

BEFORE THE SECURITIES COMMISSIONER
FOR THE STATE OF DELAWARE

SECURITIES
DIVISION / JB
DEC 17 2009
DELAWARE

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

Case No. 09-9-1

ADMINISTRATIVE CONSENT ORDER

WHEREAS, at all times relevant herein, the Respondent, CREDIT SUISSE SECURITIES (USA) LLC (hereinafter "Respondent Credit Suisse"), a limited liability company organized under the laws of the state of Delaware, has been and remains a securities dealer registered with the State of Delaware under the provisions of the Delaware Securities Act (6 Del. C. ch. 73) (hereinafter "the Act"). In addition, Respondent Credit Suisse 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 Respondent Credit Suisse and its affiliates 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. (hereinafter "NASAA"); and

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

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

1 or longer; auction rate preferred shares of certain closed-end funds have no maturity date
2 whatsoever. While auction rate securities are all long-term instruments, one significant feature of
3 auction rate securities, which historically provided the potential for short-term liquidity, is that the
4 variable interest rates reset through a bidding process known as a Dutch auction that occurred in
5 varying increments, generally between seven (7) and forty-two (42) days. At a Dutch auction,
6 bidders generally state the number of auction rate securities they wish to purchase and the
7 minimum interest rate they are willing to accept. Bids are then ranked, from lowest to highest,
8 according to the minimum interest rate each bidder is willing to accept. The lowest interest rate
9 required to sell all of the auction rate securities available at auction, known as the "clearing rate,"
10 becomes the rate paid to all holders of that particular security until the next auction. If an auction
11 is successful, investors wishing to sell are able to exit the auction rate securities market on a short-
12 term basis. When there are not enough orders to purchase all of the auction rate securities being
13 sold, a "failed" auction occurs. If an auction fails, investors are required to hold all or some of
14 their auction rate securities until the next successful auction in order to liquidate their funds, or
15 they may attempt to sell those auction rate securities in a secondary market transaction, if such a
16 secondary market even exists and is functioning. Beginning in February 2008, the auction rate
17 securities market experienced widespread and repeated failed auctions.
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19 (b) "Individual Investor" means any natural person who purchased auction rate
20 securities from or through a Respondent Credit Suisse account prior to February 14, 2008, and also
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23 (i) legal entities acting as an investment vehicle for family members, including
24 but not limited to IRA accounts, Trusts, Family Limited Partnerships, and other legal
25 entities performing a similar function;

26 (ii) charities and non-profits; and

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

8 (c) "Institutional Investor" means any other legal entity not meeting the definition of
9 "Individual Investor" in paragraph I.3(b), above, and which purchased auction rate securities from
10 or through a Respondent Credit Suisse account.

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

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

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

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

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

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

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

4 8. The potential for a market dislocation should have been evident to Respondent
5 Credit Suisse. In those auctions where Respondent Credit Suisse was a lead manager, Respondent
6 Credit Suisse's support bids filled the increasing gap between the supply of and the demand for
7 auction rate securities, maintaining the impression that the auction process was functioning. From
8 Fall 2007 until February 2008, demand for auction rate securities continued to erode and
9 Respondent Credit Suisse's inventory of auction rate securities grew. Respondent Credit Suisse
10 was aware of increasing strains on the auction rate securities market and increasingly questioned
11 the viability of the auction rate securities market. On January 28, 2008, Respondent Credit Suisse
12 provided written disclosure of these increasing risks of owning or purchasing auction rate securities
13 to its customers; prior to that date, certain of its representatives did not fully disclose those
14 increasing risks to certain of their clients.
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16 9. In February 2008, Respondent Credit Suisse and other broker-dealers stopped
17 supporting the auctions. Without the benefit of support bids, the auction rate securities market
18 collapsed, leaving investors who thought they were buying liquid, short-term investments instead
19 holding long-term or perpetual securities that they were unable to sell at par value.
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21 10. In certain instances, Respondent Credit Suisse representatives told certain of the
22 firm's customers that auction rate securities were liquid investments that were alternatives to
23 money market funds as part of a strategy for cash management. Specifically, certain employees
24 acting on behalf of Respondent Credit Suisse represented to certain investors that auction rate
25 securities were highly liquid, highly rated alternatives to money market investments and other
26 cash-equivalent investments.

1 inducements, or offers of any kind, other than as stated in this document, have been made by the
2 Division or any member of the staff of the Division, or any agent or employee of the Division in
3 connection with the signing of this Order.

4 18. Based upon the foregoing Findings of Fact, and consistent with the consent of the
5 Respondent Credit Suisse, the Commissioner makes the following:

6 **II.**

7 **CONCLUSIONS OF LAW**

8 1. The Commissioner has jurisdiction over the subject matter of securities transactions
9 with persons in Delaware and the person of Respondent Credit Suisse under the Act.

10 2. As described in the Findings of Fact, Respondent Credit Suisse violated 6 *Del. C.*
11 *sec. 7316(a)(10)* by its failure reasonably to supervise certain of its registered salesmen in their
12 communication of material information concerning auction rate securities.

13 3. By reason of the matters described in the Findings of Fact, Respondent Credit
14 Suisse through the activities of certain of its registered salesmen violated 6 *Del. C. sec. 7316(a)(7)*
15 by failing to adequately state complete facts concerning auction rate securities.

16 4. Action by the Commissioner against Respondent Credit Suisse pursuant to the cited
17 provisions of the Act is necessary and appropriate in the public interest and for the protection of
18 investors, and is consistent with the purposes fairly intended by the policy and provisions of the
19 Act.
20 Act.

21 **III.**

22 **ORDER**

23 On the basis of the Findings of Fact, Conclusions of Law, and Respondent Credit Suisse's
24 consent to the entry of this Order,
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26 **IT IS HEREBY ORDERED:**

1 1. This Order terminates the investigation by the Division with respect to Respondent
2 Credit Suisse's marketing and sale of auction rate securities to Individual Investors. However,
3 nothing herein limits the ability of the Division, individually or jointly with other States, in
4 pursuing any investigation with respect to any individual concerning Respondent Credit Suisse's
5 marketing and sale of auction rate securities, whether that individual is associated with Respondent
6 Credit Suisse or otherwise; and specifically excluded from and not covered by this paragraph are
7 any claims by the Division arising from or relating to the Order provisions contained herein.

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

10 3. Respondent Credit Suisse will CEASE AND DESIST from violating the Act and will
11 comply with the provisions of the Act.

12 4. Within ten (10) days following the entry of this Order, Respondent Credit Suisse
13 shall pay the sum of One Hundred and Thirty Thousand Three Hundred Thirty Two and 37/100
14 Dollars (\$130,332.37) to the State of Delaware. That amount constitutes Delaware's allocated
15 share of the \$15 million total settlement payment that Respondent Credit Suisse has agreed to make
16 to those states and territories that enter administrative or civil consent orders approving the terms of
17 the NASAA settlement and to the State of New York, allocated according to a formula determined
18 and set by NASAA and the State of New York. Respondent Credit Suisse shall make payment by
19 delivering to the Commissioner within that ten (10) day period a check drawn on good and
20 sufficient funds made payable to "The State of Delaware" in the amount of \$130,332.37.
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22 5. In the event another state securities regulator determines not to accept Respondent
23 Credit Suisse's offer of settlement and does not enter an administrative or civil consent order
24 approving the terms of the NASAA settlement, the total amount of the Delaware allocated payment
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1 shall not be affected, and shall remain at One Hundred and Thirty Thousand Three Hundred Thirty
2 Two and 37/100 Dollars (\$130,332.37).

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

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

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

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

15 C. Respondent Credit Suisse shall keep such offer open until December 31,
16 2009, and promptly shall purchase such securities from any Individual Investor who accepts
17 the offer between December 11, 2008, and December 31, 2009;

18 D. Respondent Credit Suisse promptly will have provided notice to customers
19 of the settlement terms publicly announced on September 16, 2008, and Respondent Credit
20 Suisse promptly will have established a dedicated telephone assistance line, with
21 appropriate staff, to respond to questions from customers concerning the terms of the
22 settlement;

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

4 F. No later than December 11, 2008, Respondent Credit Suisse shall have
5 notified all Individual Investors that a public arbitrator (as defined by section 12100(u) of
6 the *NASD Code of Arbitration Procedure for Customer Disputes*, effective April 16, 2007),
7 under the auspices of the Financial Industry Regulatory Authority ("FINRA"), will be
8 available for the exclusive purpose of arbitrating any Individual Investor's consequential
9 damages claim. Arbitration shall be conducted by public arbitrators and Respondent Credit
10 Suisse will pay all applicable forum and filing fees. Any Individual Investors who choose
11 to pursue such claims shall bear the burden of proving that they suffered consequential
12 damages and that such damages were caused by investors' inability to access funds
13 consisting of investors' auction rate securities holdings in Credit Suisse accounts.
14 Respondent Credit Suisse shall be able to defend itself against such claims; provided,
15 however, that Respondent Credit Suisse shall not contest in these arbitrations liability
16 related to the sale of auction rate securities; and further provided that Respondent Credit
17 Suisse shall not be able to use as part of its defense an Individual Investor's decision not to
18 borrow money from Respondent Credit Suisse. Punitive damages shall not be available in
19 the arbitration proceedings;
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21 G. Respondent Credit Suisse shall endeavor to work with issuers and other
22 interested parties, including regulatory and governmental entities, to expeditiously provide
23 liquidity solutions for Institutional Investors;
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25 H. Beginning December 11, 2008, and then quarterly after that, Respondent
26 Credit Suisse shall submit a written report to the representative specified by NASAA

1 outlining the efforts in which Respondent Credit Suisse has engaged and the results of those
2 efforts with respect to Respondent Credit Suisse's Institutional Investors' holdings in
3 auction rate securities;

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

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

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

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

21 M. Respondent Credit Suisse shall, upon request by the Commissioner, provide
22 all documentation and information reasonably necessary for the Commissioner to verify
23 compliance with this Order;

24 N. Respondent Credit Suisse shall not take any action, or make or permit to be
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1 made any public statement, denying, directly or indirectly, any finding in this Order or
2 creating the impression that this Order is without factual basis. Nothing in this paragraph
3 affects Respondent Credit Suisse's (a) testimonial obligations; or (b) right to take legal or
4 factual positions in defense of litigation or other legal proceedings to which the
5 Commissioner is not a party; and

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

13 9. If payment is not made timely by Respondent Credit Suisse, or if Respondent Credit
14 Suisse defaults in any of its obligations set forth in this Order, the Commissioner may vacate this
15 Order, at its sole discretion, upon ten (10) days notice to Respondent Credit Suisse and without
16 opportunity for administrative hearing, or may refer this matter for enforcement as provided in 6
17 *Del. C. ch. 73.*

18 10. Nothing herein shall preclude the State of Delaware, its departments, agencies,
19 boards, commissions, authorities, political subdivisions, and corporations (collectively, "State
20 Entities"), other than the Division and then only to the extent set forth in Paragraphs III.1 and III.8,
21 and the officers, agents, or employees of State Entities from asserting any claims, causes of action,
22 or applications for compensatory, nominal and/or punitive damages, administrative, civil, criminal,
23 or injunctive relief against Respondent Credit Suisse in connection with the marketing and sale of
24 auction rate securities by Respondent Credit Suisse.
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1 11. This Order is not intended to indicate that Respondent Credit Suisse or any of its
2 affiliates or current or former employees shall be subject to any disqualifications contained in the
3 federal securities law, the rules and regulations thereunder, the rules and regulations of self
4 regulatory organizations or various states' securities laws including any disqualifications from
5 relying upon the registration exemptions or safe harbor provisions. In addition, this Order is not
6 intended to form the basis for any such disqualifications.

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

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

16 14. This Order and any dispute related thereto shall be construed and enforced in
17 accordance with, and governed by, the laws of the State of Delaware without regard to any choice
18 of law principles.

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

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

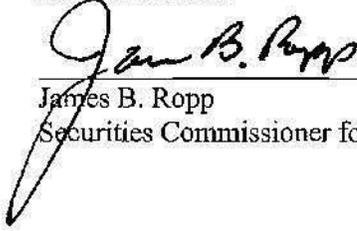
4 17. In the event that one or more provisions contained in this Order shall for any reason
5 be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or
6 unenforceability shall not affect any other provision of this Order.

7 18. By its consent to and execution of this Order, Respondent Credit Suisse
8 affirmatively represents that it freely agrees to the signing of this Order by the Commissioner, and
9 that no threats, promises, representations, inducements, or offers of any kind, other than as stated in
10 this document, have been made by the Division, any member of the staff of the Commissioner, or
11 any agent or employee of the Division in connection with the negotiation and signing of this Order.
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13 19. This Order shall become final upon entry.

14 Dated this 17th day of December, 2009.

15 BY ORDER OF

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17 _____
18 James B. Ropp
19 Securities Commissioner for the State of Delaware

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

Credit Suisse Securities (USA) LLC (hereinafter "Credit Suisse") hereby acknowledges that it has been served with a copy of this Administrative Consent Order ("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 Securities Commissioner for the State of Delaware ("Commissioner"), 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 Commissioner.

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 M. 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 16th day of December, 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 16th day of December, 2009.

[Signature]
Notary Public

My commission expires: May 18, 2010

JOHN J. MacDONALD
Notary Public, State Of New York
No. 01MA6007204
Qualified In New York County
Commission Expires May 18, 2010