

State of Missouri  
Office of Secretary of State

Case No. AP-08-27

IN THE MATTER OF:

COMMERCE BROKERAGE SERVICES, INC.

Serve Commerce Brokerage Services, Inc. at:  
8000 Forsyth Blvd.  
Suite 1200  
St. Louis, Missouri 63105,

Respondent.

**CONSENT ORDER**

WHEREAS, Commerce Brokerage Services, Inc. ("Respondent") is a Missouri-registered broker-dealer with its home office at 8000 Forsyth Blvd., Suite 1200, St. Louis, Missouri 63106; and

The Missouri Securities Division (the "Division") conducted an investigation into Respondent's marketing and sale of auction rate securities to investors during the period January 1, 2006 through February 14, 2007; and

Respondent has advised the Division of its agreement to resolve the investigation relating to its marketing and sale of auction rate securities to investors; and

Respondent elects to permanently waive any right to a hearing and appeal under Chapter 409 or Chapter 536, RSMo. (Cum. Supp. 2007), with respect to this Consent Order (the "Order");

NOW, THEREFORE, the Missouri Commissioner of Securities ("Commissioner") hereby enters this Order.

**I.**

**FINDINGS OF FACT**

1. Respondent admits the jurisdiction of the Commissioner, neither admits nor denies the Findings of Fact and Conclusions of Law contained in this Order, and consents to the entry of this Order by the Commissioner.
2. Auction rate securities are long-term debt or equity instruments that include auction preferred shares of closed-end funds, municipal auction rate bonds, and various asset-backed auction rate bonds (collectively referred to herein as "ARS"). While ARS are all long-term instruments, one significant feature of ARS (which historically provided the potential for short-term liquidity) is the interest/dividend reset through weekly or monthly Dutch auctions. If an auction is successful, investors are able to exit the ARS market on a short-term basis. If, however, auctions "fail," investors are required to hold all or some of their ARS until the next successful auction in order to liquidate their funds. Beginning in February 2008, the ARS market experienced widespread failed auctions.
3. Respondent, through its Missouri-registered securities agents ("Registered Agents"), sold ARS totaling approximately twenty million two hundred thousand dollars (\$20,200,000). Respondent's Registered Agents, also sold ARS through an affiliate ("Respondent's Affiliate").
4. In early March, 2008, investors who had purchased ARS from Respondent or its Registered Agents began to submit complaints to the Division regarding their ARS purchases.

**Marketing and Sales of ARS**

5. In connection with the sale of ARS, some Missouri investors stated to Division personnel that they were told by Respondent and/or its Registered Agents that ARS were:
  - a. good as cash;
  - b. very liquid;
  - c. short-term, liquid notes;
  - d. money-market instruments;

- e. putable;
- f. offered for investors' liquid funds;
- g. stable and liquid cash alternatives; and
- h. very safe.

Although marketed and sold to investors as safe, liquid, cash-like investments, ARS are actually long-term instruments subject to a complex auction process that, upon failure, can lead to illiquidity of the ARS.

6. Although ARS are complicated and complex products, Respondent did not provide its Registered Agents with the training and information necessary to adequately explain these products or the mechanics of the auction process to investors.
7. Respondent failed to provide reasonable supervision by, among other things:
  - a. failing to provide adequate suitability guidelines to its Registered Agents regarding the sale of ARS to investors;
  - b. failing to provide pertinent information and comprehensive training to its Registered Agents concerning the complexity of the ARS product; and
  - c. failing to provide pertinent information and comprehensive training to its Registered Agents regarding the mechanics of the auction process.

#### **Buyback of ARS from Customers of Respondent**

8. On August 22, 2008, Respondent voluntarily offered to purchase at par ARS that were the subject of auctions that were not successful and were not subject to current calls or redemptions from all persons who purchased ARS from Respondent on or before February 13, 2008 and were held in accounts at Respondent on that date. Respondent's Affiliate also made the same offer on that date. In addition, Respondent has certified to the Division that all ARS sold by Respondent or Respondent's Affiliate as described in this paragraph were repurchased at par.

## **II.**

### **CONCLUSIONS OF LAW**

9. The Commissioner has jurisdiction over this matter pursuant to the Missouri Securities Act of 2003, Chapter 409, RSMo. (Cum. Supp. 2007).
10. The Commissioner finds Respondent engaged in marketing and sales practices with respect to ARS in violation of Section 409.4-412(d)(13), RSMo. (Cum. Supp. 2007), and failed to reasonably supervise its registered agents in violation of Section 409.4-412(d)(9), and that this conduct constitutes grounds to revoke Respondent's registration under Section 409.4-412(b), RSMo. (Cum. Supp. 2007).
11. The Commissioner finds this order and the following relief appropriate, in the public interest, and consistent with the purposes intended by the Missouri Securities Act of 2003.

## **III.**

### **ORDER**

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

IT IS HEREBY ORDERED:

12. This Order concludes the investigation by the Division and any other action that the Division could commence under applicable Missouri law as it relates to Respondent or Respondent's Affiliate, relating to the marketing and sale of auction rate securities by Respondent or Respondent's Affiliate.
13. This Order is entered into solely for the purpose of resolving the referenced investigation, and is not intended to be used for any other purpose.
14. Respondent is hereby CENSURED.
15. Respondent will CEASE AND DESIST from violating the Missouri Securities Act of 2003 and will comply with the Missouri Securities Act of 2003.
16. Respondent will retain, at its expense, an outside consultant ("Consultant") not unacceptable to the Commissioner, no later than one (1) month after the execution of this Consent Order. Within six (6) months of the execution of this Order, the Consultant will furnish an initial report to Respondent concerning Respondent's supervisory and compliance policies and

procedures relating to the product review of non-conventional investments and the training, marketing, and sale of these non-conventional investments by Respondent and its Registered Agents. The Consultant will make any applicable recommendations to improve Respondent's policies and procedures relating to non-conventional investments. If the Consultant becomes unable to perform his or her duties, Respondent shall have thirty (30) days to select a replacement Consultant not unacceptable to the Commissioner.

17. The Consultant will prepare a follow-up report twelve (12) months following the execution of this Consent Order unless the Consultant affirmatively determines that such follow-up report is unnecessary. This follow-up report, if any, will make further recommendations and discuss the extent to which Respondent has implemented the Consultant's earlier recommendations.
18. Respondent will provide to the Division copies of all reports prepared by the Consultant. The Division may speak with the Consultant at any time during the period that the Consultant is retained by Respondent. Any costs and/or fees associated with the Division's speaking with the Consultant shall be borne by the Division.
19. Respondent will promptly adopt and implement the processes, procedures and practices recommended by the Consultant; however, Respondent may propose alternative procedures ("Alternative Procedures") designed to achieve the same objective or purpose as those that were recommended by the Consultant. Respondent may adopt the Alternative Procedures if the Consultant agrees that Respondent's proposed procedures will achieve the same objectives or purposes as the Consultant's original recommendations. In the event that Respondent and the Consultant disagree regarding any recommendation by the Consultant, Respondent shall have thirty (30) days to appeal such recommendation to the Commissioner and shall be bound by the decision of the Commissioner.
20. Respondent will make available upon request by the Division all written communications between Respondent, its employees and the Consultant, as well as all documents that the Consultant has advised Respondent in writing that the Consultant reviewed or relied upon in connection with this engagement.
21. For a period of three (3) years following the conclusion of the Consultant's work, Respondent and its affiliates may not employ or hire the Consultant in any capacity.
22. Respondent shall pay the sum of five hundred thousand dollars (\$500,000) payable to the Investor Education and Protection Fund. This amount shall be sent to Missouri Securities Division at 600 West Main Street, Jefferson City, Missouri 65101 within thirty (30) days of the effective date of this Consent Order.
23. Respondent shall pay the sum of twenty-five thousand dollars (\$25,000.00) as the costs of the investigation. This amount shall be sent to Missouri Securities Division at 600 West Main Street, Jefferson City, Missouri 65101, within thirty (30) days of the effective date of this consent order and be payable to the Secretary of State's Missouri Investor Education and Protection Fund as provided in Section 409.6-604(e), RSMo. (Cum. Supp. 2007).
24. Within thirty (30) days of the date of this Order, Respondent shall mail a notice to all ARS purchasers from Respondent that transferred ARS positions to a firm other than Respondent, prior to the date of this Order, if the transfer of the ARS positions occurred on or after January 1, 2003. Such notice shall state the offer to purchase ARS if the ARS remain held by the Purchasers. Within thirty (30) days of the receipt of the ARS purchaser's acceptance of the offer Respondent will purchase at par the ARS from the ARS purchaser.
25. In a claim for consequential damages brought against Respondent, Respondent shall arbitrate, or offer to arbitrate the claim if there is no pre-dispute arbitration agreement, the claim pursuant to the following provisions:
  - a. the arbitrations will be conducted by a 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;
  - b. the above-referenced public arbitrator will be available for the exclusive purpose of arbitrating any ARS Purchasers consequential damages claim;
  - c. Respondent shall pay all applicable forum and filing fees;
  - d. any Purchaser of ARS who chooses to pursue such a claim shall bear the burden of proving that they suffered consequential damages and that such damages were caused by investors' inability to access funds consisting of investors' ARS purchases through Respondent;
  - e. Respondent shall be able to defend against such claims; provided, however, that Respondent shall not contest liability related to the sale of ARS and, provided further, that Respondent shall not be able to use as part of its defense an investor's decision not to borrow money from the Respondent Affiliates.
26. Until February 28, 2009, Respondent shall pay each purchaser of ARS from Respondent within 30 days of receiving notice from the Purchaser that the purchaser sold the ARS below par between February 13, 2008 and August 15, 2008, the difference between par and the price at which the purchaser sold the ARS.
27. If the payments are not made by Respondent or Respondent defaults in any of its obligations set forth in this Order, the

Commissioner may vacate this Order, at his sole discretion, upon 10 days prior written notice to Respondent and without opportunity for administrative hearing or may refer this matter for enforcement as provided in Section 409.6-603 and 409-6-604, RSMo. (Cum. Supp. 2007).

28. In addition, Respondent agrees that it shall be deemed a default of an obligation of Respondent under this Order if Respondent's Affiliate does not take the actions set forth in paragraphs 25 and 26 above.
29. This Order is not intended to indicate that Respondent or any of its affiliates or current or former employees shall be subject to any disqualifications contained in the federal securities law, the rules and regulations thereunder, the rules and regulations of self regulatory organizations or various states' securities laws including any disqualifications from relying upon the registration exemptions or safe harbor provisions. In addition, this Order is not intended to form the basis for any such disqualifications.
30. For any person or entity not a party to this Order, this Order does not limit or create any private rights or remedies against Respondent including, without limitation, the use of any e-mails or other documents of Respondent or of others for the marketing and sale of auction rate securities to investors, limit or create liability of Respondent, or limit or create defenses of Respondent to any claims.
31. Nothing herein shall preclude Missouri, its departments, agencies, boards, commissions, authorities, political subdivisions and corporations, other than the Division and only to the extent set forth in paragraph 1 above, (collectively, "State Entities") and the officers, agents or employees of State Entities from asserting any claims, causes of action, or applications for compensatory, nominal and/or punitive damages, administrative, civil, criminal, or injunctive relief against Respondent in connection with the marketing and sale of auction rate securities at Respondent.
32. This Order shall not disqualify Respondent or any of its agents, affiliates or current or former employees from any business that they otherwise are qualified or licensed to perform under applicable state law, and this Order is not intended to form the basis for any disqualification.
33. Respondent shall pay its own costs and attorneys' fees with respect to this matter.

**SO ORDERED:**

**WITNESS MY HAND AND OFFICIAL SEAL OF MY OFFICE AT JEFFERSON CITY, MISSOURI THIS 18TH DAY OF NOVEMBER, 2008.**

**ROBIN CARNAHAN  
SECRETARY OF STATE**

(Signed/Sealed)

**MATTHEW D. KITZI  
COMMISSIONER OF SECURITIES**

**Consented to by:**

(Signed)

**Mary S. Hosmer  
Missouri Securities Division**

**Commerce Brokerage Services, Inc.**

(Signed)

**Name: Robert M. Carr  
Title: President**

**Approved as to Form**

(Signed)

**John R. Short  
Husch Blackwell Sanders LLP  
Attorneys for Respondent**