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BEFORE THE ARKANSAS SECURITIES COMMISSIONER,

CASE NO. S-09-024

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ARKANSAS SECURITIES DEPT.

Order No. S-09-024-09-CO08

1  
2 IN THE MATTER OF

3 CREDIT SUISSE SECURITIES (USA) LLC

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CONSENT ORDER

WHEREAS, at all times relevant herein, the Respondent, CREDIT SUISSE SECURITIES (USA) LLC ("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 Arkansas Securities Department under the provisions of the Arkansas Securities Act (hereinafter "the Act"), codified at Ark. Code Ann §§ 23-42-101 through 23-42-509. 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

WHEREAS, Respondent Credit Suisse without admitting or denying the Findings of Fact

1 or Conclusions of Law agrees to take certain actions described below and to make certain  
2 payments; and

3 WHEREAS, Respondent Credit Suisse elects to permanently waive any right to a hearing  
4 and appeal under the Act and the Arkansas Administrative Procedures Act, codified at Ark. Code  
5 Ann. §§ 25-15-201 through 219, with respect to this Consent Order (the "Order");

6 NOW, THEREFORE, the Arkansas Securities Commissioner, as administrator of the Act,  
7 hereby enters this Order:

8 **I.**

9 **FINDINGS OF FACT**

10 1. Respondent Credit Suisse admits that this matter is within the subject matter  
11 jurisdiction of the Arkansas Securities Commissioner and that it is personally subject to the  
12 jurisdiction of the Arkansas Securities Commissioner. Respondent Credit Suisse expressly waives  
13 any right to a hearing, the making of findings of fact and conclusions of law, and all further  
14 proceedings before the Arkansas Securities Commissioner to which it may be entitled under the  
15 Act, or any other law. Respondent Credit Suisse expressly waives all rights to seek judicial review  
16 or otherwise challenge the validity of this Order.  
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18 2. Respondent Credit Suisse neither admits nor denies the Findings of Fact and  
19 Conclusions of Law contained in this Order, and consents to the entry of this Order by the  
20 Arkansas Securities Commissioner.  
21

22 **DEFINITIONS**

23 3. For the purposes of this Order:

24 (a) "Auction rate securities" are long-term debt or equity instruments that include  
25 auction rate preferred shares of closed-end funds, municipal auction rate bonds, and various asset-  
26 backed auction rate bonds. Some auction rate securities products have maturity dates of 20 years

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.  
18

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  
21 includes  
22

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, lead, or co-lead manager, ordinary investors had no comparable  
21 ability to assess the operation of the market. There was no way for those investors to monitor  
22 supply and demand in the market or to assess when broker-dealers might decide to stop supporting  
23 the market, which could cause numerous and repeated auction failures.  
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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.  
15

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 Arkansas Securities Commissioner or any member of the staff of the Arkansas Securities  
2 Department, or any agent or employee of the Arkansas Securities Department in connection with  
3 the signing of this Order.

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

6 **II.**

7 **CONCLUSIONS OF LAW**

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

10 2. As described in the Findings of Fact, Respondent Credit Suisse violated Ark. Code  
11 Ann. § 23-42-509(a)(2)(J) by its failure reasonably to supervise certain of its registered salesmen in  
12 their 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 Ark. Code Ann. § 23-42-  
15 509(a)(2)(G) by failing to adequately state complete facts concerning auction rate securities.

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

23 **ORDER**

24 On the basis of the Findings of Fact, Conclusions of Law, and Respondent Credit Suisse's  
25 consent to the entry of this Order,  
26

**IT IS HEREBY ORDERED:**

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

10  
11 2. This Order is entered into solely for the purpose of resolving the previously referenced  
12 multistate investigation, and is not intended to be used for any other purpose.

13  
14 3. Respondent Credit Suisse will CEASE AND DESIST from violating the Arkansas  
15 Securities Act and will comply with the provisions of that Act.

16  
17 4. Within ten (10) days following the entry of this Order, Respondent Credit Suisse shall  
18 pay the sum of \$30,000 in two payments as follows: (1) \$3,000 to the Arkansas State Fund at the  
19 Investor Protection Trust, a nonprofit organization devoted to investor education; and (2) \$27,000  
20 payable to the Arkansas Securities Department. These amounts constitute Arkansas's allocated share  
21 of the total settlement payment that Respondent Credit Suisse has agreed to make to those states  
22 and territories that enter administrative or civil consent orders approving the terms of the NASAA  
23 settlement and to the State of New York, allocated according to a formula determined and set by  
24 NASAA and the State of New York.

25  
26 5. In the event another state securities regulator determines not to accept Respondent  
Credit Suisse's offer of settlement and does not enter an administrative or civil consent order  
approving the terms of the NASAA settlement, the total amount of the Arkansas allocated payment

1 shall not be affected, and shall remain at \$30,000.

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

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

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

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

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

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

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

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

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 Administrator, provide  
22 all documentation and information reasonably necessary for the Administrator 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 Administrator is not a party.

6 9. 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 Arkansas  
9 Securities Commissioner will have refrained from taking legal action against Respondent Credit  
10 Suisse with respect to its Institutional Investors until at least December 11, 2008, and will not seek  
11 additional monetary payments from Respondent Credit Suisse relating to Respondent Credit  
12 Suisse's marketing and sale of auction rate securities.

13  
14 10. If payment is not made timely by Respondent Credit Suisse, or if Respondent Credit  
15 Suisse defaults in any of its obligations set forth in this Order, the Arkansas Securities  
16 Commissioner may vacate this Order, at its sole discretion, upon ten (10) days notice to  
17 Respondent Credit Suisse and without opportunity for administrative hearing, or may refer this  
18 matter for enforcement as provided in Ark. Code Ann. § 23-42-209.

19 11. Nothing herein shall preclude the state of Arkansas, its departments, agencies, boards,  
20 commissions, authorities, political subdivisions, and corporations (collectively, "State Entities"), other  
21 than the Arkansas Securities Department and then only to the extent set forth in Paragraphs III.1 and  
22 III.9, and the officers, agents, or employees of State Entities from asserting any claims, causes of  
23 action, or applications for compensatory, nominal and/or punitive damages, administrative, civil,  
24 criminal, or injunctive relief against Respondent Credit Suisse in connection with the marketing and  
25 sale of auction rate securities by Respondent Credit Suisse.  
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1           12.     The parties admit and acknowledge that the Arkansas Securities Commissioner has  
2 no authority or jurisdiction over any other state or federal agency or regulatory authority.  
3 Nonetheless, the Arkansas Securities Commissioner does not intend for this Order to serve as a  
4 basis for Respondent Credit Suisse or any of its affiliates disqualification from registration  
5 exemptions or safe harbor provisions contained in the following:

- 6                     - Arkansas Securities Act, or rules or regulations thereunder;
- 7                     - Federal securities laws, or the rules and regulations thereunder;
- 8                     - Rules and regulations of self regulatory organizations; or
- 9                     - Various states' or U.S. Territories' securities laws.

10           The Arkansas Securities Commissioner also does not intend for this Order to form a basis for  
11 the disqualification of Respondent Credit Suisse or any of its affiliates or employees from any  
12 business that they are otherwise qualified or licensed to perform.

13           13.     For any person or entity not a party to this Order, this Order does not limit or create  
14 any private rights or remedies against Respondent Credit Suisse including, without limitation, the use  
15 of any e-mails or other documents of Respondent Credit Suisse or of others for auction rate securities  
16 practices, limit or create liability of Respondent Credit Suisse, or limit or create defenses of or for  
17 Respondent Credit Suisse to any claims.

18           14.     This Order and any dispute related thereto shall be construed and enforced in  
19 accordance with, and governed by, the laws of the state of Arkansas without regard to any choice  
20 of law principles.

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

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

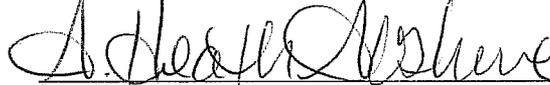
6 17. In the event that one or more provisions contained in this Order shall for any reason  
7 be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or  
8 unenforceability shall not affect any other provision of this Order.

9 18. By its consent to and execution of this Order, Respondent Credit Suisse  
10 affirmatively represents that it freely agrees to the signing of this Order by the Arkansas Securities  
11 Commissioner, and that no threats, promises, representations, inducements, or offers of any kind,  
12 other than as stated in this document, have been made by the Arkansas Securities Commissioner,  
13 any member of the staff of the Arkansas Securities Department, or any agent or employee of the  
14 Arkansas Securities Department in connection with the negotiation and signing of this Order.  
15

16 19. This Order shall become final upon entry.

17 Dated this 16<sup>th</sup> day of April, 2010.

18  
19 BY ORDER OF THE ARKANSAS SECURITIES COMMISSIONER

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21 A. Heath Abshure, Commissioner  
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**CONSENT TO ENTRY OF CONSENT 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 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 Arkansas Securities 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 Arkansas Securities 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 14<sup>th</sup> day of April, 2010.

**CREDIT SUISSE SECURITIES (USA) LLC**

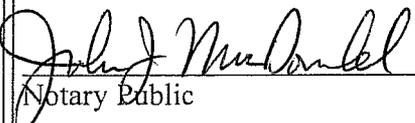
By: 

Title: Managing Director

STATE OF New York

COUNTY OF New York

SUBSCRIBED AND SWORN TO before me this 14<sup>th</sup> day of April, 2010.

  
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