

BEFORE THE ARKANSAS SECURITIES COMMISSIONER  
CASE NO. S-09-024

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2  
3 **IN THE MATTER OF**

4 **RAYMOND JAMES & ASSOCIATES,**  
5 **INC., AND RAYMOND JAMES**  
6 **FINANCIAL SERVICES, INC.**

**Order No. S-09-024-11-OR15**

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10 **CONSENT ORDER**

11 WHEREAS, Raymond James & Associates, Inc. ("Respondent RJA") and Raymond James  
12 Financial Services, Inc. ("Respondent RJFS") (collectively, "Respondents") are broker-dealers  
13 registered in the state of Arkansas; and

14 WHEREAS, Respondents' activities regarding the sale of auction rate securities ("ARS")  
15 have been the subject of coordinated investigations conducted by a multi-state task force; and

16 WHEREAS, Respondents have cooperated fully with regulators conducting the  
17 investigations by providing documentary evidence and other materials and by providing regulators  
18 with access to information relevant to their investigations; and

19 WHEREAS, on June 29, 2011 Respondents and the multi-state task force reached an  
20 agreement to resolve the investigations relating to Respondents' sale of ARS to certain customers;  
21 and

22 WHEREAS, Respondents agree, among other things, to purchase certain ARS from  
23 customers and to make certain payments; and

24 WHEREAS, Respondents elect to waive permanently any right to a hearing and appeal  
25 under the Arkansas Securities Act ("Act"), codified at Ark. Code Ann. §§ 23-42-101 through 23-  
26 42-509, and to judicial review of this Consent Order ("Order" or "Consent Order"); and

WHEREAS, Respondents waive compliance with the provisions of the Arkansas  
Administrative Procedure Act, codified at Ark. Code Ann. §§ 25-15-201 through 25-15-219; and

WHEREAS, Respondents admit the jurisdiction of the Arkansas Securities Commissioner  
and consent to the entry of this Order; and

1 WHEREAS, Respondents have voluntarily agreed to purchase ARS from certain customers,  
2 as described in Section IV below, and to use best efforts to provide liquidity solutions for certain  
3 other customers; and

4 WHEREAS, Respondents neither admit nor deny the Findings of Fact and Conclusions of  
5 Law contained in this Order, and consent to the entry of this Order by the Arkansas Securities  
6 Commissioner.

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

9 **I.**

10 **RESPONDENTS**

11 1. Respondent RJA (CRD #705) is a broker-dealer registered in the state of Arkansas  
12 and was, at all times material herein, a Florida corporation with its principal place of business at  
13 880 Carillon Parkway, St. Petersburg, Florida 33716.

14 2. Respondent RJFS (CRD #6694) is a broker-dealer registered in the state of  
15 Arkansas and was, at all times material herein, a Florida corporation with its principal place of  
16 business at 880 Carillon Parkway, St. Petersburg, Florida 33716.

17 **II.**

18 **FINDINGS OF FACT**

19 3. Respondents are each in the business of effecting transactions in securities in  
20 Arkansas as a "broker-dealer" within the meaning of the Act.

21 4. Respondents have customers located across the United States of America, including  
22 Arkansas.

23 5. Prior to February 13, 2008, Respondents sold ARS to Arkansas residents.  
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ARS

1  
2           6.     ARS are bonds or preferred stocks that have interest rates or dividend yields that are  
3 periodically reset through an auction process, typically every seven (7), twenty-eight (28), or thirty-  
4 five (35) days.

5           7.     ARS are usually issued with thirty (30) year maturities, but ARS maturities can  
6 range from five years to perpetuity.

7           8.     ARS can be attractive investments to investors because ARS may offer slightly  
8 higher yields than various alternative products, including forms of cash alternative products.

9           9.     An ARS yield is determined by the periodic auctions (commonly referred to as  
10 “Dutch” auctions) during which ARS are auctioned at par.

11          10.    ARS can be bought or sold at par at one of these periodic Dutch auctions.

12          11.    Under the typical procedures for an ARS auction in effect prior to February 13,  
13 2008, an investor, including a customer of either Respondent, who wished to purchase ARS at  
14 auction, submitted a bid that included the minimum interest or dividend rate that the investor would  
15 accept.

16          12.    ARS holders could either choose to keep their securities until the next auction or  
17 submit offers to sell their ARS.

18          13.    An auction agent collected all of the bids and offers for a particular auction.

19          14.    The final yield rate at which the ARS were sold was the “clearing rate” and the  
20 clearing rate applied to that particular ARS until the next auction.

21          15.    Bids with the lowest rate and then successively higher rates were accepted until all  
22 ARS sell orders were filled.

23          16.    The clearing rate was the lowest rate bid sufficient to cover all ARS offered for sale  
24 in the auction.

25          17.    If there were not enough bids to cover the ARS offered for sale in an auction, then  
26 an auction would fail.

1 18. In a failed auction, investors who want to sell are not able to do so and such  
2 investors must hold their ARS until at least the next auction.

3 19. In the event of a failed auction, an ARS issuer pays the holders a maximum rate or  
4 “penalty” rate, which is either a flat rate or a rate based on a formula set forth in the ARS offering  
5 documents.

6 20. Penalty rates might be higher or lower than the prior clearing rate or market rates on  
7 similar products.

8 21. To facilitate the auction process, issuers of ARS selected one or more broker-dealers  
9 to underwrite an offering and/or manage an auction process.

10 22. In many instances, these broker-dealers submitted their own bids to support the  
11 ARS auctions and to prevent the auctions from failing, maintain an orderly market, or set a clearing  
12 rate.

13 23. Due to various market conditions in the early part of 2008, many of the broker-  
14 dealers that acted as underwriters of the ARS offerings or as lead managers for the ARS auctions  
15 stopped submitting their own bids in support of the ARS auctions.

16 24. As a result, by February 13, 2008, the ARS market began to experience widespread  
17 auction failures, leaving ARS investors, including some of Respondents’ customers throughout the  
18 United States of America, unable to sell their ARS holdings.

19 25. On February 13, 2008, through the date of this Order, the ARS market has  
20 continued to experience widespread failures, making ARS holdings illiquid.

21 26. Some ARS have been redeemed by their issuers since February 13, 2008.  
22 Thousands of ARS investors, however, including some of Respondents’ customers, have been  
23 unable to liquidate their ARS positions through the auction process.

24 27. Respondents’ customers currently hold hundreds of millions of dollars in illiquid  
25 ARS that they are unable to sell through the auction process.

26



1 disclose to customers that Respondent RJA managed the auctions of the MARS and that RJA  
2 routinely bid in MARS auctions to prevent a failed auction, maintain an orderly market, or set a  
3 particular clearing rate. For example, some of Respondents' registered representatives and  
4 financial advisors did not adequately disclose to customers that their ARS could become illiquid  
5 for an indeterminate period of time in the event of an auction failure.

6 33. The information described in Paragraphs II.31 through II.32 was material to  
7 Respondents' customers.

8 34. Respondents should have known that their registered representatives and financial  
9 advisors marketed ARS to customers as highly liquid and as an alternative to cash or money market  
10 funds without adequately disclosing that ARS are complex securities that may become illiquid.

11 35. In connection with the marketing of ARS, Respondents failed to adopt policies and  
12 procedures reasonably designed to ensure that its registered representatives and financial advisors  
13 recommended ARS only to customers who had stated investment objectives that were consistent  
14 with their purchase of ARS. Some of Respondents' registered representatives and financial  
15 advisors recommended ARS to customers as a liquid, short-term investment. As a result, some of  
16 Respondents' customers who needed short-term access to funds invested in ARS even though ARS  
17 had long-term maturity dates, or in the case of ARPS and TARS, no maturity dates.

### 18 III.

#### 19 CONCLUSIONS OF LAW

20 36. The Arkansas Securities Commissioner has jurisdiction over this matter pursuant to  
21 Ark. Code Ann. § 23-42-205.

22 37. By engaging in the acts and conduct set forth in Paragraphs II.3 through II.35,  
23 Respondents engaged in dishonest or unethical practices in the offer and sale of securities, in  
24 violation of Ark. Code Ann. § 23-42-308(a)(2)(G), and the failure to reasonably supervise their  
25 agents, in violation of Ark. Code Ann. § 23-42-308(a)(2)(J). The Arkansas Securities  
26 Commissioner finds the following relief appropriate and in the public interest.

1 IV.

2 ORDER

3 On the basis of the Findings of Fact, Conclusions of Law, and Respondents' consent to the  
4 entry of this Order, without admitting or denying the facts or conclusions herein,

5 IT IS HEREBY ORDERED:

6 1. This Order concludes the investigation by the Arkansas Securities Department and  
7 precludes any other action that the Arkansas Securities Commissioner could commence against the  
8 Respondents under applicable Arkansas law on behalf of the state of Arkansas as it relates to  
9 Respondents' sale of ARS to Eligible Investors, as defined below.

10 2. This Order is entered into solely for the purpose of resolving the above-referenced  
11 multi-state investigation, and is not intended to be used for any other purpose.

12 3. Respondents shall cease and desist from violating the Act and will comply with Ark.  
13 Code Ann. §§ 23-42-308(a)(2)(G) and (J) of the Act in connection with the marketing and sale of  
14 ARS.

15 4. Within ten (10) days following the entry of this Order, Respondents shall pay the  
16 sum of \$5,766.45, as a civil monetary penalty, to the Arkansas Securities Department. This  
17 amount constitutes the state of Arkansas's proportionate share of the total state settlement amount  
18 of \$1,750,000.00. In the event another state securities regulator determines not to accept  
19 Respondents' settlement offer, the total amount of the payment to the state of Arkansas shall not be  
20 affected.

21 5. Respondents shall take certain measures with respect to current and former  
22 customers with respect to "Eligible Auction Rate Securities", as defined below in Paragraph IV.6.

23 6. "Eligible Auction Rate Securities". For purposes of this Order, "Eligible Auction  
24 Rate Securities" means ARS purchased at Respondents on or before February 13, 2008, and that  
25 have failed at auction at least once since February 13, 2008. Notwithstanding the foregoing  
26 definition, the term "Eligible Auction Rate Securities" shall not include ARS that were purchased

1 at Respondents in accounts owned, managed or advised by or through correspondent broker-  
2 dealers or unaffiliated registered investment advisers.

3 7. “Eligible Investors”. For purposes of this Order, “Eligible Investors,” shall mean  
4 the following:

5 (1) Any investor that purchased Eligible Auction Rate Securities at Respondents on or  
6 before February 13, 2008, did not transfer such Eligible Auction Rate Securities away from  
7 Respondents prior to January 1, 2006, and held those securities on February 13, 2008.

8 (2) “Eligible Investors,” for the purposes of this Order, shall not include institutional  
9 money managers.

10 (3) “Eligible Investors,” for the purposes of this Order, shall not include customers who  
11 resolved their ARS claims through arbitration proceedings or negotiated settlements with  
12 Respondents.

13 8. Purchase Offer. Respondents shall offer to purchase, at par plus accrued and unpaid  
14 dividends/interest, from Eligible Investors their Eligible Auction Rate Securities that have failed at  
15 auction at least once since February 13, 2008 (the “Purchase Offer”).

16 9. Notification and Buyback Procedures.

17 a. Respondents shall create a written notice related to the Purchase Offer (the  
18 “Notice”). The Notice shall explain the relevant terms of this Order and describe what Eligible  
19 Investors must do to accept, in whole or in part, the Purchase Offer, including how Eligible  
20 Investors may accept the Purchase Offer.

21 b. Initial Notice

22 i. Respondents shall provide the Notice to Eligible Investors who purchased Eligible  
23 Auction Rate Securities at Respondents by no later than thirty (30) days from June 29, 2011.

24 ii. Furthermore, Respondents shall undertake their best efforts to identify and locate  
25 customers who purchased Eligible Auction Rate Securities at Respondents but who transferred  
26 such Eligible Auction Rate Securities away from Respondents prior to January 1, 2006 by no later

1 than thirty (30) days from June 29, 2011. Respondents will provide any such customers the  
2 Purchase Offer described in Paragraph IV.8, the Notification and Buyback Procedures described in  
3 Paragraph IV.9, and the other terms described in Paragraphs IV.11, IV.12, and IV. 13.

4 c. Second Notice

5 With respect to each Eligible Investor that Respondents sent the Notice required by  
6 Paragraph IV.9(b) above and who did not respond, Respondents shall provide a second copy of the  
7 Notice on or before forty-five (45) days before the end of Offer Period, as defined below.

8 d. Offer Period

9 i. Respondents shall keep the Purchase Offer open for seventy-five (75) days after  
10 mailing the Initial Notice as required by Paragraph IV.9(b), above (“Offer Period”).

11 ii. Eligible Investors may accept the Purchase Offer by notifying Respondents as  
12 described in the Purchase Offer, at any time before 11:59 P.M. Eastern Time, on or before the last  
13 day of the Offer Period. For those Eligible Investors who accept the Purchase Offer within the  
14 Offer Period, Respondents shall purchase their Eligible Auction Rate Securities by no later than  
15 five (5) business days following the expiration of the Offer Period.

16 e. An Eligible Investor may revoke their acceptance of Respondents’ Purchase Offer at  
17 any time up until Respondents’ purchase of such Eligible Investor’s Eligible Auction Rate  
18 Securities or provide notice of their intent to purchase such Eligible Auction Rate Securities.

19 f. Respondents’ obligation to those Eligible Investors who custodied their Eligible  
20 Auction Rate Securities away from Respondents as of the date of this Order shall be contingent on:  
21 (1) Respondents receiving reasonably satisfactory assurances from the financial institution  
22 currently holding the Eligible Investor’s Eligible Auction Rate Securities that the bidding rights  
23 associated with such Eligible Auction Rate Securities will be transferred to Respondents; (2) the  
24 Eligible Investor reactivating their former account with Respondents; and (3) the transfer of the  
25 Eligible Auction Rate Securities to the Eligible Investor’s former account with Respondents.

1 g. Respondents shall use their best efforts to identify, contact and assist any Eligible  
2 Investor who has transferred the Eligible Auction Rate Securities out of Respondents' custody in  
3 returning such Auction Rate Securities to Respondents' custody, and shall not charge such Eligible  
4 Investor any fees relating to or in connection with the return to Respondents or custodianship by  
5 Respondents of such Eligible Auction Rate Securities.

6 10. Customer Assistance. Within two (2) days of June 29, 2011, Respondents shall  
7 establish a dedicated toll-free telephone assistance line and website to provide information and to  
8 respond to questions concerning the terms of this Order, and to provide information concerning the  
9 terms of this Order and, via an e-mail address or other reasonable means, to respond to questions  
10 concerning the terms of this Order. Respondents shall maintain the telephone assistance line for at  
11 least nine months from the date of this Order.

12 11. Relief for Eligible Investors Who Sold Below Par. Respondents shall use their best  
13 efforts to identify each Eligible Investor who: (i) purchased Eligible Auction Rate Securities at  
14 Respondents on or before February 13, 2008; and (ii) who sold those Eligible Auction Rate  
15 Securities below par between February 13, 2008 and the date of this Order ("Below Par Sellers").  
16 Within seventy-five (75) days of June 29, 2011, Respondents shall pay each Below Par Seller the  
17 difference between par and the price at which the Below Par Seller sold the Eligible Auction Rate  
18 Securities, plus reasonable interest thereon. Furthermore, Respondents will pay promptly the  
19 difference between par and the price at which the Below Par Seller sold the Eligible Auction Rate  
20 Securities, plus reasonable interest thereon to any Below Par Sellers identified more than seventy-  
21 five (75) days after this Order.

22 12. Consequential Damages Arbitration Process.

23 a. Respondents shall consent to participate in a special arbitration process  
24 ("Arbitration") for the exclusive purpose of arbitrating any Eligible Investor's consequential  
25 damages claim arising from their inability to sell Eligible Auction Rate Securities. In the  
26 Arbitration, the Special Arbitration Process applicable to firms that have entered into settlements

1 with state regulators (the "State SAP") will be available for the exclusive purpose of arbitrating any  
2 Eligible Investor's consequential damages claim. Respondents shall notify Eligible Investors of  
3 the terms of the Arbitration process through the Notice.

4 b. The Arbitration shall be conducted under the auspices of FINRA, pursuant to the  
5 NASD Code of Arbitration Procedures for Customer Disputes, eff. April 16, 2007. Respondents  
6 will pay all applicable forum and filing fees.

7 c. Any Eligible Investors who choose to pursue such claims in the Arbitration shall  
8 bear the burden of proving that they suffered consequential damages and that such damages were  
9 caused by their inability to access funds invested in Eligible Auction Rate Securities. In the  
10 Arbitration, Respondents shall be able to defend themselves against such claims; provided,  
11 however, that Respondents shall not contest liability for the illiquidity of the underlying ARS  
12 position or use as part of their defense any decision by the Eligible Investor not to borrow money  
13 from either Respondent.

14 d. Eligible Investors who elect to use the Arbitration provided for herein shall not be  
15 eligible for punitive damages, or for any other type of damages other than consequential damages.  
16 However, the State SAP will govern the availability of attorney's fees.

17 13. Loan Interest Expense.

18 Respondents shall use their best efforts to identify Eligible Investors that obtained a loan  
19 through Respondents (or its affiliates) secured by Eligible Auction Rate Securities that were not  
20 successfully auctioning at the time the loan was taken and who paid more in interest on the loan  
21 than the Eligible Investor received in interest or dividends from the Eligible Auction Rate  
22 Securities during the time the loan was outstanding ("Negative Carry"). If the Eligible Investor can  
23 provide Respondents documentation evidencing the amount of Negative Carry, Respondents, on or  
24 before seventy-five (75) days from the date of this Order, will reimburse the Eligible Investor the  
25 amount of Negative Carry actually paid.

1           14.    Best Efforts

2            Respondents will use their best efforts to provide the institutional money managers, within  
3 nine (9) months of the date of June 29, 2011, opportunities to liquidate their Eligible Auction Rate  
4 Securities including, but not limited to, facilitating issuer redemptions, restructurings, and through  
5 other reasonable means. Although Respondents are required to use their best efforts to liquidate  
6 Eligible Auction Rate Securities owned by the institutional money managers, the Respondents are  
7 not obligated to purchase the securities.

8           15.    Reports and Meetings

9           a.    Respondents shall submit a bi-monthly written report detailing Respondents'  
10 progress with respect to the provisions of this Order within forty-five (45) days of the end of each  
11 month in which a report is required, beginning with a report covering the month ended after June  
12 29, 2011 and continuing through and including a report covering the month ended nine months  
13 from June 29, 2011. This report shall be submitted to a representative specified by the North  
14 American Securities Administrators Association ("NASAA").

15          b.    Beginning one hundred twenty (120) days after June 29, 2011, Respondents shall  
16 confer at least quarterly with the representative specified by NASAA to discuss Respondents'  
17 progress with respect to the provisions of this Order. Such quarterly conferences shall continue for  
18 nine months from June 29, 2011.

19          c.    The reporting and conference deadlines set forth above may be amended or  
20 modified with written permission from the representative specified by NASAA.

21          16.    The parties admit and acknowledge that the Arkansas Securities Commissioner has  
22 no authority or jurisdiction over any other state or federal agency or regulatory authority.  
23 Nonetheless, this Order is not intended to indicate that Respondents or any of its affiliates or  
24 current or former employees shall be subject to any disqualifications contained in the federal  
25 securities law, the rules and regulations thereunder, the rules and regulations of self regulatory  
26 organizations or various states' securities laws including any disqualifications from relying upon

1 the registration exemptions or safe harbor provisions. In addition, this Order is not intended to  
2 disqualify Respondents or any of its affiliates or current or former employees from any business  
3 that they otherwise are qualified or licensed to perform under applicable state securities law. This  
4 Order is not intended to form the basis for any such disqualifications.

5 17. Except in an action by the Arkansas Securities Commissioner to enforce the  
6 obligations of Respondents in this Order, this Order may neither be deemed nor used as an  
7 admission of or evidence of any alleged fault, omission or liability of Respondents in any civil,  
8 criminal, arbitration or administrative proceeding in any court, administrative agency or tribunal.  
9 For any person or entity not a party to this Order, this Order does not limit or create any private  
10 rights or remedies against Respondents including, without limitation with respect to the use of any  
11 emails or other documents of Respondents or of others concerning the marketing and/or sales of  
12 ARS, limit or create liability of Respondents, or limit or create defenses of Respondents to any  
13 claims.

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

17 19. The Arkansas Securities Commissioner has agreed to the terms of this Order based  
18 on, among other things, the representations made to the Arkansas Securities Commissioner by  
19 Respondents, Respondents' counsel, and the Arkansas Securities Department's own factual  
20 investigation. To the extent that any material representations are later found to be materially  
21 inaccurate or misleading, this Order is voidable by the Arkansas Securities Commissioner in his  
22 sole discretion.

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25 DATED this 4<sup>th</sup> day of April, 2012.

1 BY ORDER OF THE ARKANSAS SECURITIES  
2 COMMISSIONER

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4 \_\_\_\_\_  
5 A. Heath Abshire, Commissioner

1 **CONSENT TO ENTRY OF CONSENT ORDER BY RAYMOND JAMES & ASSOCIATES,**  
2 **INC. AND RAYMOND JAMES FINANCIAL SERVICES, INC.**

3 Raymond James & Associates, Inc. and Raymond James Financial Services, Inc. (together  
4 "Raymond James") hereby acknowledges that it has been served with a copy of this Consent Order,  
5 has read the foregoing Order, is aware of its right to a hearing and appeal in this matter, and has  
6 waived the same.

7 Raymond James admits the jurisdiction of the Arkansas Securities Commissioner, neither  
8 admits nor denies the Findings of Fact and Conclusions of Law contained in this Order, and consents  
9 to entry of this Order by the Arkansas Securities Commissioner as settlement of the issues contained  
10 in this Order.

11 Respondents shall not claim, assert, or apply for a tax deduction or tax credit with regard to  
12 any state, federal, or local tax for any administrative monetary payment that Respondents shall pay  
13 pursuant to this Order.

14 Raymond James states that no promise of any kind or nature whatsoever was made to it to  
15 induce it to enter into this Order and that it has entered into this Order voluntarily.

16 Tash S. Elwyn represents that he is President of Raymond James & Associates, Inc., and that,  
17 as such, has been authorized by Raymond James & Associates, Inc., to enter into this Order for and on  
18 behalf of Raymond James & Associates, Inc.

19 Donald K. Runkle represents that he is Senior Vice President, Chief Compliance Officer of  
20 Raymond James Financial Services, Inc., and that, as such, has been authorized by Raymond James  
21 Financial Services, Inc., to enter into this Order for and on behalf of Raymond James Financial  
22 Services, Inc.

23 DATED this 16<sup>th</sup> day of March, 2012.  
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25  
26

RAYMOND JAMES & ASSOCIATES, INC.

By: [Signature]  
Tash S. Elwyn

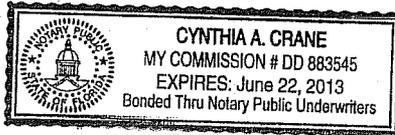
Title: President

STATE OF Florida )  
County of Pinellas )

SUBSCRIBED AND SWORN TO before me this 16th day of March, 2012.

[Signature]  
Notary Public

My commission expires:  
\_\_\_\_\_



RAYMOND JAMES FINANCIAL SERVICES, INC.

By: [Signature]  
Donald K. Runkle

Title: Senior Vice President, Chief Compliance Officer

STATE OF Florida )  
County of Pinellas )

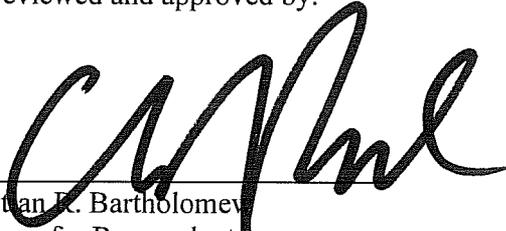
SUBSCRIBED AND SWORN TO before me this 16th day of March, 2012.

[Signature]  
Notary Public

My commission expires:  
\_\_\_\_\_



1  
2 The foregoing Consent Order  
3 was reviewed and approved by:

4 

5 Date: 3/22/12

6 Christian R. Bartholomev  
7 Attorney for Respondents  
8 Raymond James & Associates Inc., and  
9 Raymond James Financial Services, Inc.  
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