auction rate securities inventory grew significantly, requiring
28 RBC to raise its risk management limits on its auction rate securities inventory several times.

1 13. From the Fall of 2007 through February of 2008, demand for auction rate securities continued
2 to erode and RBC's auction rate securities inventory reached unprecedented levels. RBC was aware
3 of the increasing strains on the auction rate securities market, increasingly questioned the viability of
4 the auction rate securities market and planned for potential widespread market failure. RBC did not
5 disclose these increasing risks of owning or purchasing auction rate securities to all of its customers.

6 14. In February 2008, RBC and other firms stopped supporting most auctions. Without the
7 benefit of support bids, much of the auction rate securities market collapsed, leaving investors who
8 had been led to believe that these securities were cash alternative and liquid investments, appropriate
9 for managing short-term cash needs, holding long-term or perpetual securities that could not be sold
10 at par value.

11 **II. CONCLUSIONS OF LAW**

12 1. The California Department of Corporations has jurisdiction over this matter pursuant to the
13 California Corporate Securities Law and because RBC is and, at all times relevant to this order, was
14 registered in California as a broker-dealer.

15 2. The above conduct is in violation of Title 10, Ch. 3, section 260.218 of the California Code of
16 Regulations for failure to observe high standards of commercial honor and just and equitable
17 principles of trade, and in violation of Title 10, Ch. 3, section 260.218.4(a) of the California Code of
18 Regulations for failure to supervise its employees with regard to the sale of securities.

19 3. The California Department of Corporations finds the following relief appropriate and in the
20 public interest.

21 **III. ORDER**

22 On the basis of the Findings of Fact, Conclusions of Law, and RBC's consent to the entry of this
23 Order,

24 **IT IS HEREBY ORDERED:**

25 1. This Order concludes the investigation by the California Department of Corporations and any
26 other action that the California Department of Corporations could commence under applicable
27 California law on behalf of California as it relates to RBC's marketing and sale of ARS to RBC's
28 "Eligible Investors," as defined below.

1 less in assets in their accounts with RBC net of margin loans, as determined by the
2 customer's aggregate household position(s) as of October 8, 2008, or, if the customer was
3 not a customer of RBC as of October 8, 2008, as of the date that the customer terminated
4 its customer relationship with RBC. Notwithstanding any other provision, "Small
5 Businesses" does not include broker-dealers, banks acting as conduits for their customers,
6 investment managers or other financial intermediaries, or customers that had total assets of
7 greater than \$50 million as of October 8, 2008.

8 In no event shall RBC be required by this Order to purchase more than \$10 million of auction rate
9 securities from any Small Business.

10 8. RBC shall have offered to buy back from Eligible Investors, at par plus accrued interest or
11 dividends, if any, Eligible Auction Rate Securities that have failed at auction at least once between
12 October 3, 2008 and June 30, 2009 ("Buyback Offer"). The Buyback Offer shall have remained open
13 until June 30, 2009 ("Offer Period"). RBC may extend the Offer Period beyond this date.

14 9. RBC shall have undertaken its best efforts to identify and provide notice to Eligible Investors
15 who invested in Eligible Auction Rate Securities that have failed at auction at least once between
16 October 3, 2008 and June 30, 2009 of the relevant terms of this Order, together with an explanation
17 of what Eligible Investors must do to accept, in whole or in part, the Buyback Offer, by December 5,
18 2008. RBC will also have undertaken its best efforts to identify and provide notice of the relevant
19 terms of this Order to such Eligible Investors not previously identified.

20 10. To the extent that any Eligible Investor who invested in Eligible Auction Rate Securities that
21 have failed at auction at least once between October 3, 2008 and June 30, 2009 had not responded to
22 the Buyback Offer, RBC shall have undertaken best efforts to provide any such Eligible Investor a
23 second written notice on or before 45 days before the end of the Offer Period informing them of the
24 relevant terms of this Order, notifying such Eligible Investor of the impending expiration of the Offer
25 Period, describing the state of the auction rate securities market at that time, and explaining the
26 consequences of failing to sell their auction rate securities to RBC prior to the expiration of the Offer
27 Period.

28 11. Eligible Investors may accept the Buyback Offer by notifying RBC at any time before 5:00

1 p.m., Eastern Standard Time, June 30, 2009, or such later date and time as RBC may extend the Offer
2 Period. For Eligible Investors who accept the Buyback Offer within the Offer Period, RBC shall
3 purchase the Eligible Auction Rate Securities on or before the next scheduled auction date that occurs
4 after three (3) business days following RBC's receipt of notification.

5 12. No later than two days after execution of this Order, RBC shall have established: (a) a
6 dedicated toll-free telephone assistance line, with appropriate staffing, to provide information and to
7 respond to questions concerning the terms of this Order; and (b) a public Internet page on its
8 corporate Website(s), with a prominent link to that page appearing on RBC's relevant homepage(s),
9 to provide information concerning the terms of this Order and, via the telephone assistance line,
10 together with an e-mail address or other reasonable means of communication, to respond to questions
11 concerning the terms of this Order. RBC shall have maintained the telephone assistance line and
12 Internet page through June 30, 2009.

13 **Relief for Eligible Investors Who Sold Below Par**

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15 13. By May 31, 2009, RBC shall have undertaken its best efforts to identify any Eligible
16 Investor who sold Eligible Auction Rate Securities below par between February 11, 2008 and
17 October 8, 2008 and paid such Eligible Investors the difference between par and the price at which
18 the Eligible Investor sold the Eligible Auction Rate Securities. RBC will undertake its best efforts to
19 identify and pay, as soon as reasonably possible, any Eligible Investors identified thereafter who sold
20 Eligible Auction Rate Securities below par between February 11, 2008 and October 8, 2008.

21 **Reimbursement for Related Loan Expenses**

22 14. RBC shall have undertaken its best efforts to identify Eligible Investors who took out loans
23 from RBC, between February 11, 2008 and May 31, 2009, that were secured by Eligible Auction
24 Rate Securities that were not successfully auctioning at the time the loan was taken out from RBC,
25 and paid interest associated with the auction rate securities based portion of those loans in excess of
26 the total interest and dividends received on the auction rate securities during the duration of the loan.
27 RBC shall have reimbursed such customers for such excess expense, plus reasonable interest thereon.
28 Such reimbursement shall have occurred no later than May 31, 2009.

1 **Consequential Damages Arbitration Process**

2 15. RBC shall consent to participate in a special arbitration (“Arbitration”) for the exclusive
3 purpose of arbitrating any Eligible Investor’s consequential damages claim arising from their
4 inability to sell Eligible Auction Rate Securities. RBC shall notify Eligible Investors of the terms of
5 the Arbitration process through the notice described in paragraph III(12).

6 16. The Arbitration shall be conducted by a single public arbitrator (as defined by section
7 12100(u) of the NASD Code of Arbitration Procedures for Customer Disputes, eff. April 16, 2007),
8 under the auspices of FINRA. RBC shall pay all applicable forum and filing fees.

9 17. Any Eligible Investors who choose to pursue such claims in the Arbitration shall bear the
10 burden of proving that they suffered consequential damages and that such damages were caused by
11 their inability to access funds invested in Eligible Auction Rate Securities. In the Arbitration, RBC
12 shall be able to defend itself against such claims; provided, however, that RBC shall not contest
13 liability for the illiquidity of the underlying auction rate securities position or use as part of its
14 defense any decision by an Eligible Investor not to borrow money from RBC.

15 18. Eligible Investors who elect to use the special arbitration process provided for herein shall not
16 be eligible for punitive damages, or for any other type of damages other than consequential damages.

17 19. All customers, including but not limited to Eligible Investors who avail themselves of the
18 relief provided pursuant to this Order, may pursue any remedies against RBC available under the law.
19 However, Eligible Investors that elect to utilize the special arbitration process set forth above are
20 limited to the remedies available in that process and may not bring or pursue a claim relating to
21 Eligible Auction Rate Securities in another forum.

22 **Municipal Issuers**

23 20. By May 31, 2009, or five business days from the date of this Order, whichever is later, RBC
24 shall refund to municipalities (which, for avoidance of doubt, do not include student loan
25 securitization vehicles or closed-end mutual funds) underwriting fees the issuers paid to RBC for the
26 refinancing or conversion of their auction rate securities that occurred after February 11, 2008, where
27 RBC acted as underwriter for the primary offering of the auction rate securities between August 1,
28 2007 and February 11, 2008.

1 **Institutional Investors**

2 21. RBC shall endeavor to work with issuers and other interested parties, including regulatory and
3 governmental entities, to expeditiously provide liquidity solutions for institutional investors not
4 covered by Section I.A. above that purchased auction rate securities from RBC (“Institutional
5 Investors”).

6 **Reports to NASAA**

7 22. Within 45 days of the end of each month, beginning with a report covering the period
8 beginning October 8, 2008 and ending April 30, 2009 (due on June 15, 2009) and continuing monthly
9 through and including a report covering the month ended December 31, 2009 (due on February 16,
10 2010), RBC shall submit a monthly written report detailing the efforts in which RBC has engaged
11 and the results of those efforts with respect to RBC’s institutional investors’ holdings in ARS. The
12 report shall be submitted to a representative specified by the North American Securities
13 Administrators Association (“NASAA”). Beginning in June 2009, upon the request of NASAA,
14 RBC shall meet quarterly with a designated NASAA representative to discuss its progress with
15 respect to its obligations pursuant to this Order. Such quarterly meetings shall continue until no later
16 than December 2009. The reporting or meeting deadlines set forth above may be amended with
17 written permission from a designated NASAA representative.

18 **IV. Additional Considerations**

19
20 23. RBC agrees that it shall not, collectively or individually, seek or accept, directly or indirectly,
21 reimbursement or indemnification, including, but not limited to, payment made pursuant to any
22 insurance policy, with regard to any or all of the amounts payable pursuant to paragraph 4 above.

23 24. In consideration of the settlement and RBC’s compliance with Paragraphs 21 and 22 of this
24 agreement, the California Department of Corporations has refrained from taking legal action against
25 RBC with respect to RBC’s marketing and sale to its institutional investors. The California
26 Department of Corporations shall issue continuances as it deems appropriate.

27 25. If payment is not made by RBC, or if RBC defaults in any of its obligations set forth in this
28 Order, the California Department of Corporations may vacate this Order, at its sole discretion, upon

1 10 days notice to RBC and without opportunity for administrative hearing.

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

8 27. For any person or entity not a party to this Order, this Order does not limit or create any private
9 rights or remedies against RBC including, without limitation, the use of any e-mails or other documents
10 of RBC or of others for the marketing and sale of ARS to investors, limit or create liability of RBC, or
11 limit or create defenses of RBC to any claims.

12 28. Nothing herein shall preclude California, its departments, agencies, boards, commissions,
13 authorities, political subdivisions and corporations, other than the Department of Corporations and only
14 to the extent set forth in paragraph III(1) and IV(24) above, (collectively, "California Entities") and the
15 officers, agents or employees of California Entities from asserting any claims, causes of action, or
16 applications for compensatory, nominal and/or punitive damages, administrative, civil, criminal, or
17 injunctive relief against RBC in connection with the marketing and sale of ARS by RBC.

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

21 30. This Order and any dispute related thereto shall be construed and enforced in accordance
22 with, and governed by, the laws of California without regard to any choice of law principles.

23 31. RBC, through its execution of this Consent Order, voluntarily waives its right to a hearing on
24 this matter and to judicial review of this Consent Order under California Corporations Code sections
25 25532(d) and 25609.

26 32. RBC enters into this Consent Order voluntarily and represents that no threats, offers,
27 promises, or inducements of any kind have been made by the California Department of Corporations
28 or any member, officer, employee, agent, or representative of the California Department of

1 Corporations to induce RBC to enter into this Consent Order.

2 33. This Order shall be binding upon RBC and its successors and assigns as well as to successors
3 and assigns of relevant affiliates with respect to all conduct subject to the provisions above and all
4 future obligations, responsibilities, undertakings, commitments, limitations, restrictions, events, and
5 conditions.

6 34. Nothing in this Order shall be considered an admission of fraud.

7 Dated this 30th day of September, 2009.

8 PRESTON DuFAUCHARD
9 California Corporations Commissioner

10 By _____
11 ALAN S. WEINGER
12 Deputy Commissioner
13 Enforcement Division
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1 **CONSENT TO ENTRY OF ADMINISTRATIVE ORDER BY RBC**

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

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

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

10 Dorthy Heyl represents that he/she is counsel to RBC and that, as such, has been authorized by
11 RBC to enter into this Order for and on behalf of RBC.

12 RBC agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard
13 to any state, federal, or local tax for any administrative monetary penalty that RBC shall pay pursuant
14 to this Order.

15 Dated this 22nd day of September, 2009.

16 RBC Capital Markets Corporation

17

18 By: _____

19 Name: Dorothy Heyl

20 Title: Of Counsel. Milbank, Tweed, Hadley & McCloy

21

22 SUBSCRIBED AND SWORN TO before me this 22nd day of September, 2009.

23 _____

24 Notary Public

25

26 My commission expires:

27 _____

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