

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-11-0740-11-CO01

CONSENT ORDER

RAYMOND JAMES & ASSOCIATES,
INC.; RAYMOND JAMES FINANCIAL
SERVICES, INC.,

Respondents.

INTRODUCTION

WHEREAS, Raymond James & Associates, Inc. (“Respondent RJA”) and Raymond James Financial Services, Inc. (“Respondent RJFS”) (collectively, “Respondents”) are broker-dealers registered in the state of Washington; and

WHEREAS, Respondents’ activities regarding the sale of auction rate securities have been the subject of coordinated investigations conducted by a multi-state task force; and

WHEREAS, Respondents have cooperated fully with regulators conducting the investigations by providing documentary evidence and other materials and by providing regulators with access to information relevant to their investigations; and

WHEREAS, on June 29, 2011, Respondents and the multi-state task force reached an agreement to resolve the investigations relating to Respondents’ sale of ARS to certain customers; and

WHEREAS, Respondents agree, among other things, to purchase certain auction rate securities from customers and to make certain payments; and

CONSENT ORDER

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DEPARTMENT OF FINANCIAL INSTITUTIONS
Securities Division
PO Box 9033
Olympia, WA 98507-9033
360-902-8760

1 **II.**

2 **FINDINGS OF FACT**

3 3. Respondents are each in the business of effecting transactions in securities in the
4 state of Washington as a “broker-dealer” within the meaning of 21.20.005(3).

5 4. Respondents have customers located across the United States of America,
6 including in the state of Washington.

7 5. Prior to February 13, 2008, Respondents sold financial instruments known as
8 auction rate securities (“ARS”) to Washington residents.

9 **ARS**

10 6. ARS are bonds or preferred stocks that have interest rates or dividend yields that
11 are periodically reset through an auction process, typically every seven (7), twenty-eight (28), or
12 thirty-five (35) days.

13 7. ARS are usually issued with thirty (30) year maturities, but ARS maturities can
14 range from five years to perpetuity.

15 8. ARS can be attractive investments to investors because ARS may offer slightly
16 higher yields than various alternative products, including forms of cash alternative products.

17 9. An ARS yield is determined by the periodic auctions (commonly referred to as
18 “Dutch” auctions) during which ARS are auctioned at par.

19 10. ARS can be bought or sold at par at one of these periodic Dutch auctions.

20 11. Under the typical procedures for an ARS auction in effect prior to February 13,
21 2008, an investor, including a customer of either Respondent, who wished to purchase ARS at
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1 auction, submitted a bid that included the minimum interest or dividend rate that the investor
2 would accept.

3 12. ARS holders could either choose to keep their securities until the next auction or
4 submit offers to sell their ARS.

5 13. An auction agent collected all of the bids and offers for a particular auction.

6 14. The final yield rate at which the ARS were sold was the “clearing rate” and the
7 clearing rate applied to that particular ARS until the next auction.

8 15. Bids with the lowest rate and then successively higher rates were accepted until
9 all ARS sell orders were filled.

10 16. The clearing rate was the lowest rate bid sufficient to cover all ARS offered for
11 sale in the auction.

12 17. If there were not enough bids to cover the ARS offered for sale in an auction, then
13 an auction would fail.

14 18. In a failed auction, investors who want to sell are not able to do so and such
15 investors must hold their ARS until at least the next auction.

16 19. In the event of a failed auction, an ARS issuer pays the holders a maximum rate
17 or “penalty” rate, which is either a flat rate or a rate based on a formula set forth in the ARS
18 offering documents.

19 20. Penalty rates might be higher or lower than the prior clearing rate or market rates
20 on similar products.

21 21. To facilitate the auction process, issuers of ARS selected one or more broker-
22 dealers to underwrite an offering and/or manage an auction process.

1 22. In many instances, these broker-dealers submitted their own bids to support the
2 ARS auctions and to prevent the auctions from failing, maintain an orderly market, or set a
3 clearing rate.

4 23. Due to various market conditions in the early part of 2008, many of the broker-
5 dealers that acted as underwriters of the ARS offerings or as lead managers for the ARS auctions
6 stopped submitting their own bids in support of the ARS auctions.

7 24. As a result, by February 13, 2008, the ARS market began to experience
8 widespread auction failures, leaving ARS investors, including some of Respondents' customers
9 throughout the United States of America, unable to sell their ARS holdings.

10 25. On February 13, 2008, through the date of this Order, the ARS market has
11 continued to experience widespread failures, making ARS holdings illiquid.

12 26. Some ARS have been redeemed by their issuers since February 13, 2008.
13 Thousands of ARS investors, however, including some of Respondents' customers, have been
14 unable to liquidate their ARS positions through the auction process.

15 27. Respondents' customers currently hold hundreds of millions of dollars in illiquid
16 ARS that they are unable to sell through the auction process.

17 **Respondents' Roles in the ARS Market**

18 28. Respondent RJA acted as an underwriter of single-issue municipal auction rate
19 securities ("MARS"). RJA managed the auctions of MARS it underwrote and of MARS
20 underwritten by other broker-dealers. Additionally, RJA submitted bids in the auctions it
21 managed to prevent them from failing, to maintain an orderly market, or to set a clearing rate.

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1 29. Respondent RJFS did not underwrite or act as an auction manager for ARS, and
2 did not at any time submit bids in auctions.

3 30. Respondents also acted as agents for their customers, on a solicited and
4 unsolicited basis, by submitting customers' orders to purchase and sell two other ARS products:
5 auction rate preferred securities backed by a pool of municipal bonds ("ARPS") and taxable
6 auction rate securities, which were variable rate perpetual preferred stock issued by closed-end
7 funds ("TARS"). As distributing or "downstream" broker-dealers for the ARPS and TARS,
8 Respondents did not submit bids in these auctions.

9 **Respondents' ARS Sales to Customers**

10 31. In selling ARS to its customers prior to the middle of February 2008, some of
11 Respondents' registered representatives and financial advisors made inaccurate comparisons
12 between ARS and other investments, such as money market funds, telling customers that ARS
13 were "cash equivalents," "the same as cash," and "highly liquid," but with a slightly higher yield.
14 Respondents' registered representatives and financial advisors also did not accurately
15 characterize the investment nature of ARS since ARS are highly complex securities that are very
16 different from money market funds, as evidenced by, among other things, the dependence of
17 ARS on successful auctions for liquidity.

18 32. Respondents' ARS trade confirmations, sent after customers purchased ARS,
19 disclosed the risks that these auctions could fail and that Respondents were not obligated to
20 ensure their success. Nevertheless, Respondents did not provide customers with adequate and
21 complete disclosures regarding the complexity of the auction process, including failing to
22 adequately disclose to customers that Respondent RJA managed the auctions of the MARS and
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1 that RJA routinely bid in MARS auctions to prevent a failed auction, maintain an orderly market,
2 or set a particular clearing rate. For example, some of Respondents' registered representatives
3 and financial advisors did not adequately disclose to customers that their ARS could become
4 illiquid for an indeterminate period of time in the event of an auction failure.

5 33. The information described in Paragraphs 31 through 32 was material to
6 Respondents' customers.

7 34. Respondents should have known that their registered representatives and financial
8 advisors marketed ARS to customers as highly liquid and as an alternative to cash or money
9 market funds without adequately disclosing that ARS are complex securities that may become
10 illiquid.

11 35. In connection with the marketing of ARS, Respondents failed to adopt policies
12 and procedures reasonably designed to ensure that its registered representatives and financial
13 advisors recommended ARS only to customers who had stated investment objectives that were
14 consistent with their purchase of ARS. Some of Respondents' registered representatives and
15 financial advisors recommended ARS to customers as a liquid, short-term investment. As a
16 result, some of Respondents' customers who needed short-term access to funds invested in ARS
17 even though ARS had long-term maturity dates, or in the case of ARPS and TARS, no maturity
18 dates.

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III.

CONCLUSIONS OF LAW

36. The Securities Division of the Washington State Department of Financial Institutions has jurisdiction over this matter pursuant to the Securities Act of Washington, RCW 21.20.

37. By engaging in the acts and conduct set forth in paragraphs II.3 through II.35, Respondents engaged in dishonest or unethical practices in violation of RCW 21.20.110(1)(g).

38. By engaging in the acts and conduct set forth in paragraphs II.3 through II.35, Respondents failed to reasonably supervise their agents in violation of RCW 21.20.110(1)(j).

IV.

ORDER

On the basis of the Findings of Fact, Conclusions of Law, and Respondents' consent to the entry of this Order, without admitting or denying the facts or conclusions herein,

IT IS HEREBY ORDERED:

1. This Order concludes the investigation by the Securities Division of the Washington State Department of Financial Institutions and precludes any other action that the Securities Division of the Washington State Department of Financial Institutions could commence against the Respondents under applicable Washington state law on behalf of the state of Washington as it relates to Respondents' sale of auction rate securities to Eligible Investors, as defined below.

1 2. This Order is entered into solely for the purpose of resolving the above-referenced
2 multi-state investigation, and is not intended to be used for any other purpose.

3 3. Respondents shall cease and desist from violating the Securities Act of
4 Washington and shall comply with the Securities Act of Washington.

5 4. Within ten days after the entry of this Consent Order, Respondents shall pay the
6 sum of \$8,363.42 to the state of Washington as a civil monetary penalty pursuant to RCW
7 21.20.110 and RCW 21.20.395, to be deposited in the Securities Prosecution Fund, RCW
8 43.320.115, which amount constitutes the state of Washington's proportionate share of the total
9 state settlement amount of \$1,750,000.00. In the event another state securities regulator
10 determines not to accept Respondents' settlement offer, the total amount of the payment to the
11 state of Washington shall not be affected.

12 5. Respondents shall take certain measures with respect to current and former
13 customers with respect to "Eligible Auction Rate Securities," as defined below in Paragraph
14 IV.6.

15 6. "Eligible Auction Rate Securities". For purposes of this Order, "Eligible Auction
16 Rate Securities" means auction rate securities purchased at Respondents on or before February
17 13, 2008, and that have failed at auction at least once since February 13, 2008. Notwithstanding
18 the foregoing definition, the term "Eligible Auction Rate Securities" shall not include auction
19 rate securities that were purchased at Respondents in accounts owned, managed or advised by or
20 through correspondent broker-dealers or unaffiliated registered investment advisers.

21 7. "Eligible Investors". For purposes of this Order, "Eligible Investors," shall mean
22 the following:

1 (1) Any investor that purchased Eligible Auction Rate Securities at
2 Respondents on or before February 13, 2008, did not transfer such Eligible Auction Rate
3 Securities away from Respondents prior to January 1, 2006, and held those securities on
4 February 13, 2008.

5 (2) "Eligible Investors," for the purposes of this Order, shall not include
6 institutional money managers.

7 (3) "Eligible Investors," for the purposes of this Order, shall not include
8 customers who resolved their ARS claims through arbitration proceedings or negotiated
9 settlements with Respondents.

10 8. Purchase Offer. Respondents shall offer to purchase, at par plus accrued and
11 unpaid dividends/interest, from Eligible Investors their Eligible Auction Rate Securities that have
12 failed at auction at least once since February 13, 2008 (the "Purchase Offer").

13 9. Notification and Buyback Procedures.

14 a. Respondents shall create a written notice related to the Purchase Offer (the
15 "Notice"). The Notice shall explain the relevant terms of this Order and describe what
16 Eligible Investors must do to accept, in whole or in part, the Purchase Offer, including
17 how Eligible Investors may accept the Purchase Offer.

18 b. Initial Notice

19 i. Respondents shall provide the Notice to Eligible Investors who
20 purchased Eligible Auction Rate Securities at Respondents by no later than thirty
21 (30) days from June 29, 2011.

1 ii. Furthermore, Respondents shall undertake their best efforts to
2 identify and locate customers who purchased Eligible ARS at Respondents but
3 who transferred such Eligible ARS away from Respondents prior to January 1,
4 2006 by no later than thirty (30) days from June 29, 2011. Respondents will
5 provide any such customers with the Purchase Offer described in Section IV.8,
6 the Notification and Buyback Procedures described in Section IV.9, and the other
7 terms described in Sections IV.11, IV.12, and IV.13.

8 c. Second Notice

9 With respect to each Eligible Investor that Respondents sent the Notice required
10 by Paragraph IV.9.b above and who did not respond, Respondents shall provide a second
11 copy of the Notice on or before 45 days before the end of the Offer Period, as defined
12 below.

13 d. Offer Period

14 i. Respondents shall keep the Purchase Offer open for seventy-five
15 (75) days after mailing the Initial Notice as required by Paragraph IV.9.b, above
16 (“Offer Period”).

17 ii. Eligible Investors may accept the Purchase Offer by notifying
18 Respondents as described in the Notice, at any time before 11:59 P.M. Eastern
19 Time, on or before the last day of the Offer Period. For those Eligible Investors
20 who accept the Purchase Offer within the Offer Period, Respondents shall
21 purchase their Eligible Auction Rate Securities by no later than five (5) business
22 days following the expiration of the Offer Period.

1 e. An Eligible Investor may revoke their acceptance of Respondents'
2 Purchase Offer at any time up until Respondents' purchase of such Eligible Investor's
3 Eligible Auction Rate Securities or provide notice of their intent to purchase such
4 Eligible Auction Rate Securities.

5 f. Respondents' obligation to those Eligible Investors who custodied their
6 Eligible Auction Rate Securities away from Respondents as of the date of this Order shall
7 be contingent on: (1) Respondents receiving reasonably satisfactory assurances from the
8 financial institution currently holding the Eligible Investor's Eligible Auction Rate
9 Securities that the bidding rights associated with such Eligible Auction Rate Securities
10 will be transferred to Respondents; (2) the Eligible Investor reactivating their former
11 account with Respondents; and (3) the transfer of the Eligible Auction Rate Securities to
12 the Eligible Investor's former account with Respondents.

13 g. Respondents shall use their best efforts to identify, contact and assist any
14 Eligible Investor who has transferred the Eligible Auction Rate Securities out of
15 Respondents' custody in returning such Auction Rate Securities to Respondents' custody,
16 and shall not charge such Eligible Investor any fees relating to or in connection with the
17 return to Respondents or custodianship by Respondents of such Eligible Auction Rate
18 Securities.

19 10. Customer Assistance. Within two (2) days of June 29, 2011, Respondents shall
20 establish a dedicated toll-free telephone assistance line and website to respond to questions
21 concerning the terms of this Order, and to provide information concerning the terms of this Order
22 and, via an e-mail address or other reasonable means, to respond to questions concerning the
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1 terms of this Order. Respondents shall maintain the telephone assistance line for at least nine
2 months from the date of this Order.

3 11. Relief for Eligible Investors Who Sold Below Par. Respondents shall use their
4 best efforts to identify each Eligible Investor who: (i) purchased Eligible Auction Rate Securities
5 at Respondents on or before February 13, 2008; and (ii) who sold those Eligible Auction Rate
6 Securities below par between February 13, 2008 and the date of this Order (“Below Par
7 Sellers”). Within 75 days of June 29, 2011, Respondents shall pay each Below Par Seller the
8 difference between par and the price at which the Below Par Seller sold the Eligible Auction
9 Rate Securities, plus reasonable interest thereon. Furthermore, Respondents will pay promptly
10 the difference between par and the price at which the Below Par Seller sold the Eligible Auction
11 Rate Securities, plus reasonable interest thereon to any Below Par Sellers identified more than 75
12 days after this Order.

13 12. Consequential Damages Arbitration Process.

14 a. Respondents shall consent to participate in a special arbitration process
15 (“Arbitration”) for the exclusive purpose of arbitrating any Eligible Investor’s
16 consequential damages claim arising from their inability to sell Eligible Auction Rate
17 Securities. In the Arbitration, the Special Arbitration Process applicable to firms that
18 have entered into settlements with state regulators (the “State SAP”) will be available for
19 the exclusive purpose of arbitrating any Eligible Investor’s consequential damages claim.
20 Respondents shall notify Eligible Investors of the terms of the Arbitration process
21 through the Notice.

1 b. The Arbitration shall be conducted under the auspices of FINRA, pursuant
2 to the NASD Code of Arbitration Procedures for Customer Disputes, eff. April 16, 2007.
3 Respondents will pay all applicable forum and filing fees.

4 c. Any Eligible Investors who choose to pursue such claims in the
5 Arbitration shall bear the burden of proving that they suffered consequential damages and
6 that such damages were caused by their inability to access funds invested in Eligible
7 Auction Rate Securities. In the Arbitration, Respondents shall be able to defend
8 themselves against such claims; provided, however, that Respondents shall not contest
9 liability for the illiquidity of the underlying auction rate securities position or use as part
10 of their defense any decision by the Eligible Investor not to borrow money from either
11 Respondent.

12 d. Eligible Investors who elect to use the Arbitration provided for herein
13 shall not be eligible for punitive damages, or for any other type of damages other than
14 consequential damages. However, the State SAP will govern the availability of
15 attorney's fees.

16 13. Loan Interest Expense.

17 Respondents shall use their best efforts to identify Eligible Investors that obtained a loan
18 through Respondents (or its affiliates) secured by Eligible Auction Rate Securities that were not
19 successfully auctioning at the time the loan was taken and who paid more in interest on the loan
20 than the Eligible Investor received in interest or dividends from the Eligible Auction Rate
21 Securities during the time the loan was outstanding ("Negative Carry"). If the Eligible Investor
22 can provide Respondents documentation evidencing the amount of Negative Carry, Respondents,
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1 on or before 75 days from the date of this Order, will reimburse the Eligible Investor the amount
2 of Negative Carry actually paid.

3 14. Best Efforts.

4 Respondents will use their best efforts to provide the institutional money managers,
5 within nine (9) months of the date of June 29, 2011, opportunities to liquidate their Eligible
6 Auction Rate Securities including, but not limited to, facilitating issuer redemptions,
7 restructurings, and through other reasonable means. Although Respondents are required to use
8 their best efforts to liquidate Eligible Auction Rate Securities owned by the institutional money
9 managers, the Respondents are not obligated to purchase the securities.

10 15. Reports and Meetings.

11 a. Respondents shall submit a bi-monthly written report detailing
12 Respondents' progress with respect to the provisions of this Order within 45 days of the
13 end of each month in which a report is required, beginning with a report covering the
14 month ended after June 29, 2011 and continuing through and including a report covering
15 the month ended nine months from June 29, 2011. This report shall be submitted to a
16 representative specified by the North American Securities Administrators Association
17 ("NASAA").

18 b. Beginning 120 days after June 29, 2011, Respondents shall confer at least
19 quarterly with the representative specified by NASAA to discuss Respondents' progress
20 with respect to the provisions of this Order. Such quarterly conferences shall continue
21 for nine months from June 29, 2011.

1 c. The reporting and conference deadlines set forth above may be amended
2 or modified with written permission from the representative specified by NASAA.

3 16. This Order is not intended to indicate that Respondents or any of its affiliates or
4 current or former employees shall be subject to any disqualifications contained in the federal
5 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
7 the registration exemptions or safe harbor provisions. In addition, this Order is not intended to
8 form the basis for any such disqualifications.

9 17. Except in an action by the Securities Division of the Washington State
10 Department of Financial Institutions to enforce the obligations of Respondents in this Order, this
11 Order may neither be deemed nor used as an admission of or evidence of any alleged fault,
12 omission or liability of Respondents in any arbitration or any civil, criminal or administrative
13 proceeding in any court, administrative agency or tribunal. For any person or entity not a party
14 to this Order, this Order does not limit or create any private rights or remedies against
15 Respondents including, without limitation, the use of any emails or other documents of
16 Respondents or of others concerning the marketing and/or sales of auction rate securities, limit or
17 create liability of Respondents, or limit or create defenses of Respondents to any claims.

18 18. This Order is not intended to disqualify Respondents 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 securities law and this Order is not intended to form the basis for
21 any disqualification.

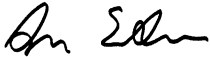
1 Dated and Entered this 22nd day of November, 2011.

2 By:

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5 _____
6 William M. Beatty
7 Securities Administrator

8 Approved by:

9 

10 _____
11 Suzanne Sarason
12 Chief of Enforcement

Presented by:

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14 _____
15 Bridgett Fisher
16 Enforcement Attorney

1 **CONSENT TO ENTRY OF ADMINISTRATIVE ORDER BY RAYMOND JAMES &**
2 **ASSOCIATES, INC. AND RAYMOND JAMES FINANCIAL SERVICES, INC.**

3 Raymond James & Associates, Inc. and Raymond James Financial Services, Inc. (together
4 “Raymond James”) hereby acknowledges that it has been served with a copy of this Consent Order,
5 has read the foregoing Order, is aware of its right to a hearing and appeal in this matter, and has
6 waived the same.

7 Raymond James admits the jurisdiction of the Securities Division of the Washington State
8 Department of Financial Institutions, neither admits nor denies the Findings of Fact and
9 Conclusions of Law contained in this Order, and consents to the entry of this Order by the
10 Securities Division of the Washington State Department of Financial Institutions as settlement of
11 the issues contained in this Order.

12 Respondents 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 payment that Respondents shall
14 pay pursuant to this Order.

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

17 Dennis W. Zank represents that he is President of Raymond James &
18 Associates, Inc., and that, as such, has been authorized by Raymond James & Associates, Inc., to
19 enter into this Order for and on behalf of Raymond James & Associates, Inc.

20 Donald K. Runkle represents that he is Senior Vice President, Chief Compliance
21 Officer of Raymond James Financial Services, Inc., and that, as such, has been authorized by
22 Raymond James Financial Services, Inc., to enter into this Order for and on behalf of Raymond
23 James Financial Services, Inc.

1 DATED this 3rd day of November, 2011.

2
3 RAYMOND JAMES & ASSOCIATES, INC.

4
5 By: /s/

6 Title: President

7 STATE OF Florida)

8 County of Pinellas)

9 SUBSCRIBED AND SWORN TO before me this 3rd day of
10 November, 2011.

11
12 /s/
13 Notary Public

14 My commission expires:
 June 22, 2013

15
16 RAYMOND JAMES FINANCIAL SERVICES,
17 INC.

18
19 By: /s/

20 Title: Senior Vice President, Chief Compliance Officer

1 STATE OF Florida)
2 County of Pinellas)

3 SUBSCRIBED AND SWORN TO before me this 3 day of November,
4 2011.

5
6 /s/
Notary Public

7 My commission expires:

8 June 22, 2013

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11
12 The foregoing Consent Order
13 was reviewed and approved by:

14
15 /s/ Date: 11/7/11/
16 Christian R. Bartholomew
17 Attorney for Respondents
18 Raymond James & Associates Inc., and
19 Raymond James Financial Service, Inc.