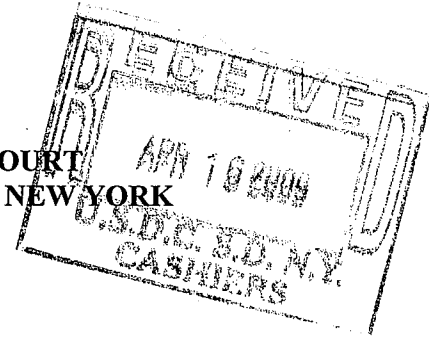


UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK



PIVOT POINT CAPITAL MASTER LP,  
Individually And On Behalf of All Others  
Similarly Situated,

Plaintiff,

v.

DEUTSCHE BANK AG and DEUTSCHE  
BANK SECURITIES INC.,

Defendants.

08-cv-2788 (LAP)

**SECOND AMENDED CLASS ACTION  
COMPLAINT FOR VIOLATIONS OF  
THE FEDERAL SECURITIES LAWS**

**JURY TRIAL DEMANDED**

1. Plaintiff Pivot Point Capital Master LP, by its undersigned counsel, alleges the following based upon personal knowledge as to its own acts and upon the investigation of by its counsel, which included, among other things, a review of: (a) public statements, sales presentations and marketing materials by Deutsche Bank AG and Deutsche Bank Securities Inc. (collectively “Deutsche Bank” or “Defendants”), and their affiliates, agents and employees; (b) Securities and Exchange Commission (“SEC”) filings made by Deutsche Bank and other brokerages, financial services firms and investment companies; (c) public filings and statements in court proceedings and civil government and regulatory investigations involving Deutsche Bank and other brokerages, financial services firms and investment companies; (d) documents believed to be authentic copies of internal emails and other business records of various brokerages, financial services firms and investment companies obtained from public record sources; (e) securities analysts’ reports, press releases and media reports; (f) interviews with purchasers of auction rate securities and other knowledgeable individuals; and (g) discussions with consultants.

### INTRODUCTION

2. This is a class action under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (“Exchange Act”) on behalf of all persons or entities who, between March 17, 2003 and February 13, 2008, inclusive (“Class Period”), purchased auction rate securities that Deutsche Bank Securities Inc. underwrote or sold, or for which Deutsche Bank Securities Inc. managed auctions (“DB Auction Rate Securities”), and who were damaged thereby.

3. Auction rate securities are bonds or preferred stocks that pay interest or dividends at rates set at periodic auctions. During the Class Period, Defendants and their affiliates underwrote, served as an auction manager and as an auction agent for auction rate securities, and sold those securities to investors as highly liquid investments and appropriate short-term investments.

4. During the Class Period, Deutsche Bank engaged in a comprehensive scheme to defraud purchasers of DB Auction Rate Securities by manipulating the market for those securities. The scheme allowed Defendants to reap millions of dollars in underwriting fees, auction management fees, and auction agent fees at the expense of investors who purchased DB Auction Rate Securities at overvalued prices.

5. Deutsche Bank perpetuated an artificial market for DB Auction Rate Securities and pushed billions of dollars of those securities onto investors, including its own inventory of DB Auction Rate Securities, in order to avoid being stuck with them on its own balance sheet. Deutsche Bank manipulated the auctions for DB Auction Rate Securities by routinely intervening in auctions to prevent auction failures and to influence the rates of interest (or dividends) paid on DB Auction Rate Securities.

6. Deutsche Bank's scheme came to light when the auction rate securities market collapsed after Deutsche Bank and the other major auction rate securities broker-dealers abruptly ended their policy of propping up the market. Deutsche Bank's withdrawal of "support" for the auction market left Class Members holding billions of dollars in illiquid DB Auction Rate Securities, often earning interest far below market rates.

#### **JURISDICTION AND VENUE**

7. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1337, and Section 27 of the Exchange Act (15 U.S.C. § 78aa). The claims asserted herein arise under Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)), and Rule 10b-5 promulgated thereunder by the SEC (17 C.F.R. 240.10b-5).

8. Venue is proper in this District pursuant to Section 27 of the Exchange Act and 28 U.S.C. §§ 1391(b) and 1337. Defendant Deutsche Bank Securities Inc. maintains its principal place of business within this District and many of the acts giving rise to the violations complained of herein took place in this District.

9. In connection with the acts alleged in this Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce including, but not limited to, the mails, interstate telephone communications and the facilities of the national securities markets.

### **PARTIES**

10. Plaintiff Pivot Point Capital Master LP (“Pivot Point”) is a Delaware limited partnership with its principal place of business in San Francisco, California. Pivot Point purchased DB Auction Rate Securities during the Class Period and was damaged thereby.

11. Defendant Deutsche Bank AG is a German corporation headquartered in Frankfurt, Germany. Deutsche Bank AG is one of the world’s leading financial firms and does business in the United States through its subsidiaries including Deutsche Bank Securities Inc.

12. Defendant Deutsche Bank Securities Inc. (“Deutsche Bank Securities”) is incorporated in Delaware and maintains its principal executive offices in New York, New York. Deutsche Bank Securities, a wholly-owned subsidiary of Deutsche Bank AG, is registered with the SEC as a broker-dealer pursuant to Section 15(b) of the Exchange Act and is a member of the New York Stock Exchange and the Financial Industry Regulatory Authority. During the Class Period, Deutsche Bank Securities underwrote DB Auction Rate Securities, managed auctions for those securities, and sold those securities to Class members through Client Advisors in its division Deutsche Bank Alex. Brown.

13. Unless specifically noted, “Deutsche Bank” or “Defendants” refers collectively to defendants Deutsche Bank AG and Deutsche Bank Securities.

### **CLASS ACTION ALLEGATIONS**

14. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a), 23(b)(1), (b)(2) and/or (b)(3), and 23(c)(4) on behalf of a Class consisting of all persons and entities that purchased DB Auction Rate Securities between March 17, 2003 and February 13, 2008, inclusive, and were damaged thereby (the “Class”).

15. Excluded from the Class are Defendants; the subsidiaries and affiliates of any Defendant; any person or entity who is a partner, officer, director, employee or controlling person of any Defendant; members of Defendants' immediate families and their legal representatives, heirs, successors or assigns; and any entity in which any Defendant has or had a controlling interest.

16. The members of the Class are so numerous that joinder of all members is impracticable. The market for auction rate securities, while it existed, was estimated to exceed \$300 billion in the United States.

17. Deutsche Bank Securities was a substantial underwriter of and auction manager for auction rate securities while the market for such securities existed. During the Class Period, investors purchased billions of dollars of auction rate securities that Deutsche Bank Securities underwrote and/or for which Deutsche Bank Securities managed auctions.

18. During the Class Period, DB Auction Rate Securities were sold to thousands of retail, corporate and institutional customers. While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are thousands of members of the proposed Class.

19. Record owners and other members of the Class may be identified from records maintained by Defendants and other brokerage firms and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

20. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- (a) Whether the federal securities laws were violated by Defendants' acts as alleged herein;
- (b) Whether Defendants joined, directed, participated in, or otherwise engaged in a scheme to defraud purchasers of DB Auction Rate Securities during the Class Period;

- (c) Whether Defendants manipulated the market for DB Auction Rate Securities during the Class Period; and
- (d) Whether Class members have sustained damages and the proper measure of damages.

21. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

22. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

23. A class action is superior to all other available methods for the fair and efficient adjudication of Plaintiff's claims. The damages suffered by individual Class members are relatively small given the burden and expense of individual prosecution of the complex litigation necessitated by Defendants' conduct. It would be virtually impossible for members of the Class to individually redress the wrongs done to them.

24. Furthermore, even if Class members could afford such individualized litigation, the court system could not. Individualized litigation would create the danger of inconsistent or contradictory judgments and increase the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, is in fact manageable, and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single court. The benefits of adjudicating this controversy as a class action far outweigh any difficulties in managing the Class.

25. In the alternative, the Class and the Subclass may be certified under the provisions of Fed. R. Civ. P. 23(b)(1), 23(b)(2) and/or 23(c)(4) because:

- (a) the prosecution of separate actions by the individual Class members would create a risk of inconsistent or varying adjudications with respect to individual Class members which would establish incompatible standards of conduct for Defendants;
- (b) the prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them which would, as a practical matter, be dispositive of the interests of other Class members not parties to the adjudications, or substantially impair or impede their ability to protect their interests;

- (c) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole; and
- (d) The claims of Class members are comprised of common issues that are appropriate for certification under Rule 23(c)(4).

### **FACTUAL ALLEGATIONS**

#### **A. Background: Auction Rate Securities**

26. Auction rate securities are long-term or perpetual variable-rate equity or debt instruments that pay interest or dividends at rates set at periodic “auctions.”

27. Auction rate securities are issued by closed-end preferred funds (“auction rate preferreds”); states, state agencies, municipalities, or other governmental authorities (“municipal auction rate securities”); public or private student loan originators and lenders (“SLARS”); and other corporations and entities (“CDO auction rate securities”).

28. The market for auction rate securities experienced dramatic growth since the securities were first introduced in 1984.

29. By February 2008, approximately \$330 billion of auction rate securities were outstanding.

30. Investments in auction rate securities when they were first marketed in the 1980s were limited to highly sophisticated institutional investors, with required minimum purchases of \$250,000 or more.

31. Prior to the beginning of the Class Period, issuers and underwriters lowered the minimum investment to \$25,000.

32. The reduced minimum investment enabled sellers to market auction rate securities to retail investors including individuals, charities and small businesses.

#### **B. The Auction Process**

33. Prior to February 2008, auction rate securities typically traded at par value through periodic auctions.

34. The rates of interest or dividends paid on auction rate securities were determined at the periodic auctions, which were conducted as “Dutch” auctions.

35. Although the amount of time between each auction varied between individual securities, in general auctions were held on a weekly or monthly basis, with interest paid at the end of the auction period.

36. Auction rate securities were sold to investors by broker-dealers who had entered into agreements to manage auctions and accept orders for the purchase and sale of those securities, or by other designated brokerages, often referred to as “remarketing agents” or “distributing firms.”

37. In theory, before an auction took place, broker-dealers surveyed investor interest and gave guidance to potential investors, providing a range of rates within which the broker-dealers believed the auction would “clear,” as described below. This conduct was referred to as “price talk.”

38. Price talk enabled broker-dealers, including Deutsche Bank Securities, to influence the clearing rate for the auctions they managed. Among other things, if investors placed bids well above the price talk, the broker-dealers were able to and did place sufficient bids to clear the auctions at lower interest rates.

39. According to typical auction procedures, each prospective buyer submitted a bid for a specific amount of securities and a specified minimum interest or dividend rate. Broker-dealers submitted buy and sell bids to an auction agent that administered the auction. The auction agent determined which sell orders were filled beginning with bids at the lowest rate and continuing with bids at progressively higher rates, until all securities available for sale were sold. The interest or dividend rate bid at which the last of the securities were sold was the “clearing rate.” The clearing rate, as calculated by the auction agent, was then applied to all securities sold in the auction.

40. Auction procedures typically provided for the following types of orders available to holders or prospective buyers of the securities:

- (a) Hold: The holder kept the securities regardless of the clearing rate;

- (b) Hold at Rate: The prospective seller kept the securities only if the clearing rate was at least as much as the rate that the person specified; if the clearing rate was less than the rate specified, then the person sold his or her securities;
- (c) Sell: The prospective seller sold the securities regardless of the clearing rate;
- (d) Buy: The prospective buyer submitted a bid to purchase securities at a specified minimum interest or dividend rate.

41. Auctions could end in one of three ways: as a successful auction, an “all-hold” auction, or a failed auction.

42. In a successful auction, the number of shares bid for purchase was equal to or greater than the number of shares offered for sale. All shares for sale were purchased, and the clearing rate applied to all securities sold until the next auction. If several bidders had bids at the clearing rate, and there were more bids than shares offered for sale, the shares were divided pro-rata among the clearing rate bidders.

43. As an example of a successful auction, assume an auction took place in which \$1,000,000 of securities were for sale, and the auction received four bids: Bid A was for \$500,000 at a minimum dividend or interest rate of 3.2 percent; Bid B was for \$500,000 at 3.3 percent; Bid C was for \$500,000 at 3.3 percent; and Bid D was for \$250,000 at 3.4 percent. In this example, the clearing rate would be 3.3 percent, which would be paid as interest or dividends on all securities in the auction until the next auction. Bid A would be allocated \$500,000, Bids B and C would receive pro-rata allocations of \$250,000 each, and Bid D would not receive any allocation.

44. If all investors decided to hold and not sell their securities, then the auction was an all-hold auction. No securities changed hands, and a formula specified in the offering documents set the interest or dividend rate for all securities until the next auction.

45. The all-hold rate was generally lower than the market rate. Thus, if no holder sold securities in the auction, the interest or dividend rate on all holders’ securities would be reduced.

46. An auction failed if the number of shares offered for sale exceeded the number of shares bid for purchase. If the auction failed, then the current shareholders could not sell their

shares, no matter what type of order they issued. An interest or dividend rate called the “penalty rate” or “maximum rate” (hereafter referred to as the “maximum rate”) would then apply until the next auction. The maximum rate was specified in the offering documents as either a formula or a multiplier of a reference rate, such as a specified index rate.

47. The maximum rate on an auction rate security was intended to ensure that the security remained liquid if the auction failed, by attracting new buyers or prompting the issuer to refinance. If the maximum rate was insufficient to attract liquidity in the event of an auction failure, however, the risk characteristics of an auction rate security were fundamentally altered. An auction rate security that carried a low penalty rate was dependent on the broker-dealer’s intervention and “support” for the periodic auctions to ensure liquidity, and in the absence of the broker-dealer’s support, any auction failure would render the security illiquid.

48. Auction rate securities have no “put” feature guaranteeing that an investor could either sell the securities back to the broker-dealer on demand at par value or force the issuer to redeem the securities if the auctions failed. Holders of auction rate securities depended on the integrity of the broker-dealers and the auctions to ensure that the securities remained liquid.

**C. Deutsche Bank Engaged In A Scheme To Defraud Purchasers Of DB Auction Rate Securities**

**i. Deutsche Bank Securities Routinely Intervened In The Auctions To Create The Appearance Of Stability And Liquidity**

49. During the Class Period, Deutsche Bank Securities underwrote billions of dollars of auction rate securities that carried insufficient maximum rates to ensure the liquidity of those securities if the auctions failed. Deutsche Bank Securities and other distributing firms sold DB Auction Rate Securities to investors during the Class Period.

50. Throughout the Class Period, Deutsche Bank Securities underwrote auction rate securities with maximum rates there were insufficient to ensure the liquidity of those securities in the event of a failed auction. Deutsche Bank Securities underwrote securities with low maximum rates in order to obtain AAA ratings from credit rating agencies including Fitch and

Standard & Poor's, thus creating the appearance of quality and safety. Deutsche Bank Securities touted AAA ratings as a selling point.

51. Unbeknownst to investors, however, the maximum rate caps limited the liquidity of DB Auction Rate Securities, and ensured that, once an auction failed, investors would receive interest rates that were below market value and insufficient to compensate for the lack of liquidity.

52. To mask the inherent lack of liquidity of DB Auction Rate Securities, Deutsche Bank Securities engaged in a wide range of deceptive and manipulative tactics directed at auction rate securities investors and the market for auction rate securities. As credit markets deteriorated in the summer and fall of 2007, the range and extent of the deceptive practices employed by Deutsche Bank Securities increased as Deutsche Bank Securities attempted simultaneously to conceal the liquidity characteristics of the DB Auction Rate Securities while protecting itself from the consequences of its policy of intervening in auctions to prevent failures.

53. Throughout the Class Period, Deutsche Bank Securities intervened in the auctions by placing "support bids" to purchase DB Auction Rate Securities for its own account when the auctions otherwise would have failed due to lack of sufficient demand.

54. Deutsche Bank Securities was able to place support bids and prevent auctions from failing, because it was aware of the other bids in the auctions and could place its own bids after the bidding deadline for other investors.

55. Deutsche Bank Securities failed to disclose to investors the extent to which it made support bids during the Class Period, Deutsche Bank Securities' reasons for intervening to prevent auction failures, and the impact of its support bids on the market for DB Auction Rate Securities.

56. Deutsche Bank Securities' extensive and sustained interventions to prevent auction failures created the outward appearance that DB Auction Rate Securities were readily liquid investments, and that the auction market functioned by the natural interplay of supply and demand.

