

Corporate and Securities Alert Auction Rate Securities—Recent Settlements With SEC and Other Regulators

AUGUST 11, 2008

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On August 7 and 8, the Securities and Exchange Commission announced settlements with Citigroup Global Markets and UBS Securities LLC and UBS Financial Services Inc. These settlements appear to pave the way for retail and institutional customers to recoup their investments in auction rate securities (“ARS”) that had effectively been frozen since the beginning of the year.

While the full settlement agreements have not yet been made public, according to the SEC announcement, both Citigroup and UBS will be required to repurchase at par the ARS of retail investors in the near term, and use best efforts to repurchase at par the ARS of institutional investors by the end of 2009 or 2010.

In the meantime, until the ARS are repurchased, each bank must make no cost loans available to its customers and neither bank may liquidate its own holdings of ARS until customers’ holdings have been liquidated. The banks must also compensate customers for losses on any ARS sold subsequent to February 2008.

We understand that regulatory authorities from other states as well as the SEC are still conducting investigations with respect to the ARS practices of other institutions. However, only Citigroup and UBS have entered into settlements at this time, and therefore only customers of those institutions will be able to benefit from the terms of the announced settlements.

Key provisions of the Citigroup and UBS settlements include:

Required Repurchases by UBS

- No later than Oct. 31, 2008, UBS must offer to liquidate at par all ARS from its individual investors customers and charitable organizations who have less than \$1,000,000 in its funds on deposit at UBS
- No later than Jan. 2, 2009, UBS must offer to liquidate at par all ARS from all of its other individual investors and charitable organization customers as well as from small business¹ investors customers with account and household values up to \$10,000,000
- UBS must use its best efforts to offer to liquidate at par ARS from its institutional customers by the end of 2009. However, UBS must offer to liquidate at par all ARS held by institutional customers no later than June 30, 2010²

Required Repurchases by Citigroup

- Citigroup will liquidate at par all ARS from its retail customers, which include all natural persons, charities, and small businesses, no later than three months from the settlement date
- Citigroup will use its best efforts to liquidate at par ARS from its institutional customers by the end of 2009

Make Whole

Each bank will make whole any losses sustained by the customers described above who purchased ARS prior to February 2008 and subsequently sold such ARS. UBS has a deadline of September 15, 2008 to accomplish this.

No-Cost Loans

Each bank must provide customers no-cost loans that will remain outstanding until provision has been made for the liquidation of the customer's ARS.

Dispute Resolution

A special arbitration process run by the Financial Industry regulatory Authority, or FINRA, has also been established for customers of these banks who believe they have incurred consequential damages beyond the loss of liquidity of the ARS. Neither bank may contest its liability for any misrepresentations or omissions made with respect to the ARS, but it may contest the amount of damages claimed. The arbitration process is voluntary, and customers may elect all other remedies available to them.

Notice of Settlement Terms

Both banks must provide customers with notice of the terms of the settlements and must establish telephone assistance lines.

The full text of the Citigroup announcement can be found at:

<http://sec.gov/news/press/2008/2008-168.htm>

The full text of the UBS announcement can be found at:

<http://sec.gov/news/press/2008/2008-171.htm>

For additional information, please contact Jeffrey Vetter, Partner, Corporate Group at jvetter@fenwick.com, 650.335.7631 or any other member of your Fenwick team.

- 1. Note that "small business" is not defined in the release, and at this time we have not yet ascertained whether the term would apply to private technology companies.*
- 2. No deadline was specified for Citigroup in the announcement*

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