

STATE OF WASHINGTON
DEPARTMENT OF FINANCIAL INSTITUTIONS
SECURITIES DIVISION

IN THE MATTER OF DETERMINING
whether there has been a violation
of the Securities Act of Washington by:

Order Number S-09-195-09-CO01

CONSENT ORDER

Deutsche Bank Securities Inc.;

Respondents.

INTRODUCTION

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

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

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

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

WHEREAS, DBSI and the Securities Division of the State of Washington Department of Financial Institutions wish to resolve these issues in accordance with the terms of the Settlement and without the expense and delay that formal administrative proceedings would involve; and

CONSENT ORDER

1 **WHEREAS,** DBSI consents to the form and entry of this Consent Order without
2 admitting or denying the allegations set forth herein. Accordingly, DBSI waives the following
3 rights:

4 a. To be afforded an opportunity for hearing on the Securities Division of the State
5 of Washington Department of Financial Institutions' findings and conclusions of
6 law in this Consent Order after reasonable notice within the meaning of RCW
7 34.05; and

8 b. To seek judicial review of, or otherwise challenge or contend, the validity of this
9 Consent Order; and

10 **WHEREAS,** DBSI agrees that for purposes of this matter, or any future proceedings to
11 enforce this Consent Order by the Securities Division of the State of Washington Department of
12 Financial Institutions, this Consent Order shall have the same effect as if proven and ordered
13 after a full hearing held pursuant to RCW 34.05; and

14 **WHEREAS,** the provisions set forth in this Consent Order constitute the entire
15 agreement between the Securities Division of the State of Washington Department of Financial
16 Institutions and DBSI, and shall supersede any conflicting provisions contained in the
17 Settlement;

18 NOW, THEREFORE, the Securities Division of the State of Washington Department of
19 Financial Institutions, as administrator of the Securities Act of the State of Washington, hereby
20 enters this Consent Order:
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23 **I.**
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FINDINGS OF FACT

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2 1. DBSI admits the jurisdiction of the Securities Division of the State of Washington
3 Department of Financial Institutions, neither admits nor denies the findings of fact and
4 conclusions of law contained in this Consent Order, and consents to the entry of this Consent
5 Order by the Securities Division of the State of Washington Department of Financial Institutions.

Auction Rate Securities

6
7 2. Auction rate securities (“ARS”) as a general term refers to long-term debt or
8 equity instruments tied to short-term interest rates that are reset periodically through an auction
9 process.

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

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

17 5. Common categories of ARS instruments include: auction preferred shares of
18 closed-end funds (“Preferreds”); municipal auction rate certificates (“Municipal ARS”); and
19 student loan-backed auction rate certificates (“Student Loan ARS”). The interest rates paid to
20 ARS holders are intended to be set through a Dutch auction process.

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

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

4 **DBSI's Marketing and Sale of Auction Rate Securities**

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

7 9. Deutsche Bank Alex. Brown ("DBAB"), a division of DBSI, provides wealth
8 planning and brokerage services to private, institutional, and corporate clients.

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

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

12 12. Certain DBSI agents solicited sales of ARS to clients; however, certain DBSI
13 agents did not fully comprehend the product, auction process, or the risks.
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15 13. DBSI did not provide its agents with adequate training concerning the complex
16 characteristics of ARS and risks inherent with this type of investment.

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

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

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

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

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

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

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

13 21. Beginning in 2003, CIB began to underwrite certain Student Loan ARS issues
14 (“CIB SL ARS”). Because CIB had not developed a sales network for those CIB SL ARS, there
15 were instances in which several CIB SL ARS issues were not successfully sold to institutions
16 during the initial offering. As a consequence, CIB purchased and maintained on its books 100
17 percent of the outstanding ARS for several CIB SL ARS issues, which ultimately allowed the
18 initial offerings for these issues to succeed. Despite this, CIB continued to market those CIB SL
19 ARS to investors. Some of those CIB SL ARS remained on CIB’s books as of the 2008 Auction
20 Failures.
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1 22. Because certain DBSI agents misrepresented the characteristics of ARS to clients
2 and purchased ARS for clients based upon those misrepresentations, DBSI engaged in dishonest
3 and unethical conduct in the securities business with respect to the marketing and sale of auction
4 rate securities.

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

9 **Conflict of Interest**

10 24. DBAB failed to adequately disclose to clients who purchased ARS that the firm's
11 roles as underwriter and broker-dealer in certain ARS issues were a conflict of interest, and this
12 conflict may affect the auction clearing rate. As the underwriter and lead manager on four
13 Preferred issues since 1992¹ (the "DBAB Managed Preferred"), it was in the interest of the firm
14 to keep the clearing rates low for issuers of the DBAB Managed Preferred. As broker-dealer, the
15 firm had a duty to provide the highest available ARS clearing rates to its clients.

16 25. DBAB issued a "price talk" document prior to each ARS auction in which it acted
17 as a broker-dealer. This document detailed the interest rate at which DBAB believed the ARS
18 would clear at auction. DBAB determined this rate by utilizing different factors, including the
19 competing interests of both investors and issuers.
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¹ These Preferred issues were Nuveen Maryland Premium Income Municipal Fund 2 (CUSIP No. W67061Q305),
and Van Kampen Invest Grade (CUSIP Nos. E920929601, F920929700, and G920929809).

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

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

8 **Supporting Bids**

9 28. In every auction for the DBAB Managed Preferred, the firm submitted
10 “supporting bids” for its own account that were sufficient to cover the entire allotment of each
11 DBAB Managed Preferred issue. These supporting bids were customary among lead managers
12 to prevent failed auctions and to maintain liquidity for investors. In certain instances, the
13 supporting bids prevented failed auctions, and in others, the supporting bids were unnecessary.
14 However, regardless of the auction outcome, these supporting bids were consistently placed by
15 DBAB, ensuring that successful auctions occurred and liquidity was maintained.
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17 29. DBAB failed to disclose to clients that, in each auction of auction rate preferred
18 issues for which DBAB acted as lead manager, the firm placed supporting bids for the entire
19 allotment of auction rate preferred to ensure a successful auction.
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21 30. DBAB agents were not aware that DBAB placed supporting bids in the auction
22 rate preferred auctions for which DBAB was the lead manager; nor were they aware of the effect
23 of DBAB’s supporting bids on those auctions.
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1 31. In or around August 2007, CIB declined to place supporting bids for certain ARS
2 issued by three special purpose vehicles previously created by Deutsche Bank (the “SPVs”)
3 (called Pivots, Capstans, and Cambers). CIB’s decision to stop submitting supporting bids
4 resulted in failed auctions for these ARS issues.

5 32. On or around February 13, 2008, the head traders of DBAB’s fixed-income
6 trading desk and CIB’s asset-backed trading desk, each of which handled the firm’s trading in
7 ARS, declined to submit supporting bids for ARS issues in which DBSI was the lead manager.
8 This decision resulted in failed auctions for the ARS issues in which DBSI was a lead
9 underwriter, and a lack of liquidity for clients invested in these issues. Neither DBAB nor CIB
10 has placed a supporting bid since that decision.

11 33. By engaging in the practice of placing supporting bids to prevent failed ARS
12 auctions and failing to disclose the practice to clients, DBAB engaged in dishonest and unethical
13 conduct in the securities business with respect to the marketing and sale of auction rate
14 securities.
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16 34. By failing to ensure adequate disclosure to clients of DBAB’s practice of placing
17 supporting bids to artificially prevent failed ARS auctions, DBSI failed to reasonably supervise
18 its agents with respect to the marketing and sale of auction rate securities.

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20 **II.**

21 **CONCLUSIONS OF LAW**

1 Solely for the purpose of this Consent Order, and without admitting or denying the
2 allegations set forth herein, DBSI consents to the Securities Division of the State of Washington
3 Department of Financial Institutions' making the following conclusions of law:

4 1. In connection with: (i) the misrepresentation of ARS to clients, (ii) the failure to
5 adequately disclose to clients the effect of the firm's role as underwriter and broker-dealer for
6 ARS issues, and (iii) the use of supporting bids to artificially prevent failed ARS auctions and
7 failing to adequately disclose the practice to clients, DBSI engaged in dishonest and unethical
8 conduct in the securities business, in violation of RCW 21.20.110(1)(g).

9 2. In connection with the failure to (i) provide adequate training to agents
10 concerning ARS, (ii) create and maintain adequate written supervisory procedures concerning
11 ARS, (iii) ensure accurate disclosure of ARS characteristics to clients by its agents, and (iv)
12 ensure adequate disclosure of conflicts of interest concerning ARS to clients by its agents, DBSI
13 failed to reasonably supervise, and establish and enforce procedures necessary to detect and
14 prevent such conduct, in violation of its duties under RCW 21.20.110(1)(j).

15 3. The activities set forth herein are grounds, pursuant to the Securities Act of
16 Washington, RCW 21.20, for the initiation of administrative proceedings; and further, pursuant
17 to RCW 21.20.110, to impose such other appropriate remedial measures as may be necessary in
18 the public interest.
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21 **III.**

22 **ORDER**

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

3 IT IS HEREBY ORDERED:

4 1. Pursuant to RCW 21.20.110, DBSI is assessed and shall pay a civil monetary
5 penalty in the amount of \$154,308.35 (Washington State's pro rata share of the \$15,000,000 total
6 penalty that DBSI agreed to pay pursuant to the Settlement), due and payable within ten (10)
7 days of the entry of this Consent Order to the Securities Division of the State of Washington
8 Department of Financial Institutions. The penalty will be deposited in the Securities Prosecution
9 Fund and shall be made payable to the Washington State Treasurer and delivered to Michael E.
10 Stevenson, Securities Administrator, Washington Department of Financial Institutions, Securities
11 Division, 150 Israel Road SW, Tumwater, WA 98501.

12
13 2. DBSI shall take certain measures, enumerated below, with respect to all current
14 and former clients of DBSI that purchased "Eligible ARS", defined below, from DBSI on or
15 before February 13, 2008 (the "Relevant Class"). For purposes of this Consent Order, "Eligible
16 ARS" shall be defined as ARS purchased from DBSI that were subject to auctions that were not
17 continuously succeeding between February 13, 2008, and August 31, 2008.

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19 3. DBSI shall have offered to purchase at par Eligible ARS, that were purchased
20 from DBSI prior to February 13, 2008, held by: (i) all individuals; (ii) legal entities forming an
21 investment vehicle for family members including but not limited to IRA accounts, Trusts, Family
22 Limited Partnerships and other legal entities performing a similar function; (iii) all charities and

1 non-profits; and (iv) small to medium sized businesses with assets of \$10 million dollars or less
2 with Deutsche Bank (collectively, "Individual Investors").

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

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

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

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

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

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

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

17 d. DBSI shall be able to defend itself against such claims; provided,
18 however, that DBSI shall not contest in these arbitrations liability related to the sale
19 of auction rate securities; and provided further that DBSI shall not be able to use as
20 part of its defense a DBSI Individual Investor's decision not to borrow money from
21 DBSI;
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1 e. Individual Investors who elect to use the State SAP provided for in this
2 Order shall not be eligible for punitive damages, or any other type of damages other
3 than consequential damages. The State SAP will govern the availability of attorneys'
4 fees.

5 f. All customers, including but not limited to Individual Investors who avail
6 themselves of the relief provided pursuant to this Consent Order, may pursue any
7 remedies against DBSI available under the law. However, Individual Investors that
8 elect to utilize the special arbitration process set forth above are limited to the
9 remedies available in that process and may not bring or pursue a claim relating to
10 Eligible ARS in another forum.

11 6. DBSI shall endeavor to work with issuers and other interested parties, including
12 regulatory and governmental entities, to expeditiously provide liquidity solutions for institutional
13 investors not covered by paragraph 3 immediately above. Beginning November 19, 2008, and
14 then quarterly after that, DBSI shall submit a written report to the representative specified by
15 NASAA ("NASAA Representative") outlining the efforts in which DBSI has engaged and the
16 results of those efforts with respect to DBSI institutional investors' holdings in auction rate
17 securities. DBSI shall confer with the NASAA Representative no less frequently than quarterly
18 to discuss DBSI's progress to date. Such quarterly reports shall continue until no later than
19 December 31, 2009. Following every quarterly report, the NASAA Representative shall advise
20 DBSI of any concerns and, in response, DBSI shall discuss how DBSI plans to address such
21 concerns;
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1 7. DBSI shall have refunded refinancing fees DBSI has received from municipal
2 auction rate issuers that issued such securities through DBSI in the initial primary market
3 between August 1, 2007, and February 13, 2008, and refinanced those securities after February
4 13, 2008; and

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

14 9. This Consent Order concludes the investigation by the Securities Division of the
15 State of Washington Department of Financial Institutions and any other action that the Securities
16 Division of the State of Washington Department of Financial Institutions could commence under
17 applicable Washington State law on behalf of Washington State as it relates to DBSI's marketing
18 and sale of ARS to DBSI's "Individual Investors," as defined above.

19 10. The Securities Division of the State of Washington Department of Financial
20 Institutions shall refrain from taking legal action, if necessary, against DBSI with respect to its
21 institutional investors until November 19, 2008.

22 11. The Securities Division of the State of Washington Department of Financial
23 Institutions will not seek additional monetary penalties from Deutsche Bank relating to DBSI's
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1 marketing and sale of auction rate securities.

2 12. If payment is not made by DBSI, or if DBSI defaults in any of its obligations set
3 forth in this Consent Order, the Securities Division of the State of Washington Department of
4 Financial Institutions may vacate this Consent Order, at its sole discretion, upon ten (10) days
5 notice to DBSI and without opportunity for administrative hearing.

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

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

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

22 16. This Consent Order shall not disqualify Deutsche Bank or any of its affiliates or
23 current or former employees from any business that they otherwise are qualified or licensed to
24 perform under applicable state law and this Consent Order is not intended to form the basis for
25

1 any disqualification.

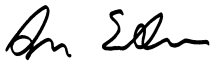
2 DATED and ENTERED this 1st day of December, 2009.

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5 MICHAEL E. STEVENSON
6 Securities Administrator

7 Approved by:

8 Presented by:

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11
12 Suzanne Sarason
13 Chief of Enforcement

14
15 Jack McClellan
16 Enforcement Attorney

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 Securities Division of the State of Washington Department of Financial Institutions; 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 Securities Division of the State of Washington Department of Financial Institutions 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 23rd day of November, 2009.

DEUTSCHE BANK SECURITIES INC.

By: /s/ Joseph Polizzotto

Title: Managing Director & General Counsel

SUBSCRIBED AND SWORN TO before me this 23rd day of November, 2009.

Notary Public: /s/ Andrew Weinberg

My commission expires: 7/2011

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 Securities Division of the State of Washington Department of Financial Institutions; 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 Securities Division of the State of Washington Department of Financial Institutions 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.

Robert Rice 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 23rd day of November, 2009.

DEUTSCHE BANK SECURITIES INC.

By: /s/ Robert Rice

Title: Managing Director

SUBSCRIBED AND SWORN TO before me this 23rd day of November, 2009.

Notary Public: /s/ Andrew Weinberg

My commission expires: 7/2011