

1 STATE OF ALASKA
2 DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
3 DIVISION OF BANKING AND SECURITIES

3 In the matter of)
4 DEUTSCHE BANK SECURITIES INC,) ORDER NO: 10-15-S
5 Respondent.) ADMINISTRATIVE CONSENT ORDER
6)

7 WHEREAS, Deutsche Bank Securities Inc. (“DBSI”) is a broker-dealer registered with the
8 State of Alaska; and

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

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

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

19 WHEREAS, DBSI and the State of Alaska, Department of Commerce, Community, and
20 Economic Development, Division of Banking and Securities (the “Division”) wish to resolve these
21 issues in accordance with the terms of the Settlement and without the expense and delay that
22 formal administrative proceedings would involve; and

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

STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
DIVISION OF BANKING AND SECURITIES
550 WEST SEVENTH AVENUE, SUITE 1940
ANCHORAGE, ALASKA 99501
(907)269-8140

1 a. To be afforded an opportunity for hearing on the Division’s findings and
2 conclusions of law in this Consent Order after reasonable notice within the meaning
3 of the Alaska Securities Act, Alaska Statutes (“AS”) 45.55; and

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

6 WHEREAS, DBSI agrees that for purposes of this matter, or any future proceedings to
7 enforce this Consent Order by the Division, this Consent Order shall have the same effect as if
8 proven and ordered after a full hearing held pursuant to the Alaska Securities Act; and

9 WHEREAS, the provisions set forth in this Consent Order constitute the entire agreement
10 between the Division and DBSI, and shall supersede any conflicting provisions contained in the
11 Settlement;

12 NOW, THEREFORE, the Division, as administrator of the Alaska Securities Act, hereby
13 enters this Consent Order:

14 **I.**

15 **FINDINGS OF FACT**

16 1. DBSI admits the jurisdiction of the Division, neither admits nor denies the findings
17 of fact and conclusions of law contained in this Consent Order, and consents to the entry of this
18 Consent Order by the Division.

19 **Auction Rate Securities**

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

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

1 and wait until the next successful auction to liquidate their positions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 Failures.

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

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

10 **Conflict of Interest**

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

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

21 26. By failing to fully inform clients about the effect of DBAB's conflicting roles, as
22 underwriter and broker-dealer of ARS issues, on auction clearing rates, DBSI engaged in dishonest
23

24 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 and unethical conduct in the securities business with respect to the marketing and sale of auction
2 rate securities.

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

6 **Supporting Bids**

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

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

17 30. DBAB agents were not aware that DBAB placed supporting bids in the auction rate
18 preferred auctions for which DBAB was the lead manager; nor were they aware of the effect of
19 DBAB’s supporting bids on those auctions.

20 31. In or around August 2007, CIB declined to place supporting bids for certain ARS
21 issued by three special purpose vehicles previously created by Deutsche Bank (the “SPVs”) (called
22 Pivots, Capstans, and Cambers). CIB’s decision to stop submitting supporting bids resulted in
23 failed auctions for these ARS issues.

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

7 33. By engaging in the practice of placing supporting bids to prevent failed ARS
8 auctions and failing to disclose the practice to clients, DBAB engaged in dishonest and unethical
9 conduct in the securities business with respect to the marketing and sale of auction rate securities.

10 34. By failing to ensure adequate disclosure to clients of DBAB's practice of placing
11 supporting bids to artificially prevent failed ARS auctions, DBSI failed to reasonably supervise its
12 agents with respect to the marketing and sale of auction rate securities.

13 II.

14 CONCLUSIONS OF LAW

15 Solely for the purpose of this Consent Order, and without admitting or denying the
16 allegations set forth herein, DBSI consents to the Division's making the following conclusions of
17 law:

18 1. In connection with: (i) the misrepresentation of ARS to clients, (ii) the failure to
19 adequately disclose to clients the effect of the firm's role as underwriter and broker-dealer for ARS
20 issues, and (iii) the use of supporting bids to artificially prevent failed ARS auctions and failing to
21 adequately disclose the practice to clients, DBSI engaged in dishonest and unethical conduct in the
22 securities business, in violation of AS 45.55.060(a)(7).

23 2. In connection with the failure to (i) provide adequate training to agents concerning
24 ARS, (ii) create and maintain adequate written supervisory procedures concerning ARS, (iii)

1 ensure accurate disclosure of ARS characteristics to clients by its agents, and (iv) ensure adequate
2 disclosure of conflicts of interest concerning ARS to clients by its agents, DBSI failed to
3 reasonably supervise, and establish and enforce procedures necessary to detect and prevent such
4 conduct, in violation of its duties under AS 45.55.060(b)(1).

5 3. The activities set forth herein are grounds, pursuant to the Alaska Securities Act, for
6 the initiation of administrative proceedings; and further, pursuant to the Alaska Securities Act, to
7 impose such other appropriate remedial measures as may be necessary in the public interest.

8 **III.**

9 **ORDER**

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

12 **IT IS HEREBY ORDERED:**

13 1. Pursuant to the Alaska Securities Act, DBSI is assessed and shall make a civil
14 monetary payment in the amount of Thirty Thousand Dollars (\$30,000.00), such amount to be
15 restricted to the following specific use by the Division: promoting investor education, investor
16 protection, and compliance with the securities laws. This payment represents Alaska's pro rata
17 share of the \$15,000,000 total payment that DBSI agreed to make pursuant to the Settlement.
18 Payment is due within ten (10) days of the entry of this Consent Order by the Division.

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

1 3. DBSI shall have offered to purchase at par Eligible ARS, that were purchased from
2 DBSI prior to February 13, 2008, held by: (i) all individuals; (ii) legal entities forming an
3 investment vehicle for family members including but not limited to IRA accounts, Trusts, Family
4 Limited Partnerships and other legal entities performing a similar function; (iii) all charities and
5 non-profits; and (iv) small to medium sized businesses with assets of \$10 million dollars or less
6 with Deutsche Bank as of July 31, 2008 (collectively, “Individual Investors”).

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

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

20 4. No later than November 19, 2008, any DBSI Individual Investor that DBSI has
21 reasonably identified 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
23 investor sold the auction rate securities;

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

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

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

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

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

23 e. Individual Investors who elect to use the State SAP provided for in this
24 Order shall not be eligible for punitive damages, or any other type of damages other

1 than consequential damages. The State SAP will govern the availability of attorneys'
2 fees.

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

9 6. DBSI shall endeavor to work with issuers and other interested parties, including
10 regulatory and governmental entities, to expeditiously provide liquidity solutions for institutional
11 investors not covered by paragraph 3 immediately above. Beginning November 19, 2008, and then
12 quarterly after that, DBSI shall submit a written report to the representative specified by NASAA
13 (“NASAA Representative”) outlining the efforts in which DBSI has engaged and the results of
14 those efforts with respect to DBSI institutional investors’ holdings in auction rate securities. DBSI
15 shall confer with the NASAA Representative no less frequently than quarterly to discuss DBSI’s
16 progress to date. Such quarterly reports shall continue until no later than December 31, 2009.
17 Following every quarterly report, the NASAA Representative shall advise DBSI of any concerns
18 and, in response, DBSI shall discuss how DBSI plans to address such concerns;

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

23 8. DBSI shall have made its best efforts to identify Individual Investors who took out
24 loans from DBSI, between February 13, 2008, and June 30, 2009, that were secured by Eligible

1 ARS that were not successfully auctioning at the time the loan was taken out from DBSI. DBSI
2 shall have refunded to those Individual Investors any interest associated with the auction rate
3 securities-based portion of those loans in excess of the total interest and dividends received on the
4 auction rate securities during the duration of the loan. Such refunds shall have occurred no later
5 than July 31, 2009.

6 GENERAL PROVISIONS

7 9. This Consent Order concludes the investigation by the Division and any other action
8 that the Division could commence under applicable Alaska law on behalf of the State of Alaska as it
9 relates to DBSI's marketing and sale of ARS to DBSI's "Individual Investors," as defined above.

10 10. The Division shall refrain from taking legal action, if necessary, against DBSI with
11 respect to its institutional investors until November 19, 2008.

12 11. The Division will not seek additional monetary payments from Deutsche Bank
13 relating to DBSI's marketing and sale of auction rate securities.

14 12. If payment is not made by DBSI, or if DBSI defaults in any of its obligations set
15 forth in this Consent Order, the Division may vacate this Consent Order, at its sole discretion, upon
16 ten (10) days notice to DBSI and without opportunity for administrative hearing.

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

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

1 Deutsche Bank, or limit or create defenses of Deutsche Bank to any claims.

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

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

12 SO ORDERED this 23rd day of December, 2010.

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State of Alaska
Department of Commerce, Community, and
Economic Development
Division of Banking and Securities

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/s/ Lorie L. Hovanec
By: Lorie L. Hovanec, Director

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

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

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

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

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

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

15 Dated this 16th day of December, 2010.

16 DEUTSCHE BANK SECURITIES INC.

17
18 By: /s/ Robert Rice

19 Title: Managing Director

20
21 SUBSCRIBED AND SWORN TO before me this 16th day of December, 2010.

22
23 /s/ Yun Suh
24 Notary Public

My commission expires: 03/31/2011

STATE OF ALASKA
DEPARTMENT OF COMMERCE, COMMUNITY, AND ECONOMIC DEVELOPMENT
DIVISION OF BANKING AND SECURITIES
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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 Division, 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 Division 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 L. Polizzotto represents that he/she is 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 payment that DBSI shall make pursuant to this Consent Order.

Dated this 15th day of December, 2010.

DEUTSCHE BANK SECURITIES INC.

By/s/ Joseph L. Polizzotto

Title: Managing Director

SUBSCRIBED AND SWORN TO before me this 15th day of December, 2010.

/s/ Yun Suh
Notary Public

My commission expires 03/31/2011