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BEFORE THE ARIZONA CORPORATION C

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COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

Arizona Corporation Commission
DOCKETED

JUL 16 2009

DOCKETED BY ne

In the matter of)
RBC CAPITAL MARKETS CORPORATION)
One Liberty Plaza)
165 Broadway)
New York, NY)
Respondent.)

DOCKET NO. S-20684A-09-0281

DECISION NO. 71216

ORDER TO CEASE AND DESIST, ORDER
FOR ADMINISTRATIVE PENALTIES, AND
CONSENT TO SAME
BY: RESPONDENT RBC CAPITAL
MARKETS CORPORATION

WHEREAS, RBC Capital Markets Corporation ("RBC"), a subsidiary of Royal Bank of
Canada, and formerly known as RBC Dain Rauscher Inc., is doing business as RBC Wealth
Management. RBC is a dealer registered in the state of Arizona; and

Coordinated investigations into RBC's activities in connection with RBC's marketing and
sale of auction rate securities ("ARS") have been conducted by a multistate task force; and

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

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

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

RBC elects to waive permanently any right to a hearing and appeal under Articles 11 and
12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* ("Securities Act") with respect to this
Consent Order (the "Order");

1 NOW, THEREFORE, the Arizona Corporation Commission ("Commission") hereby enters
2 this Order.

3 4 I. FINDINGS OF FACT

5 1. RBC admits the jurisdiction of the Commission, neither admits nor denies the Findings of
6 Fact and Conclusions of Law contained in this Order, and consents to the entry of this Order by the
7 Commission.

8 2. RBC and its subsidiaries and affiliates including Ferris, Baker Watts, Inc. and J.B. Hanauer
9 & Co. have engaged in the sale of ARS in the state of Arizona.

10 Auction Rate Securities

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

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

20 5. When there are not enough orders to purchase all of the auction rate securities being sold, a
21 "failed" auction occurs. In the event of a failed auction, investors cannot sell their auction rate
22 securities.

23 6. As an underwriter of auction rate securities, RBC also acted as the managing broker-dealer
24 for certain issues of auction rate securities. When acting as sole manager, RBC was the only firm
25 that could submit bids into the auction on behalf of its clients and/or other broker-dealers who
26 wanted to buy and/or sell any auction rate securities. When acting as lead manager, RBC was the

1 primary firm that could submit bids into the auction, while other broker-dealers were able to submit
2 orders on behalf of their clients as well. RBC received revenue in connection with auction rate
3 securities, including an underwriting fee representing a percentage of total issuance and a fee for
4 managing the auctions.

5 **RBC Made Misrepresentations to Certain Investors in Connection With the Sale of Auction**

6 **Rate Securities**

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

9 8. These representations were misleading as to certain investors. Auction rate securities were
10 in fact different from cash and money market funds. As discussed above, the liquidity of an
11 auction rate security relied on the successful operation of the Dutch auction process. In the event
12 of a failed auction, investors cannot sell their auction rate securities and are stuck holding long-
13 term investments, not cash-equivalent securities. As discussed below, starting in the Fall of 2007,
14 the auction rate securities market faced dislocation and an increased risk of failure.

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

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

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

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

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

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

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

II. CONCLUSIONS OF LAW

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2 1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona
3 Constitution and the Securities Act.

4 2. The above conduct constitutes (1) dishonest or unethical practices and (2) failure to
5 supervise within the meaning of A.R.S. §§ 44-1961(A)(12) and (13).

6 3. The Commission finds the following relief appropriate and in the public interest.
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8 **III. ORDER**

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

11 IT IS HEREBY ORDERED:

12 1. This Order concludes the investigation by the Commission and any other action that the
13 Commission could commence under applicable Arizona law on behalf of Arizona as it relates to
14 RBC's marketing and sale of ARS to RBC's "Eligible Investors," as defined below.

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

17 3. RBC shall cease and desist from violating the Securities Act and will comply with the
18 Securities Act.

19 4. RBC shall pay a total civil penalty of Nine Million Eight Hundred Thousand Dollars
20 (\$9,800,000) to those states and territories that enter administrative or civil consent orders
21 approving the terms of the NASAA settlement, of which Thirty-seven Thousand Sixty-seven and
22 52/100 Dollars (\$37,067.52) shall be paid to the state of Arizona no later than ten business days
23 after the date of this Order. The payment to the state of Arizona shall be in the form of a certified
24 or bank check made out to the "State of Arizona."
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1 5. RBC shall take certain measures with respect to current and former customers that
2 purchased "Eligible ARS" from RBC, as defined below.

3 6. Eligible ARS. For purposes of this Order, "Eligible ARS" shall mean auction rate
4 securities purchased from or through RBC prior to February 11, 2008, into an account maintained
5 in the custody of RBC at the time of purchase.

6 7. Eligible Investors. As used in this Consent, "Eligible Investors" shall mean:

- 7 i. Natural persons (including their IRA accounts, testamentary trust and estate
8 accounts, custodian UGMA and UTMA accounts, and guardianship
9 accounts) who directly purchased Eligible Auction Rate Securities;
- 10 ii. Government entities and nonprofits including charities, endowments, or
11 foundations with Internal Revenue Code Section 501(c)(3) status with \$25
12 million or less in assets in their accounts with RBC net of margin loans, as
13 determined by the customer's aggregate household position(s) as of October
14 8, 2008, that directly purchased Eligible Auction Rate Securities;
- 15 iii. Small Businesses that directly purchased Eligible Auction Rate Securities at
16 RBC. For purposes of this provision, "Small Businesses" shall mean RBC
17 customers not otherwise covered in paragraph 7(i) and (ii) above that had
18 \$10 million or less in assets in their accounts with RBC net of margin loans,
19 as determined by the customer's aggregate household position(s) as of
20 October 8, 2008, or, if the customer was not a customer of RBC as of
21 October 8, 2008, as of the date that the customer terminated its customer
22 relationship with RBC. Notwithstanding any other provision, "Small
23 Businesses" does not include broker-dealers, banks acting as conduits for
24 their customers, investment managers or other financial intermediaries, or
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1 customers that had total assets of greater than \$50 million as of October 8,
2 2008.

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

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

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

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

23 11. Eligible Investors may accept the Buyback Offer by notifying RBC at any time before 5:00
24 p.m., Eastern Standard Time, June 30, 2009, or such later date and time as RBC may extend the
25 Offer Period. For Eligible Investors who accept the Buyback Offer within the Offer Period, RBC
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1 shall purchase the Eligible Auction Rate Securities on or before the next scheduled auction date
2 that occurs after three (3) business days following RBC's receipt of notification.

3 12. RBC shall have established: (a) a dedicated toll-free telephone assistance line, with
4 appropriate staffing, to provide information and to respond to questions concerning the terms of
5 this Order; and (b) a public Internet page on its corporate Website(s), with a prominent link to that
6 page appearing on RBC's relevant homepage(s), to provide information concerning the terms of
7 this Order and, via the telephone assistance line, together with an e-mail address or other
8 reasonable means of communication, to respond to questions concerning the terms of this Order.
9 RBC shall maintain the telephone assistance line and Internet page through the Offer Period.

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

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

17 **Reimbursement for Related Loan Expenses**

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

Consequential Damages Arbitration Process

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

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

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

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

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

Municipal Issuers

20. By May 31, 2009, or five business days from the date of this Order, whichever is later, RBC shall refund to municipalities (which, for avoidance of doubt, do not include student loan

1 securitization vehicles or closed-end mutual funds) underwriting fees the issuers paid to RBC for
2 the refinancing or conversion of their auction rate securities that occurred after February 11, 2008,
3 where RBC acted as underwriter for the primary offering of the auction rate securities between
4 August 1, 2007, and February 11, 2008.

5 **Institutional Investors**

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

10 **Reports to NASAA**

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

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23 **IV. Additional Considerations**

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

3 24. In consideration of the settlement, the Commission, has refrained from taking legal action
4 against RBC with respect to RBC's marketing and sale to its institutional investors. The
5 Commission shall issue continuances as it deems appropriate.

6 25. If payment is not made by RBC, or if RBC defaults in any of its obligations set forth in this
7 Order, the Commission may vacate this Order, at its sole discretion, upon ten days notice to RBC
8 and without opportunity for administrative hearing.

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

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

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

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

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

6 31. RBC, through its execution of this Consent Order, voluntarily waives its right to a hearing on
7 this matter and to judicial review of this Consent Order under Articles 11 and 12 of the Securities
8 Act.

9 32. RBC enters into this Consent Order voluntarily and represents that no threats, offers,
10 promises, or inducements of any kind have been made by the Commission or any member, officer,
11 employee, agent, or representative of the Commission to induce RBC to enter into this Consent
12 Order.

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

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1 34. Nothing in this Consent Order and Final Agreement shall be considered an admission of
2 fraud.

3 IT IS FURTHER ORDERED that this Order shall become effective immediately.

4 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

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6 CHAIRMAN



COMMISSIONER

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8 COMMISSIONER




COMMISSIONER



COMMISSIONER

9
10 IN WITNESS WHEREOF, I, MICHAEL P. KEARNS,
11 Interim Executive Director of the Arizona Corporation
12 Commission, have hereunto set my hand and caused the
13 official seal of the Commission to be affixed at the
14 Capitol, in the City of Phoenix, this 16TH day of
15 July, 2009.

16 
17 MICHAEL P. KEARNS
18 INTERIM EXECUTIVE DIRECTOR

19 _____
20 DISSENT

21 _____
22 DISSENT

23 This document is available in alternative formats by contacting Shaylin A. Barnal, ADA
24 Coordinator, voice phone number 602-542-3931, e-mail sabernal@azcc.gov.

25 (mn)
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CONSENT TO ENTRY OF ADMINISTRATIVE ORDER BY RBC

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

RBC admits the jurisdiction of the Commission, neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Order; and consents to entry of this Order by the Commission as settlement of the issues contained in this Order.

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

Ralph DeSena represents that he/she is Vice President of RBC and that, as such, has been authorized by RBC to enter into this Order for and on behalf of RBC.

RBC 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 RBC shall pay pursuant to this Order.

Dated this 18th day of June, 2009.

RBC CAPITAL MARKETS CORPORATION

By: Ralph DeSena

Name: Ralph DeSena

Title: Vice President - Senior Counsel

STATE OF New York)

County of New York)

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

[Signature]
Notary Public

My commission expires:

HELENA HAN
Notary Public, State of New York
No. 01HA6114788
Qualified in Queens County
Certificate Filed in New York County
Commission Expires August 23, 2012