

**State of Missouri
Office of Secretary of State**

Case No. AP-09-42

IN THE MATTER OF:

NATCITY INVESTMENTS, INC., CRD No. 17490,

Respondent.

Serve:

NATCITY INVESTMENTS, INC.
629 Euclid Avenue
Cleveland, Ohio 44114

CONSENT ORDER

WHEREAS, Respondent NatCity Investments, Inc. ("NatCity"), a subsidiary of National City Corporation ("National City"), is a Missouri-registered broker-dealer with its home office at 629 Euclid Avenue, Cleveland, Ohio 44114. NatCity is registered in Missouri through the Central Registrations Depository ("CRD"), with a CRD number of 17490; and

National City Bank ("NCBank") is a national chartered bank and primary subsidiary of the holding company, National City. NCBank's home office is located at 1900 East Ninth Street, Cleveland, Ohio 44114 and it has offices in Missouri through which it does business as National City Private Client Group ("NCPC"). On or around December 28, 2008, National City and its subsidiaries were bought by PNC Financial Services Group, One PNC Plaza, 249 Fifth Avenue, Pittsburgh, Pennsylvania 15222; and

The Enforcement Section of the Missouri Securities Division (the "Enforcement Section") conducted an investigation into Respondent's and NCBank's marketing and sale of auction rate securities to investors during the period July 15, 2006 through July 15, 2008; and

Respondent has advised the Enforcement Section 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. 2008), with respect to this Consent Order (the "Order"); and

Respondent agrees that Respondent is not the prevailing party in this action and Respondent elects to specifically forever release and hold harmless the Missouri Office of Secretary of State, Secretary of State, Commissioner of Securities and their respective representatives and agents from any and all liability and claims arising out of, pertaining to, or relating to this matter; and

Respondent agrees not to take any action or to make or permit to be made any public statement creating the impression that this Order is without a factual basis. Nothing in this paragraph affects Respondent's: (a) testimonial obligations; (b) right to take legal or factual positions in defense of litigation or in defense of other legal proceedings in which the Commissioner of Securities is not a party; or (c) right to make public statements that are factual;

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, permanently waives any right to a hearing and appeal of this matter, holds the Missouri Office of Secretary of State and all its representatives harmless, and, solely for purposes of this proceeding and any other proceeding commenced by the Commissioner, 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 investor offers ARS for sale through an auction and the auction is successful, the investor is able to liquidate his ARS at their face value, thereby exiting the ARS market on a short-term basis. If, however, an auction in which an investor has offered his ARS for sale "fails," the investor will not have liquidated his ARS through that auction, and will have to either (a) await the next auction for the issue of ARS, or (b) offer the ARS for sale outside the scheduled auction context. There is no assurance that, outside the auction context, buyers can be located who are willing to purchase the ARS at par, or at all. Beginning in February 2008, auctions for many issues of ARS failed.

3. Respondent NatCity, through its Missouri-registered securities agents ("Registered Agents"), effected transactions for eleven (11) Missouri investors in which the investors purchased ARS totaling approximately seven million, three hundred seventy-five thousand dollars (\$7,375,000). In addition, NCPC, exercising discretion vested in it as an investment agent for two (2) other Missouri investors, acquired ARS in the aggregate principal amount of eight hundred seventy five thousand dollars (\$875,000) for the accounts of those Missouri investors.
4. In August, 2008, a St. Louis investor ("MR") for whose account NCPC had purchased ARS submitted a complaint to the Enforcement Section regarding those ARS purchases.

Respondent's Practices in the Marketing and Sales of ARS

5. In connection with the Missouri investors' purchases of ARS, Respondent and/or its Registered Agents recommended the transactions:
 - a. as tax advantaged investments that had, historically, been liquid investments;
 - b. suitable for investors' liquid funds;
 - c. without specific disclosure that in the event of failed auctions, the investors' ability to liquidate the ARS in the near term and at par would be compromised.
6. Although marketed and sold to investors as safe and liquid investments, ARS are actually long-term instruments subject to a complex auction process that, upon failure, can lead to illiquidity of the ARS.

Supervising of Agents who Sold ARS

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

Buyback of ARS from Customers of Respondent

9. Prior to this Consent Order, Respondent and NCPC voluntarily offered to purchase at par ARS: (a) purchased by their customers through their accounts with Respondent and/or NCPC; (b) held by such customers after auctions for the issues of ARS failed; and (c) which were not subject to current calls or redemptions by the issuers. In addition, Respondent and NCPC have certified to the Division that all ARS purchased by their customers as described above were disposed of without loss to such customers, either by Respondent or NCPC purchasing the ARS at a price at least equal to the customer's purchase price, redemption by the issuer, or sale for the customer's account at a price at least equal to the customer's purchase price.
10. Additionally, prior to this Consent Order, Respondent voluntarily ceased to recommend the purchase of ARS to its customers for any purpose and ceased to participate in transactions in ARS otherwise than (a) to liquidate ARS positions held by its customers or (b) for its own account.

II. **CONCLUSIONS OF LAW**

11. The Commissioner has jurisdiction over this matter pursuant to the Missouri Securities Act of 2003, Chapter 409, RSMo. (Cum. Supp. 2008).
12. 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. 2008), and failed to reasonably supervise their registered agents in violation of Section 409.4-412(d)(9), and that this conduct constitutes grounds to revoke, suspend, condition, or limit Respondent's registration under Section 409.4-412(b), RSMo. (Cum. Supp. 2008).
13. 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:

1. This Order concludes the investigation by the Enforcement Section and any other action that the Enforcement Section could commence under applicable Missouri law as it relates to the marketing and sale of auction rate securities by Respondent or NCPC.
2. 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.
3. Respondent NatCity is hereby CENSURED.
4. Respondent will CEASE AND DESIST from violating the Missouri Securities Act of 2003 and will comply with the Missouri Securities Act of 2003.
5. Respondent shall not participate, as a principal or agent, in any further transactions in ARS for the account of a customer, other than transactions to liquidate existing ARS positions in a customer's account.
6. Respondent shall pay the sum of One Hundred Thousand Dollars (\$100,000). This amount shall be sent to the 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 Investor Education and Protection Fund as provided in Section 409.6-604(h), RSMo. (Cum. Supp. 2008).
7. Respondent shall pay the sum of Five Thousand, Five Hundred Ninety Dollars (\$5,590) as the costs of the investigation. This amount shall be sent to the 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. 2008).
8. Within forty-five (45) days of the date of this Order, Respondent shall mail a notice to each Missouri investor who: (a) has not previously received a notice; (b) subsequent to May 31, 2006, acquired ARS through accounts maintained with Respondent and/or NCPC and transferred such ARS positions to another firm; and (c) from whom neither Respondent nor NCPC has already repurchased all such ARS. This notice shall offer to purchase at par all ARS acquired from Respondent and /or NCPC and currently held by the Missouri investor.
9. Within thirty (30) days of the receipt of the ARS investor's acceptance of the offer, Respondent will purchase at par the ARS from the ARS purchaser.
10. Upon the request of any Missouri investor who: (a) acquired an ARS through an account maintained with Respondent and/or NCPC; (b) transferred such ARS position to a firm other than Respondent and/or NCPC; and (c) remains the owner of such ARS, Respondent and/or NCPC shall effect purchase within thirty (30) days of the tender of the ARS to Respondent and/or NCPC for purchase.
11. 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; and
 - e. Respondent shall be able to defend against such claims; provided, however, that Respondent shall not be able to use as part of its defense an investor's decision not to borrow money from the Respondent.
12. Until December 31, 2009, Respondent shall pay each Missouri investor - purchaser of ARS from Respondent within 30 days of receiving notice (which notice shall include, at a minimum, supporting documentation evidencing that the ARS in question was purchased by such Missouri - investor through an account maintained with Respondent and that it was sold below par and at a loss to the investor between February 13, 2008 and the date of this Order) the lesser of (a) the difference between par and the price at which the purchaser sold the ARS, or (b) the difference between the price at which the purchaser purchased the ARS in the first instance and the price at which the purchaser sold the ARS.

13. 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. 2008).
14. In addition, Respondent agrees that it shall be deemed a default of an obligation of Respondent under this Order if Respondent does not take the actions set forth in paragraphs 10 and 11 above.
15. 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.
16. 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 ARS to investors, limit or create liability of Respondent, or limit or create defenses of Respondent to any claims.
17. Nothing herein shall preclude Missouri, its departments, agencies, boards, commissions, authorities, political subdivisions and corporations, other than the Enforcement Section 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.
18. 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.
19. 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 20TH DAY OF OCTOBER, 2009.

ROBIN CARNAHAN
SECRETARY OF STATE

Signed/Sealed)
MATTHEW D. KITZI
COMMISSIONER OF SECURITIES

Consented to by:

Mary S. Hosmer
Missouri Securities Division

NATCITY INVESTMENTS, INC.

Approved as to Form

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