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BEFORE THE ARIZONA CORPORATION CO.

Arizona Corporation Commission

DOCKETED

NOV 13 2009

COMMISSIONERS

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

DOCKETED BY nr

In the matter of
CREDIT SUISSE SECURITIES (USA) LLC
1 Madison Avenue, 9th Floor
New York, New York 10010
Respondent.

DOCKET NO. S-20699A-09-0404

DECISION NO. 71333

ORDER TO CEASE AND DESIST, ORDER
FOR ADMINISTRATIVE PENALTIES, AND
CONSENT TO SAME
BY: RESPONDENT CREDIT SUISSE
SECURITIES (USA) LLC

WHEREAS, at all times relevant herein, the Respondent, CREDIT SUISSE SECURITIES (USA) LLC, a limited liability company organized under the laws of the state of Delaware, has been and remains a securities dealer registered with the Arizona Corporation Commission (the "Commission") under the provisions of the Arizona Securities Act, A.R.S. §§ 44-1801 through 44-2126 (the "Act"). In addition, Credit Suisse Securities (USA) LLC is a registered securities broker-dealer and an investment adviser covered under federal law offering brokerage and investment products and services to investors across the United States of America; and

WHEREAS, coordinated investigations of the activities of Credit Suisse Securities (USA) LLC and its affiliates ("Respondent Credit Suisse") in connection with its marketing and sales practices for investment products generally known as "auction rate securities" have been conducted by a multistate task force composed of members of the North American Securities Administrators Association Inc. ("NASAA"); and

1 WHEREAS, Respondent Credit Suisse has cooperated with regulators conducting the
2 investigations by responding to inquiries, providing documentary evidence and other materials, and
3 providing regulators with access to facts relating to the investigations; and

4 WHEREAS, Respondent Credit Suisse has advised regulators of its agreement to resolve
5 the investigations relating to its marketing and sales practices to certain investors in auction rate
6 securities; and

7 WHEREAS, Respondent Credit Suisse admits that this matter is within the subject matter
8 jurisdiction of the Commission and that it is personally subject to the jurisdiction of the
9 Commission; and

10 WHEREAS, Respondent Credit Suisse neither admits nor denies the Findings of Fact and
11 Conclusions of Law contained in this Order To Cease and Desist, Order For Administrative
12 Penalties, And Consent To Same By: Respondent Credit Suisse Securities (USA) LLC (the
13 "Order") (except as to jurisdiction) and consents to the entry of this Order by the Commission; and

14 WHEREAS, Respondent Credit Suisse consents to the terms and conditions contained in
15 this Order; and

16 WHEREAS, Respondent Credit Suisse expressly elects to permanently waive any right to a
17 hearing, the making of findings of fact and conclusions of law, and all further proceedings before
18 the Commission to which it may be entitled under the Act, or any other law, including an appeal
19 under Articles 11 and 12 of the Act with respect to this Order, and all rights to seek judicial review
20 or otherwise challenge the validity of this Order;

21 NOW, THEREFORE, the Commission, as administrator of the Act, hereby enters this
22 Order:

I.

FINDINGS OF FACT

DEFINITIONS

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4 1. For the purposes of this Order:

5 (a) "Auction rate securities" are long-term debt or equity instruments that include
6 auction rate preferred shares of closed-end funds, municipal auction rate bonds, and various asset-
7 backed auction rate bonds. Some auction rate securities products have maturity dates of 20 years
8 or longer; auction rate preferred shares of certain closed-end funds have no maturity date
9 whatsoever. While auction rate securities are all long-term instruments, one significant feature of
10 auction rate securities, which historically provided the potential for short-term liquidity, is that the
11 variable interest rates reset through a bidding process known as a Dutch auction that occurred in
12 varying increments, generally between seven (7) and forty-two (42) days. At a Dutch auction,
13 ~~bidders generally state the number of auction rate securities they wish to purchase and the~~
14 minimum interest rate they are willing to accept. Bids are then ranked, from lowest to highest,
15 according to the minimum interest rate each bidder is willing to accept. The lowest interest rate
16 required to sell all of the auction rate securities available at auction, known as the "clearing rate,"
17 becomes the rate paid to all holders of that particular security until the next auction. If an auction
18 is successful, investors wishing to sell are able to exit the auction rate securities market on a short-
19 term basis. When there are not enough orders to purchase all of the auction rate securities being
20 sold, a "failed" auction occurs. If an auction fails, investors are required to hold all or some of
21 their auction rate securities until the next successful auction in order to liquidate their funds, or
22 they may attempt to sell those auction rate securities in a secondary market transaction, if such a
23 secondary market even exists and is functioning. Beginning in February 2008, the auction rate
24 securities market experienced widespread and repeated failed auctions.

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1 (b) "Individual Investor" means any natural person who purchased auction rate
2 securities from or through a Respondent Credit Suisse account prior to February 14, 2008, and also
3 includes

4 (i) legal entities acting as an investment vehicle for family members, including
5 but not limited to IRA accounts, Trusts, Family Limited Partnerships, and other legal
6 entities performing a similar function;

7 (ii) charities and non-profits; and

8 (iii) small- to medium-sized businesses with up to \$10 million in assets in
9 accounts with Credit Suisse Securities (USA) LLC, any of which purchased auction rate
10 securities from or through Respondent Credit Suisse prior to February 14, 2008.
11 Notwithstanding any other provision, "Individual Investor" does not include broker-dealers,
12 banks, Registered Investment Advisers, other investment firms or investment institutions
13 regardless of whether any of the foregoing were acting for their own account or as conduits
14 for their customers.

15 (c) "Institutional Investor" means any other legal entity not meeting the definition of
16 "Individual Investor" in paragraph I.1(b), above, and which purchased auction rate securities from
17 or through a Respondent Credit Suisse account.

18 (d) "Proceedings" include, but are not limited to, any meetings, interviews, depositions,
19 hearings, trials, grand jury proceedings, or any other proceedings.

20 (e) "The representative specified by NASAA" is the North Carolina Secretary of State
21 as Securities Administrator, or her lawfully authorized designee.

22 (f) All other words, terms, and phrases used in this Order shall have the usual and
23 ordinary meanings given to them in everyday speech, and are to be taken and understood in their
24 plain, ordinary, and popular sense.

EVENTS

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2 2. Respondent Credit Suisse was an underwriter of a limited number of offerings of
3 auction rate securities. Respondent Credit Suisse also acted as a manager for certain issues of
4 auction rate securities. When acting as a sole manager, Respondent Credit Suisse was the only
5 firm that could submit bids into the auction on behalf of its clients and/or other broker-dealers who
6 wanted to buy and/or sell any auction rate securities. When acting as a co-lead manager,
7 Respondent Credit Suisse and the other co-lead managers could directly submit orders into the
8 auction, while other broker-dealers were able to submit orders on behalf of their clients and on
9 their own behalf into the auction through a co-lead manager. Respondent Credit Suisse received
10 revenue in connection with auction rate securities, including underwriting fees representing a
11 percentage of total issuance and a fee for managing the auctions.

12 3. From time to time over many years, Respondent Credit Suisse submitted support
13 bids, or purchase orders, for some or all of an auction rate security issue for which it acted as the
14 sole or lead manager. Support bids were Respondent Credit Suisse's proprietary orders that would
15 be filled, in whole or in part, if there was otherwise insufficient demand in an auction. When
16 Respondent Credit Suisse purchased auction rate securities through support bids, those auction rate
17 securities were then owned by Respondent Credit Suisse and were recorded on Respondent Credit
18 Suisse's balance sheet.

19 4. Because investors could not ascertain how much of an auction was filled through
20 proprietary bids of Respondent Credit Suisse and other firms acting as sole or lead managers, they
21 could not determine if auctions were clearing because of normal marketplace demand, or because
22 Respondent Credit Suisse and other firms acting as lead managers were supporting the auctions
23 through their own proprietary purchase orders. Generally, investors also were not aware of the
24 extent to which the auction rate securities market was dependent upon Respondent Credit Suisse's
25 and other broker-dealers' use of support bids for its successful operation. While Respondent Credit
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1 Suisse could track its own inventory as a measure of the supply and demand for auction rate
2 securities for which it was a sole or co-lead manager, ordinary investors had no comparable ability
3 to assess the operation of the market. There was no way for those investors to monitor supply and
4 demand in the market or to assess when broker-dealers might decide to stop supporting the market,
5 which could cause numerous and repeated auction failures.

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

9 6. The potential for a market dislocation should have been evident to Respondent
10 Credit Suisse. In those auctions where Respondent Credit Suisse was a lead manager, Respondent
11 Credit Suisse's support bids filled the increasing gap between the supply of and the demand for
12 auction rate securities, maintaining the impression that the auction process was functioning. From
13 ~~Fall 2007 until February 2008, demand for auction rate securities continued to erode and~~
14 Respondent Credit Suisse's inventory of auction rate securities grew. Respondent Credit Suisse
15 was aware of increasing strains on the auction rate securities market and increasingly questioned
16 the viability of the auction rate securities market. On January 28, 2008, Respondent Credit Suisse
17 provided written disclosure of these increasing risks of owning or purchasing auction rate securities
18 to its customers; prior to that date, certain of its representatives did not fully disclose those
19 increasing risks to certain of their clients.

20 7. In February 2008, Respondent Credit Suisse and other broker-dealers stopped
21 supporting the auctions. Without the benefit of support bids, the auction rate securities market
22 collapsed, leaving investors who thought they were buying liquid, short-term investments instead
23 holding long-term or perpetual securities that they were unable to sell at par value.

24 8. In certain instances, Respondent Credit Suisse representatives told certain of the
25 firm's customers that auction rate securities were liquid investments that were alternatives to
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1 money market funds as part of a strategy for cash management. Specifically, certain employees
2 acting on behalf of Respondent Credit Suisse represented to certain investors that auction rate
3 securities were highly liquid, highly rated alternatives to money market investments and other
4 cash-equivalent investments.

5 9. In the context of the offer and sale of auction rate securities, the failure of certain
6 employees acting on behalf of Respondent Credit Suisse to adequately state complete facts
7 concerning auction rate securities constituted conduct in the securities business that may be
8 sanctioned under A.R.S. § 44-1961(A)(13).

9 10. Respondent Credit Suisse, by failing reasonably to supervise its registered salesmen
10 under the Act, may be sanctioned under A.R.S. § 44-1961(A)(12).

11 ACTION NECESSARY TO PROTECT PUBLIC

12 11. Action by the Commission to halt further conduct by Respondent Credit Suisse in
13 ~~violation of the Act is necessary and appropriate in the public interest and for the protection of~~
14 investors, and is consistent with the purposes fairly intended by the policy and provisions of the
15 Act.

16 12. The undersigned Respondent Credit Suisse agrees that this Order contains,
17 constitutes, and embodies the entire agreement between the undersigned, there being no agreement
18 of any kind, verbal or otherwise, which varies, alters, or adds to this Order; and that this Order
19 supersedes any prior communication, understanding, or agreement, whether written or oral,
20 concerning the subject matter of this Order.

21 13. Respondent Credit Suisse, by execution of this Order, affirmatively states that it has
22 freely agreed to the signing of this Order, and that no threats, promises, representations,
23 inducements, or offers of any kind, other than as stated in this document, have been made by the
24 Commission or any member of the staff of the Commission's Securities Division, or any agent or
25 employee of the Commission in connection with the signing of this Order.

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1 any claims by the Commission arising from or relating to the Order provisions contained herein.

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

4 3. Respondent Credit Suisse will CEASE AND DESIST from violating the Arizona
5 Securities Act and will comply with the provisions of that Act.

6 4. Within ten (10) days following the entry of this Order, Respondent Credit Suisse
7 shall pay the sum of One Hundred Sixty-seven Thousand Four Hundred Forty-four and 16/100
8 Dollars (\$167,444.16) to the state of Arizona. That amount constitutes Arizona's allocated share of
9 the total settlement payment that Respondent Credit Suisse has agreed to make to those states and
10 territories that enter administrative or civil consent orders approving the terms of the NASAA
11 settlement and to the state of New York, allocated according to a formula determined and set by
12 NASAA and the state of New York. The payment to the state of Arizona shall be in the form of a
13 wire transfer or certified or bank check made out to the "State of Arizona."

14 5. In the event another state securities regulator determines not to accept Respondent
15 Credit Suisse's offer of settlement and does not enter an administrative or civil consent order
16 approving the terms of the NASAA settlement, the total amount of the Arizona allocated payment
17 shall not be affected, and shall remain at One Hundred Sixty-seven Thousand Four Hundred Forty-
18 four and 16/100 Dollars (\$167,444.16).

19 6. Respondent Credit Suisse shall not claim, assert, or apply for a tax deduction or tax
20 credit with regard to any state, federal, or local tax for any administrative monetary payment that
21 Respondent Credit Suisse shall pay pursuant to this Order.

22 7. Respondent Credit Suisse shall fully and fairly comply with all of the following
23 requirements:

24 A. As soon as practicable after September 23, 2008, Respondent Credit Suisse
25 will have offered to purchase at par auction rate securities that since February 14, 2008,
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1 have not been successfully auctioning from Individual Investors who purchased those
2 auction rate securities from or through a Respondent Credit Suisse account prior to
3 February 14, 2008;

4 B. Respondent Credit Suisse shall have purchased such securities from
5 investors who accepted this offer prior to December 11, 2008, by that date;

6 C. Respondent Credit Suisse shall keep such offer open until December 31,
7 2009, and promptly shall purchase such securities from any Individual Investor who accepts
8 the offer between December 11, 2008, and December 31, 2009;

9 D. Respondent Credit Suisse promptly will have provided notice to customers
10 of the settlement terms publicly announced on September 16, 2008, and Respondent Credit
11 Suisse promptly will have established a dedicated telephone assistance line, with
12 appropriate staff, to respond to questions from customers concerning the terms of the
13 settlement;

14 E. No later than December 11, 2008, any Individual Investor that Respondent
15 Credit Suisse could reasonably identify who sold auction rate securities in a Credit Suisse
16 account below par between February 14, 2008, and September 16, 2008, will have been
17 paid by Respondent Credit Suisse the difference between par and the price at which the
18 Individual Investor sold those auction rate securities;

19 F. No later than December 11, 2008, Respondent Credit Suisse shall have
20 notified all Individual Investors that a public arbitrator (as defined by section 12100(u) of
21 the *NASD Code of Arbitration Procedure for Customer Disputes*, effective April 16, 2007),
22 under the auspices of the Financial Industry Regulatory Authority ("FINRA"), will be
23 available for the exclusive purpose of arbitrating any Individual Investor's consequential
24 damages claim. Arbitration shall be conducted by public arbitrators and Respondent Credit
25 Suisse will pay all applicable forum and filing fees. Any Individual Investors who choose
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1 to pursue such claims shall bear the burden of proving that they suffered consequential
2 damages and that such damages were caused by investors' inability to access funds
3 consisting of investors' auction rate securities holdings in Credit Suisse accounts.
4 Respondent Credit Suisse shall be able to defend itself against such claims; provided,
5 however, that Respondent Credit Suisse shall not contest in these arbitrations liability
6 related to the sale of auction rate securities; and further provided that Respondent Credit
7 Suisse shall not be able to use as part of its defense an Individual Investor's decision not to
8 borrow money from Respondent Credit Suisse. Punitive damages, or any other type of
9 damages other than consequential damages, shall not be available in the arbitration
10 proceedings;

11 G. Respondent Credit Suisse shall endeavor to work with issuers and other
12 interested parties, including regulatory and governmental entities, to expeditiously provide
13 liquidity solutions for Institutional Investors;

14 H. Beginning December 11, 2008, and then quarterly after that, Respondent
15 Credit Suisse shall submit a written report to the representative specified by NASAA
16 outlining the efforts in which Respondent Credit Suisse has engaged and the results of those
17 efforts with respect to Respondent Credit Suisse's Institutional Investors' holdings in
18 auction rate securities;

19 I. Respondent Credit Suisse shall confer with the representative specified by
20 NASAA no less frequently than quarterly to discuss Respondent Credit Suisse's progress to
21 date;

22 J. Such quarterly reports shall continue until no later than December 31, 2009;

23 K. Following every quarterly report, the representative specified by NASAA
24 will advise Respondent Credit Suisse of any concerns and, in response, Respondent Credit
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1 Suisse shall discuss with the representative specified by NASAA how it plans to address
2 such concerns;

3 L. Respondent Credit Suisse shall make its best efforts to identify Individual
4 Investors who took out loans from Respondent Credit Suisse, between February 14, 2008,
5 and December 11, 2008, that were secured by auction rate securities that were not
6 successfully auctioning at the time the loan was taken out from Respondent Credit Suisse,
7 and who paid interest associated with the auction-rate-securities-based portion of those
8 loans in excess of the total interest and dividends received on the auction rate securities
9 during the duration of the loan. Respondent Credit Suisse shall reimburse such customers
10 for the excess expense, plus reasonable interest, of the loan. Such reimbursement shall
11 occur no later than March 31, 2009. This paragraph does not apply to margin loans;

12 M. Respondent Credit Suisse shall, upon request by the Commission, provide all
13 documentation and information reasonably necessary for the Commission to verify
14 compliance with this Order; and

15 N. Respondent Credit Suisse shall not take any action, or make or permit to be
16 made any public statement, denying, directly or indirectly, any finding in this Order or
17 creating the impression that this Order is without factual basis. Nothing in this paragraph
18 affects Respondent Credit Suisse's (a) testimonial obligations; or (b) right to take legal or
19 factual positions in defense of litigation or other legal proceedings to which the
20 Commission is not a party.

21 8. In consideration of Respondent Credit Suisse's agreement to resolve the previously
22 referenced multistate investigation relating to its marketing and sales practices for auction rate
23 securities, and its agreement to fully comply with all the terms of this Order, the Commission will
24 have refrained from taking legal action against Respondent Credit Suisse with respect to its
25 Institutional Investors until at least December 11, 2008, and will not seek additional monetary
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1 payments from Respondent Credit Suisse relating to Respondent Credit Suisse's marketing and
2 sale of auction rate securities.

3 9. If payment is not made timely by Respondent Credit Suisse, or if Respondent Credit
4 Suisse defaults in any of its obligations set forth in this Order, the Commission may vacate this
5 Order, at its sole discretion, upon ten (10) days notice to Respondent Credit Suisse and without
6 opportunity for administrative hearing, or may refer this matter for enforcement as provided in the
7 Act.

8 10. Nothing herein shall preclude the state of Arizona, its departments, agencies, boards,
9 commissions, authorities, political subdivisions, and corporations (collectively, "State Entities"), other
10 than the Commission and then only to the extent set forth in Paragraphs III.1 and III.8, and the
11 officers, agents, or employees of State Entities from asserting any claims, causes of action, or
12 applications for compensatory, nominal and/or punitive damages, administrative, civil, criminal, or
13 injunctive relief against Respondent Credit Suisse in connection with the marketing and sale of
14 auction rate securities by Respondent Credit Suisse.

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

21 12. For any person or entity not a party to this Order, this Order does not limit or create
22 any private rights or remedies against Respondent Credit Suisse including, without limitation, the use
23 of any e-mails or other documents of Respondent Credit Suisse or of others for auction rate securities
24 practices, limit or create liability of Respondent Credit Suisse, or limit or create defenses of or for
25 Respondent Credit Suisse to any claims.

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

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

8 15. This Order shall be binding upon Respondent Credit Suisse and its affiliates, its
9 successors and assigns as well as the successors and assigns of relevant affiliates, with respect to
10 all conduct subject to the provisions above, and all future obligations, responsibilities,
11 undertakings, commitments, limitations, restrictions, events, and conditions under the above
12 provisions.

13 16. This Order contains, constitutes, and embodies the entire agreement between the
14 undersigned, there being no agreement of any kind, verbal or otherwise, which varies, alters, or
15 adds to this Order; and this Order supersedes any prior communication, understanding, or
16 agreement, whether written or oral, concerning the subject matter of this Order.

17 17. In the event that one or more provisions contained in this Order shall for any reason
18 be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
19 unenforceability shall not affect any other provision of this Order.

20 18. By its consent to and execution of this Order, Respondent Credit Suisse
21 affirmatively represents that it freely agrees to the signing of this Order by the Commission, and
22 that no threats, promises, representations, inducements, or offers of any kind, other than as stated in

23 ...

24 ...



25 ...

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1 this document, have been made by the Commission, any member of the staff of the Commission's
2 Securities Division, or any agent or employee of the Commission in connection with the
3 negotiation and signing of this Order.

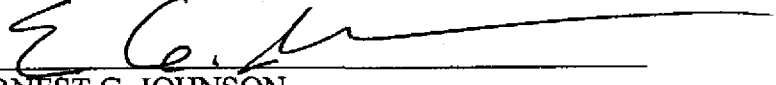
4 IT IS FURTHER ORDERED that this Order shall become effective immediately.

5 BY ORDER OF THE ARIZONA CORPORATION COMMISSION

6 
7 CHAIRMAN 
8 COMMISSIONER

9 
10 COMMISSIONER 
11 COMMISSIONER 
12 COMMISSIONER

13 IN WITNESS WHEREOF, I, ERNEST G. JOHNSON,
14 Executive Director of the Arizona Corporation
15 Commission, have hereunto set my hand and caused the
16 official seal of the Commission to be affixed at the
17 Capitol, in the City of Phoenix, this 13th day of
November, 2009.

18 
19 ERNEST G. JOHNSON
20 EXECUTIVE DIRECTOR

21 _____
22 DISSENT

23 _____
24 DISSENT

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

(mn)

**CONSENT TO ENTRY OF FINAL ORDER
BY CREDIT SUISSE SECURITIES (USA) LLC**

Credit Suisse Securities (USA) LLC ("Credit Suisse") hereby acknowledges that it has been served with a copy of this Order to Cease and Desist, Order for Administrative Penalties, and Consent to Same ("Order") has read this Order, is aware of its right to a hearing and appeal in this matter, and has waived the same.

Credit Suisse 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.

Credit Suisse 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.

Credit Suisse 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 Credit Suisse shall pay pursuant to this Order.

PIERRE GENTIN represents that he/she is the MANAGING DIRECTOR of Credit Suisse and that, as such, has been authorized by Credit Suisse to enter into this Order for and on behalf of Credit Suisse.

Dated this the 14th day of October, 2009.

CREDIT SUISSE SECURITIES (USA) LLC

By: [Signature]

Title: MANAGING DIRECTOR

STATE OF New York

COUNTY OF New York

SUBSCRIBED AND SWORN TO before me this 14th day of October, 2009

[Signature]

Notary Public

My commission expires: May 18, 2010

1 SERVICE LIST FOR: Credit Suisse Securities (USA) LLC

2 DOCKET NO.: S-20699A-09-0404

3 Matthew J. Neubert, Director
4 Securities Division
5 ARIZONA CORPORATION COMMISSION
6 1300 West Washington Street, 3rd Floor
7 Phoenix, AZ 85007

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