UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

HUTCHINSON TECHNOLOGY INCORPORATED,

Plaintiff,

vs.

UBS AG, UBS FINANCIAL SERVICES, INC., and UBS SECURITIES LLC,

Defendants.

Civil No. _______________

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff Hutchinson Technology Incorporated ("Hutchinson"), for its Complaint against Defendants UBS AG ("UBS AG"), UBS Financial Services, Inc. ("UBS Financial Services") and UBS Securities LLC ("UBS Securities") (collectively, "UBS" or "Defendants") states and alleges as follows:

INTRODUCTION

1. This action arises out of a massive fraud that UBS perpetrated upon Hutchinson (along with countless other UBS brokerage clients) relating to auction rate securities ("ARS").

2. As the woes of the sub-prime mortgage market began to spill over into the general credit market, UBS sought secretly to shift the risk from its swelling inventory of ARS onto clients like Hutchinson by pitching ARS as safe, liquid, "cash equivalent" investments while knowing that, in fact, the purported liquidity of the ARS had become an illusion. UBS knew—but did not disclose—that the purported liquidity was in fact

entirely dependent on UBS's own actions to stave off auction failures by placing "support bids" and its simultaneous efforts to drum up more and more purchasers of ARS through increased marketing and sales to customers like Hutchinson.

3. All the while, UBS secretly controlled the purported liquidity of the ARS. UBS, in its role as the underwriter and designated broker-dealer of the ARS, had the power to decide whether it would continue supporting the auctions, which in turn exposed UBS to ever greater unwanted risk. Conversely, it had the power to decide whether it would instead turn its back on its brokerage customers like Hutchinson, to whom it had marketed and sold the ARS as safe, liquid, "cash equivalent" investments, and deliberately "fail the auctions," rendering the ARS illiquid.

4. As the ARS market worsened throughout the second half of 2007 and early 2008, UBS internally (and secretly) wrestled with what it described as its "moral obligation" to support the auctions. It deliberately sought to keep this "moral" struggle hidden from its brokerage customers.

5. Finally, on February 13, 2008, UBS came to a decision. Without any warning to Hutchinson, UBS began deliberately "failing the auctions," rendering illiquid approximately $70 million dollars worth of ARS it had once marketed to Hutchinson as safe, liquid, cash equivalents.

6. As Hutchinson's fiduciary, UBS was supposed to act in Hutchinson's best interests. Instead, it acted fraudulently and in willful breach of its contractual and fiduciary duties. It has caused Hutchinson the inability to access nearly $70 million dollars.

7. Hutchinson now brings this claim for violation of the Securities Exchange Act of 1934, violation of Minnesota's securities laws, common law fraud, lack of suitability, unauthorized trading, violation of Minnesota's consumer protection laws, breach of contract, breach of fiduciary duty, negligence, and conversion.

8. UBS's fraudulent conduct has been the subject of investigations by the Securities and Exchange Commission ("SEC"), the Financial Industry Regulatory Authority ("FINRA"), the offices of the attorneys general of Massachusetts and New York ("MAG" and "NYAG," respectively) and other regulatory authorities. In June and July of 2008, the MAG and the NYAG filed separate complaints against Defendants UBS Financial Services Inc. and UBS Securities LLC. This Complaint by Hutchinson relies in part upon the results of those investigations and specifically incorporates by reference the NYAG and MAG complaints.

JURISDICTION AND VENUE

9. The Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1367. Certain claims asserted herein arise under the federal securities laws codified at 15 U.S.C. §§ 20 and 78, and 17 C.F.R. § 240.10b-5. The Court has jurisdiction over the state law claims herein because those claims are part of the same case or controversy as the federal claims. Jurisdiction also exists under 28 U.S.C. § 1332, as the parties are diverse and an amount in excess of $75,000 is at issue.

10. The Court has personal jurisdiction over Defendants because they transacted business with Hutchinson in the State of Minnesota. Further, UBS Financial

Services explicitly submitted to the jurisdiction of this Court in its agreement with Hutchinson.

11. Venue is proper in this Court under 28 U.S.C. § 1391 because a substantial part of the events and omissions giving rise to the claims in this case occurred in Minnesota.

PARTIES

12. Plaintiff Hutchinson Technology Incorporated is a Minnesota company with its principal place of business located in Hutchinson, Minnesota. Hutchinson was incorporated in Minnesota in 1965 and employs more than 4,500 people.

13. Hutchinson is a global technology leader committed to developing solutions for its customers. It has two primary divisions: a disk drive components division that is the world's leading supplier of suspension assemblies for disk drives, and a biomeasurement division that is focused on bringing new technologies and products to the market in the health care industry.

14. Defendant UBS AG is a leading Swiss-based financial services firm specializing in asset management, investment banking, and securities services. UBS AG is the parent company of Defendants UBS Financial Services and UBS Securities.

15. UBS Financial Services is a wholly-owned subsidiary of UBS AG. UBS Financial Services is a Delaware corporation with its principal place of business in Weehawken, New Jersey. UBS Financial Services is a registered broker-dealer, and offers brokerage, financial planning and investment products to individuals and

corporations across the United States. UBS Financial Services acted as Hutchinson's broker-dealer with respect to the investments at issue in this Complaint.

16. Defendant UBS Securities is a wholly owned subsidiary of UBS AG. UBS Securities is a Delaware corporation with its principal place of business located in Stamford, Connecticut. UBS Securities is a broker-dealer engaging in nationwide securities sales, trading, private banking, and underwriting services. UBS Securities served as the underwriter and broker-dealer for the ARS UBS purchased for Hutchinson.

FACTUAL ALLEGATIONS

Background of ARS

17. The $70 million worth of securities at issue are a type of ARS.

18. ARS are long-term bonds (typically 30 years) or preferred stock whose interest rates are re-set at predetermined periodic intervals (typically every 7, 14, 28 or 35 days) by means of a modified Dutch auction process. In the modified Dutch auction, potential purchasers (or their broker, as in Hutchinson's case) submit bids to a broker-dealer who is designated by the issuer to deal in the ARS in question. In the bid, the potential purchaser (or its broker) specifies to the designated broker-dealer the number of bonds or shares it would like to purchase and the lowest interest rate it would be willing to accept for purchasing the bond or preferred stock at par. The bids are collected by the designated broker-dealer and then submitted to an auction agent. The auction agent then orders the bids and determines the lowest interest rate that would successfully "clear" the auction by satisfying enough bids to meet the supply of available bonds or shares (i.e., the

number of bonds or shares that existing holders want to sell). That rate, referred to as the "clearing rate," is then applied uniformly to all successful bids.

19. The auction mechanism thus provides liquidity despite the long-term nature of the underlying investment because it allows holders to sell their securities at the next available auction.

20. ARS have a "max rate"—the maximum rate that the issuer of the ARS is obligated to pay.

21. An auction "fails" in the event that there are not enough bids to purchase the available supply of ARS at a rate less than or equal to the max rate. In that event, all existing holders must continue to hold the ARS until the next auction. In the interim, the issuer pays to existing holders the max rate (sometimes also called the "fail rate" or "default rate").

22. Once an ARS fails at auction, it typically continues to fail, as the failure signals to potential purchasers that there may be substantial liquidity risks in purchasing the ARS.

23. A designated broker-dealer of an ARS is generally permitted to prevent an auction from failing by submitting its own bids that effectively set a successful clearing rate. Such bids are referred to as "support bids." The broker-dealer is in a position to do this, as it has visibility to incoming bids and can determine whether an auction will fail based on those bids.

24. When a broker-dealer submits a support bid, it becomes the owner of the ARS on which it bids, and holds those securities in its own account (recording them on its balance sheet).

25. For a number of reasons, issuers wish to avoid having their ARS fail at auction. Therefore, an issuer of an ARS that is in jeopardy of failing would want the broker-dealer that it designated to submit support bids to rescue the auction.

26. ARS are first brought to the market via underwriters, who serve as the initial purchasers of the securities. Underwriters earn fees for underwriting ARS. UBS served as a predominant underwriter in the ARS market, and received significant compensation (typically one percent of the amount underwritten) from the issuers for its underwriting duties.

27. In addition, designated broker-dealers (sometimes referred to as lead or sole "managers") are compensated for their duties. UBS served as a predominant broker-dealer in the ARS market, and received significant compensation from the issuers for its broker-dealer duties (typically an annual management fee plus an additional management fee at each auction).

28. UBS incentivized its financial advisors ("FAs") to sell ARS by providing the FAs who make the sale a portion of the management fee as commission. Those FAs would have received no commission if they instead sold UBS's standard money market fund.

29. UBS served as underwriter and designated broker-dealer for all of the ARS it purchased for Hutchinson and therefore was compensated by the issuer for its role.

30. Thus, while owing fiduciary duties to Hutchinson as its discretionary broker and financial advisor, UBS simultaneously owed allegiances as underwriter and designated broker-dealer to the issuers of the ARS that it was purchasing for Hutchinson.

Hutchinson Sets Up A Discretionary Cash Management Brokerage Account, Seeking Primarily Safety and Liquidity

31. On or about January 20, 2006, Hutchinson and UBS entered into a discretionary cash management brokerage agreement, titled "Corporate Cash Management Account Agreement and Grant of Discretion" (the "Agreement") (attached as Exhibit A).

32. The Agreement, which superseded prior agreements between the parties, governed an existing discretionary cash management brokerage account that Hutchinson had maintained at UBS since the early to mid- 1990s (the "Account"). The purpose of the account was to enable Hutchinson to maintain a sizable liquid investment that would be readily available as cash to address Hutchinson's needs based on volatility in the technology sector, cyclical economic changes, capital intensity, research and development costs, and costs associated with technological conversions. In addition, the Account held funds that Hutchinson planned to use to satisfy various other obligations, including $150 million of convertible notes that are due March 15, 2010 ($90.1 million of which remain outstanding).

33. The Account operated (both prior to and under the Agreement) as a discretionary brokerage account, whereby UBS was authorized to purchase securities on Hutchinson's behalf so long as the purchases were consistent with Hutchinson's stated

investment objectives. Hutchinson communicated its investment objectives to UBS in a written investment policy, which Hutchinson annually provided to UBS and which UBS annually acknowledged by signing and returning to Hutchinson. The investment policy in effect at least since 2007 (the "Investment Policy") is attached hereto as Exhibit B. This Investment Policy was "acknowledge[ed] and accept[ed]" by UBS by letter dated March 16, 2007, attached hereto as Exhibit C.

34. Hutchinson's Investment Policy is incorporated into the Agreement between Defendant UBS Financial Securities and Hutchinson. As such, UBS was bound to purchases that conformed to Hutchinson's Investment Policy.

35. The Agreement reads in relevant part: "[Hutchinson] hereby grants to [UBS] discretionary authority with respect to investments and reinvestments of the Account in such instruments as authorized by [Hutchinson] pursuant to [Hutchinson's] Investment Policy."

36. Under New York law (which the parties agreed would govern the Agreement), the grant of such discretionary trading authority gives rise to broad fiduciary duties on the part of UBS with respect to management of the Account. *See, e.g.*, *Dimsey v. Bank of America*, No. 600391/2006, 2006 WL 3740349 (N.Y. Sup. Aug. 24, 2006) (citing cases).

37. In its Investment Policy, Hutchinson identified its investment objectives as: 1) "Preservation and safety of capital;" 2) "Maintain necessary liquidity;" and 3) "Maximize the rate of return within the stated guidelines."

38. In its Investment Policy, Hutchinson also explicitly identified the types of securities that UBS would be permitted to purchase on its behalf. That list included three specific types of ARS of the various types of ARS available in the market: 1) "Money Market Auction Notes;" 2) "Auction Rate Preferreds;" and 3) "Auction Rate Taxable Municipals." ARS that are not of the three types identified in the Investment Policy are not authorized.

39. The specific *type* of ARS authorized by Hutchinson is significant, because each type of ARS is backed by different collateral, and involves different risks in terms of liquidity and default.

40. Importantly, Hutchinson's Investment Policy does *not* permit or authorize UBS to purchase ARS issued by student loan organizations ("SLARS"). SLARS are issued primarily by student loan trusts, and are backed by collateral that consists of a mix of student loans. These present greater liquidity risks than the types of ARS that were authorized because the underlying collateral is very difficult to value.

41. Internal UBS documents reflect the fact that UBS distinguished SLARS from other types of ARS.

42. Nevertheless, in its efforts to put and keep Hutchinson's funds in ARS, UBS disregarded the clear terms of the Investment Policy and instead purchased SLARS, which were not authorized.

43. Meanwhile, despite the fact that UBS knew the difference between SLARS and municipal ARS, UBS issued account statements to Hutchinson identifying the SLARS as "Municipal securities." In addition, in correspondence, UBS FAs continually

referred to the securities as "taxable *municipal* auction securities." These representations were false. SLARS are not municipal issued ARS. SLARS were not authorized under the Investment Policy and should therefore not have been purchased by UBS for Hutchinson.

UBS Purchases SLARS on Hutchinson's Behalf

44. Most of the approximately $70 million worth of ARS at issue (all of which were unauthorized SLARS) were purchased in the mid-2007 to February 2008 time period. Indeed, between February 1 and February 7, 2008 (days before UBS began failing auctions), UBS purchased nearly $13 million of SLARS on Hutchinson's behalf.

45. The purchases of the currently illiquid SLARS were as follows:

a. On November 17, 2006, UBS purchased $9 million worth of SLARS issued by the Illinois Student Assistance Commission, a commission established under the laws of Illinois;

b. On May 3, 2007, $4.6 million worth of SLARS issued by New Hampshire Higher Education and Health Facilities Authority, a nonprofit corporation;

c. On May 18, 2007, $3.5 million worth of SLARS issued by Pennsylvania Higher Education Assistance Agency, a public corporation;

d. On June 4, 2007, $6.55 million worth of SLARS issued by Iowa Student Loan Liquidity Corporation, a nonprofit corporation;

e. On July 26, 2007, $4 million worth of SLARS issued by the Connecticut Student Loan Foundation, a nonprofit corporation;

f. On August 21, 2007, $6.5 million worth of SLARS issued by Pennsylvania Higher Education Assistance Agency, a public corporation;

g. On August 23, 2007, $5.7 million worth of SLARS issued by the Connecticut Student Loan Foundation, a nonprofit corporation;

h. On August 31, 2007, $7 million worth of SLARS issued by the Indiana Secondary Market Ed Loans, a nonprofit corporation;

i. On October 17, 2007, $10 million worth of SLARS issued by Utah State Board of Regents, a board organized under the laws of Utah;

j. On February 1, 2008, $1 million worth of SLARS issued by the Illinois Student Assistance Commission, a commission established under the laws of Illinois;

k. On February 1, 2008, $3 million worth of SLARS issued by Indiana Secondary Market for Education Loans, Inc., a nonprofit corporation;

l. On February 5, 2008, $5.4 million of SLARS issued by New Hampshire Higher Education and Health Facilities Authority, a nonprofit corporation; and

m. On February 7, 2008, $3.45 million worth of SLARS issued by Iowa Student Loan Liquidity, a nonprofit corporation.

UBS Represents ARS As Safe, Liquid Cash Equivalents

46. Throughout the course of purchasing the SLARS for Hutchinson, UBS consistently represented to Hutchinson that ARS were highly liquid, safe investments for

short-term investing and were equivalent to cash or money market instruments. UBS made these representations in various marketing materials about auction rate securities. UBS also conveyed these misrepresentations to Hutchinson in informal communications. And these false statements were reinforced by UBS when Hutchinson received its UBS account statements, which listed the ARS as "cash alternatives."

47. For example, throughout 2007, in informal communications between Hutchinson's treasurer and a UBS FA, the UBS FA explained that ARS were safe, liquid instruments. The UBS FA also assured the treasurer that the ARS had never had a default, that there was minimal payment default risk associated with these securities and similarly that the auctions had been in existence for 20 years and the risk of a failed auction was virtually non-existent. In one conversation, when the treasurer asked one of the UBS FAs if he was comfortable with Hutchinson's position in ARS, the FA responded that he was comfortable and further described the investment as a "no brainer."

48. In addition, each month UBS sent Hutchinson account statements. These account statements listed Hutchinson's holdings in ARS under the heading: "cash alternatives."

49. Furthermore, on its public website, UBS Financial Services posted a marketing piece entitled "Cash & Cash Alternatives Addressing Your Short-Term Needs." In this marketing piece, UBS defined liquidity as "the ability to quickly convert investments into cash when you need it. Investing in cash alternatives can add this flexibility to your overall portfolio strategy. Cash alternatives are highly liquid, short-

term investments." ARS were among the cash and cash equivalent investments listed in this marketing piece.

50. Hutchinson reasonably relied upon representations it received from UBS.

51. It was commonly known at UBS that ARS were being marketed as "cash equivalents" or "cash alternatives." For example, on December 15, 2007, David Shulman, Global Head of Municipal Securities Group at UBS Securities, sent an email stating:

> These ARCS instruments—obviously not ideal as a structure . . but I believe **have been sold for years as a cash alternative instrument**—and **retail clients have—I am confident been told that these are 'demand notes**. . and will be redeemed at par on demand—thereby relying on the remarketing agent to provide this liquidity 100 cents on the dollar on auction date . . . although there is no formal liquidity provision in place and always relies on the dutch auction mechanism to clear . . . the moral obligation runs very deep. (Emphasis added.)

UBS Fails to Disclose The Truth—That In Fact The ARS Market Was Collapsing, But For UBS's Own Efforts to Stave Off Collapse While Shifting Risk Onto Clients Such As Hutchinson

52. UBS's representations about the nature of ARS were materially false and misleading. Contrary to UBS's statements, ARS are not appropriately characterized as "cash equivalent" or "cash alternatives" because they contain a substantial risk—which was increasing dramatically at this time—that the auctions would fail due to insufficient demand.

53. But a simple "mischaracterization" of ARS's liquidity risk does not even begin to describe the deliberate fraud that UBS perpetrated upon Hutchinson and other brokerage clients like it. UBS's conduct was far more nefarious.

54. As revealed now by the various regulatory investigations into UBS's marketing of ARS, from at least August 2007, UBS was quite deliberately putting its clients, such as Hutchinson, into ARS in order to shift upon them the growing risk of auction failure that UBS itself was no longer willing to bear. As evidence unearthed by the regulatory investigations now makes clear, UBS's deceptive actions were the consequence of a conflict of interest that UBS experienced in its dual roles as broker to customers like Hutchinson and underwriter/manager to issuers of ARS.

55. As discussed below, internal UBS documents reveal:

a. that, from at least August 2007, UBS was aware of serious and worsening problems in the ARS market;

b. that the auctions associated with the ARS would have failed but for Defendant UBS Securities' intervention in its role as manager of the auctions by placing support bids;

c. that these support bids were increasing dramatically ($6.85 billion in June 2007, $7.53 billion in September 2007, $14.12 billion in January 2008);

d. that UBS Securities propped up the auctions through support bids due to its relationships with the issuers, who compensated UBS;

e. that as a result of UBS Securities' increasing use of support bids to stave off auction failure, UBS's inventory of ARS had swelled to billions of dollars beyond internal caps established by its risk management policy;

f. that in late 2007 UBS was able to convince issuers to temporarily waive the max rates so that UBS would not have to intervene with clearing rates substantially beneath market rates;

g. that UBS deliberately sought to alleviate this risk by conscripting FAs from UBS Financial Services—many of whom were kept in the dark as to how UBS controlled the market for ARS and what it planned to do;

h. that for months UBS considered the possibility of ceasing its support of the auctions, i.e., "failing the auctions;"

i. that during this time, senior managers at UBS were selling their personal holdings in ARS while simultaneously encouraging FAs from UBS Financial Services to sell more to brokerage clients; and

j. that UBS deliberately decided to fail the auctions beginning February 13, 2008.

56. UBS never disclosed to Hutchinson (or to the public) these material facts.

57. Indeed, throughout this time, up until February 13, 2008, UBS explicitly assured Hutchinson that the ARS markets were perfectly fine.

58. Internally UBS was a veritable dysfunctional family, where, the parent, UBS AG, sought to reduce risk and simply watched as senior officials at UBS Securities blamed UBS Financial Services for the ARS product (which they described as a "huge albatross") but cooperated with senior officials from UBS Financial Services to sell the product internally to unwitting FAs from UBS Financial Services, who in turn were encouraged to push ARS onto unsuspecting clients.

59. The documents unearthed by the regulators constitute strong direct and circumstantial evidence of UBS's fraudulent intent and demonstrate that Defendants had clear motive and opportunity to commit fraud.

60. Many of the documents are delineated in greater detail in the complaints filed against UBS by the NYAG and the MAG. This Complaint will not repeat all of the NYAG's and MAG's allegations as to those documents, but rather will refer to some and also specifically incorporate the NYAG and MAG complaints as if fully set forth herein (see complaints attached hereto as Exhibits D and E).

61. There are many players at UBS involved in this fraud. Principal players include: David Shulman, Global Head of the Municipal Securities Group at UBS Securities; Ross Jackman, the Trading Desk Manager at UBS Securities; Chris Long, the Short Term Desk Manager at UBS Securities; John Hausmann, the Director of Product Management at UBS Financial Services; Joseph Scoby, the Chief Risk Officer at UBS Securities; and a "Governing Executive Board" made up of senior officials at UBS AG.

62. Following is a sample of what the documents reflect was occurring internally at UBS during the mid-2007 to February 2008 timeframe, all unbeknownst to Hutchinson.

63. On August 20, 2007, David Shulman, Global Head of Municipal Securities, sent an email concerning auction rate preferred stock ("APS"), a form of ARS. Shulman wrote:

> . . . **am trying to determine best exit strategy for moving more risk off muni books** . . . all of the APS product below (legacy from before integration) . . . is heavily reliant on our wealth management

group for distribution . . . as this ultimately is preferred stock . . most firms on the street trade this off their preferred desk. We make zero revenue on this product . . . it all gets paid out 100% to wealth management brokers. **Our inventory is higher than our limits right now** . . . and I will not recommend for us to participate to take on any more of this risk. . . . (Emphasis added.)

64. On August 22, 2007, Shulman emailed Jackman, the Trading Desk Manager, and others, regarding a "[financial advisor] call on the auction markets." Shulman wrote:

> **we have encouraged our [Wealth Management] partners to mobilize the troops internally to focus on value so that we can move more product through the system . . . this is our best and most effective way of hedging our exposure** . . . and to demonstrate the relative value in the muni product area . . . thank you for your focus. (Emphasis added.)

65. That same day, Long, the Short Term Desk Manager, acknowledged the sales efforts in an e-mail summarizing a conference call that day with UBS financial advisors:

> On another note a conference call was held this afternoon with the retail FA system. The call had great participation from the field, the Wealth Management group did an excellent job in re-educating the field as to the structure and credit quality of the 40' act deals. **Our hope is that this gains some traction with the sales force and alleviates capital usage concerns over the coming days.** (Emphasis added.)

66. On August 23, 2007, Long sent an email to John Hausmann, the Director of Product Management for UBS Financial Services, and others. In it he stated:

> Below tracks the last 7 trading days worth of secondary market activity in APS (UBS client purchases). While in my opinion yesterday's conference call was a success in many respects the greatest proof will be in the trend below continuing. Today marks the highest level in regards to par value of Retail distribution in the

> APS market in over a week. While we still have considerable progress to make, I find some solace in today's result.

67. On August 28, 2007, Chris Long, the Short Term Desk Manager, described UBS's careful balancing act of trying to unload inventory while satisfying issuer relations in an email as follows: "We are basing pricing decisions based on our ability to attract investors while managing issuer client relationships and will continue to do so in efforts to move securities."

68. On August 30, 2007, Shulman emailed Michael Weisberg, Global Head of Products & Services North America, stating:

> We are working closely with Hausmann [Dir. of Product Management, UBS Financial Services] and the marketing forces to demonstrate municipal bond relative value to the FA national sales force. **As your division is critically important to us from a distribution perspective for specifically APS and ARCs product**, it is important that the lines of communication stay wide open . . . **As you can imagine during these stressful times, the pressure is on to move our inventory.** (Emphasis added.)

69. On September 5, 2007, Jackman emailed Shulman, "[C]learly student loans are pushing us over inventory limits. **I'm concerned that this will continue as retail buyers continue to prefer traditional muni credits. We need to find a short term solution and a long term solution for this problem**." (Emphasis added.)

70. On September 6, 2007, Panagoitis Koutsogiannis in risk management asked Shulman "how do MUNIS plan to contribute to the liquidity creation and balance sheet reduction exercises?" Shulman responded:

> we understand clearly the mandate and have been exploring all options . . . **please note we will be under severe inventory pressure** from client base in the auction rate markets as move into

> quarter end . . . (these are seasonal trends in municipals). **I have legal looking into options to EXIT some business lines (to resign from supporting the programs that we have been senior manager on for 5+ years) to accommodate our firms request and what our liability in the marketplace/[Wealth Management] and reputation issues with issuers as well as investors would be . . .** long term – this will cost us – my view.
>
> SHORT TERM INVENTORY – currently 3 billion . . . 2.3 bill ARCS (1.3 bill is taxable student loans)-this is the area of focus for us in reducing (we are looking into discounting the paper to distribute as well as potentially resigning from supporting as senior manager). Many legal and reputational issues on this decision . . . I cant [sic] commit to being down by 1 billion without exiting a business right now – this is a product that was created by [Wealth Management] and as an auction rate mechanism . . . just doesn't go away-without resigning from programs or terming out to longer term financing. (Emphasis added.)

71. Shulman then forwarded this email to the assistant to Robert Wolf, the President and Chief Operating Officer of UBS Investment Bank, stating: "so you can see what's going on . . . this is [Wealth Managegment] legacy product (we get paid ZERO for it in the IB) yet are held hostage to it in every sense . . . **I don't want to service this product either – quite frankly and am happy to responsibly dispose of it—we are trying for sure**." (Emphasis added.)

72. On or about October 31, 2007, Shulman received an email from Kenneth LaBarge, in which LaBarge wrote: "David, adding to the list, I have to do a conference call with another client CFO who wants to sell his AAA ARCS because his auditor, PWC, is telling him there are problems with auction securities and to get out now. I expect other clients to call knowing that PWC started the whole reclassification mess and how many corporate clients they have."

73. Shulman then forwarded the email from LaBarge to Wolf's assistant in an email titled "Holding the Bag," stating:

> This is what we dealing [sic] with - fyi - retail [wealth management] that now is demanding liquidity - **putting more pressure on balance sheet etc**. . . this is the gift that keeps on giving . . am speaking to [UBS's Global Head of Products and Marketing] tonight from zurich on this and all failed auction stuff. . . . **this is a huge albatross** . . . really something . . . [wealth management] enjoyed all the fees and rev when times are good . . now the [investment bank] steps in to provide balance sheet and risk with a limited exit strategy - very hostage to [Wealth Management] for distribution - that was and is the model . . totally lopsided . . . unreal. (Emphasis added.)

74. On November 15, 2007, UBS's Chief Risk Officer of Americas UBS Investment Bank e-mailed senior members of the UBS auction rate securities desk and demanded: "[W]hy the continual increase in ARC inventory? What measures are being taken to reduce this exposure?"

75. On November 15, 2007, Jackman replied:

> We continue to see selling pressure across all investor classes. We are aggressively widening spreads across all silos in efforts to attract cross over and non-traditional buyers. . . **We will continue to price securities to attempt to attract those investors mentioned above.** (Emphasis added.)

76. On December 11, 2007, UBS held over $3.2 billion in auction rate securities.

77. On December 11, 2007, in response to an e-mail from Scoby, the UBS Securities Chief Risk Officer, in which Scoby admitted that he was "very nervous about getting long a bunch of paper," Shulman acknowledged that, "**I understand completely the need to move this paper down** . . . Despite being very hostage to the [Wealth

Management] franchise for distribution of these products (**we are pressing as hard as we can**), we are reaching deep into the institutional client base to take these." (Emphasis added.) As was UBS's tendency, its reaction was to re-double its sales efforts.

78. That same day, Schulman sent an email to a Co-Head of Student Loan and the Municipal Securities Institutional Manager an e-mail titled "need to put together a sales force call on muni arcs—student loan." Schulman provided the following instruction: "**we need to move this paper** and have to explore all angles possible. . . we need to do this as quickly as possible." (Emphasis added.)

79. On December 11, Jackman sent an email to Shulman and another, stating: "[W]e were very concerned about the max rate issue and continue to support this product (as we own all the tail risk) we need to find a long term solution. Please push these providers into discussions now. **The auction product is flawed** and we do want to be in a position with resets at T Bills + spreads come February and the turn of the calendar will not correct the problem in this marketplace." (Emphasis added.)

80. In response, Jackman was asked: "How much do you need to move by February?"

81. In reply, Jackman stated: "We need to scrub the book for any deals that will have a max rate in feb. and work on the deals first to be converted to vrdo's. **I think eventually most of the book needs to be converted as the auctions aren't going to come back. . . .** " (Emphasis added.)

82. On December 12, 2007, Jackman emailed Shulman: "**The auction product does not work** and we need to use our leverage to force the issuers to confront this

problem **our options are to resign as remarketing agent or fail or?**" [sic] (Emphasis added.)

83. That same day, Shulman sold his remaining personal shares of ARS, while at the same time continuing to orchestrate enhanced marketing efforts to clients.

84. On December 15, 2007 Shulman emailed Joseph Scoby (UBS Securities' Chief Risk Officer) and indicated that:

> . . . I will need some guidance from you as well as marcel in terms of our overall position and philosophy as it relates to continuing to support these auctions. Given the size held within [Wealth Management] and all the reputational dynamics that go along with this decision, establishing somewhat of a framework is critically important in advance. . . . **What is clear is that the fundamental mechanism of ARCs structure is not working in a liquidity squeezed environment**. . . . (Emphasis added.)

85. Shulman also acknowledged:

> These ARCS instruments—obviously not ideal as a structure . . but **I believe have been sold for years as a cash alternative instrument—and retail clients have—I am confident been told that these are 'demand notes**. . and will be redeemed at par on demand—thereby relying on the remarketing agent to provide this liquidity 100 cents on the dollar on auction date . . . although there is no formal liquidity provision in place and always relies on the dutch auction mechanism to clear. . . **the moral obligation runs very deep.** (Emphasis added.)

86. On December 17, 2007, Scoby sent an email to Shulman and others stating:

> I need to know your inventory each day of munis and student loans and how much it had changed . . . please do this after any auctions for that day. Starting today. . . .
>
> If you find yourself experiencing a horrible auction: ie you need to support more than 25% or more money that you have used in other auctions, call risk control BEFORE you support it.

> If you see signs that other dealers are walking away from auctions, let us know.

87. By December 19, 2007, the concern about the ARS inventory increases were elevated to the highest levels at UBS's parent, UBS AG. Scoby spoke with UBS AG's Governing Executive Board ("GEB") about the ARS market conditions. Following this meeting, Scoby sent an e-mail titled "Munis/student loans etc. URGENT" to the Global Head of Municipal Securities, the Chief Risk Officer of the Investment Bank, the Global Head of Products and Marketing and the Deputy CEO. The e-mail requested a host of information to be provided to the GEB, including: (1) a description of inventory levels, (2) a description of what happens when an auction fails, (3) a description of where failed auction paper would be sold, and (4) a description of an "ugly scenario, considering technical imbalances (supply-demand) and deterioration in credit worthiness. How much money we would lose?"

88. In an email dated December 19, 2007, Long proposed a response that stated: "In the event of a failed auction, the securities in question would be rendered illiquid." Long acknowledged that: "Our risk in essence, resulting from failed auctions, would be a required reclassification of the assets on the book from the current mode (i.e. 7, 28, or 35 day) to an asset (FRN) with a 30-40 year final maturity. This reclassification would be accompanied by significant increases in VAR, Stress and Capital charges."

89. Long further noted that widespread ARS failures could occur and that failures occurring in one type of ARS could create market failures for all types of ARS:

> **This forces the hand of every broker dealer in the auction market to decide between supporting deals, taking inventories at**

> **levels far below market rates or failing auctions (not supporting) which triggers a chain reaction of selling across all auction products, regardless of them being Student Loans, Municipals or Auction Preferred Stock.**
>
> **Mark to market losses would be significant, to all parties involved.** (Emphasis added.)

90. Beginning in 2008, in response to the substantial decrease in corporate cash demand for ARS, UBS Financial Services FAs began a "re-education" campaign.

91. On January 8, 2008, the Municipal Bond Chief wrote an email titled "Already Starting" to Shulman, stating that, "I was just asked by a former co-worker . . . that he is hearing that municipals at UBS going to be shut down." Shulman remarked: "**Imagine if [Wealth Management] fa's get a whiff of this** - how much paper you think they sell back to desk- **scary and delicate quite frankly**." (Emphasis added.)

92. On January 9, 2008, Scoby wrote to Wolf that he needed a write-up of the auction rate situation for UBS's Governing Executive Board. He wrote that he wanted the write-up to include: "Feedback from marten and Michael (I suggest you let them ghost write it) on reputation damage if we fail. . . . [F]inally, the merits of a strategy in which we discriminate which auctions we fail based on credit quality and separately based on which clients own that particular issue."

93. By January 31, 2008, UBS held approximately $9 billion in auction rate securities, more than $6 billion over UBS's internal caps.

94. In February 2008, auction rate securities inventory continued to increase at UBS, as did a recognition that widespread failure was imminent.

95. On February 1, 2008, Shulman wrote an e-mail entitled: "Been thinking a lot." In it, he concluded that the auction rate securities business, "despite generating approx 150-200 million for [Wealth Management] is **a complete loser**." (Emphasis added). Shulman opined that UBS should close the business: "our best sensing this and will be leaving anyway" and remarked that: "**This is absolute torture**." (Emphasis added.) Rather than apprise UBS's customers that a senior Municipal Securities official believed that UBS should close its auction rate securities business as it was a "complete loser," UBS continued to push auction rate securities on its customers as a cash equivalent investment.

96. On February 4, 2008, UBS held approximately $9 billion in auction rate securities. On February 6, 2008, the Head of Product & Marketing sent an e-mail to the Head of Product Management and the Global Head of Municipal Securities, in connection with a presentation to the GEB's Risk Committee, listing the issues to be discussed, including "exposures," "no easy way out-muddle along," "fail and exit," "backstop," "what biz could be with investment," "each scenario-economics," "process to achieve with time-line," "risks" and "implications."

97. On February 6, 2008, Jackman sent an email to Schulman and others, stating: "**D Day will come soon on the max rate issue on the ARCs** and we need solutions or we are going to be left buried with below market securities and no options." (Emphasis added.)

98. On February 7, 2008, Shulman summed up UBS's auction rate securities situation: "Clock-ticking-not sustainable."

99. By February 8, 2008, UBS held approximately $10.5 billion in auction rate securities. Due to the inventory levels, UBS was feverishly trying to sell the ARS through its financial advisors for retail clients.

100. On February 8, 2008, Shulman e-mailed Wolf, the President of the Investment Bank and expressed his concerns over the ever-rising inventory levels as a result of UBS's continuing to support ARS auctions:

> I . . . hopefully look to receive some closure or decision on the firm's overall posture and position with respect to the short term municipal market pressure we currently face. I need to write this note to you to express that I am extremely conflicted in the role that I currently am in as Head of the MSG within the IB. While as a shareholder and dedicated employee, I am trying to walk the fine line and balance between managing market risk with overall franchise risk for UBS. In my functional role as Head of the MSG, I must communicate that **I am not comfortable at all with the current risks that we in the [Investment Bank] are taking on with respect to ARCS (most specifically Student Loan) exposure**. To me, for the IB - the risks of accumulating more positions are real and very significant... we must fully understand what position we put the IB and the MSG group in by continuing to support the auctions. **I do not like this risk nor would I look to accumulate this risk.** I am most concerned . . . about the possibility of "max rate" reset features on these instruments. . . . When this occurs, no doubt – this will result in large selling on behalf of [Wealth Management] clients and the IB owning substantial inventory being carried at well below funding costs . . . **Many of our competitors' decisions recently are now forcing our hand to make some very difficult decisions that obviously have many implications.** I just thought appropriate to communicate to you, my deep concerns about the substantial risks we in the MSG are assuming, and how much this can compromise our overall Munipal franchise and quite frankly – all solely in an effort to support our [Wealth Management] client franchise. (Emphasis added.)

101. Also on February 8, 2008, Jackman questioned the continued participation of Chris Long, the Trading Desk Manager on Financial Advisor Calls: "How can Chris do this call? **All the FA's will have one question on supporting**?" (Emphasis added.)

102. Long did participate in the Financial Advisor Call that day and continued to paint a promising picture of the ARS market to financial advisors: "The public auction market continues to clear hundreds of auctions daily, with lead-broker-dealers frequently bidding to clear auctions where needed. While broker-dealers are not obligated to bid in auctions, we do not have reason to change our current practice when UBS is lead underwriter." After the Financial Advisor Conference, a summary of the call made note of the fact that management was required to provide "a lot of cuddling & comforting today . . . ."

103. On February 12, 2008, on the eve of UBS's allowing its auctions fail, the Deputy CEO sent the CEO an e-mail titled "Carpe Diem," and stated: "I will not repeat obvious statements about [Wealth Management] franchise risks and related subjects."

104. That same day, the GEB held an "Extraordinary Audio Conference" on the current ARS market conditions. Among the participants were senior UBS management, including, the CEO and the Group Chief Risk Officer. According to the meeting notes, which were mainly redacted:

> The GEB has an extensive discussion whether or not we should join the competitors . . . in failing auctions of student ARCS. The sense of the meeting is in favor of failing if the markets develop as they do, and [the Chief Risk Officer of UBS AG] is instructed to further watch the markets and make the appropriate decisions tomorrow.

105. Nevertheless, on February 12, 2008, in an email entitled "Inventory," Scoby wrote to Shulman and others: "**we need to beat the bushes harder than ever to unload this paper**." (Emphasis added.)

UBS Does Not Disclose Any Of These Problems, and Indeed Purchases Additional ARS For Hutchinson During this Time

106. None of the above internal discussions about the collapse of the ARS market, about UBS's swelling inventory, about its re-doubled efforts to "unload" ARS in order to reduce risk on UBS's balance sheet, about its concerns about liquidity or about its consideration of "failing auctions" was disclosed to Hutchinson. Far from it, UBS's FAs continued to assure Hutchinson that everything was fine up until February 13, 2008.

107. Indeed, UBS was actually still purchasing millions of dollars worth of additional ARS for Hutchinson as late as February 7, 2008—just five days before UBS decided to fail the market. Between February 1 and February 7, UBS purchased nearly $12 million worth of ARS for Hutchinson.

108. On Monday, February 11, 2008, Hutchinson's Treasurer read in the Wall Street Journal that certain ARS managed by Goldman Sachs Group, Inc., had failed the prior Thursday and Friday. She wrote an email to UBS FA Paul Tashima, asking for his "current assessment of UBS' inventory of student loan auction rate securities as opposed to 3, 6, and 12 months ago." She asked, "Are you seeing any impacts on the current valuations or liquidity of these securities?"

109. Tashima called back and assured her that UBS was fully supporting all its auctions and that he saw no problem with these securities.

110. On or about February 12, when Hutchinson's Treasurer then learned that Citigroup had now failed auctions, she called Tashima again to say that Hutchinson wanted to liquidate its holdings in ARS. Tashima informed her that UBS was supporting its auctions but that Hutchinson could not liquidate until the next auction.

UBS Suddenly Stops Supporting the Auctions, Resulting In Market Collapse

111. On February 13, 2008, unwilling to bear the risk to which its growing inventory of ARS exposed it, UBS stopped supporting auctions altogether and "walked away" from the ARS market. UBS never disclosed that it would do this. Scoby, UBS Securities' Chief Risk Officer aptly noted that, "There will be significant client relationship damage."

112. The ARS immediately failed at their next auction.

113. Hutchinson was left with approximately $70 million of highly-illiquid investments.

114. The auctions have continued to fail since February 2008, and there is no foreseeable return of a market for these securities.

The Government Investigates UBS's Conduct and Concludes It Was Fraudulent

115. UBS's fraudulent conduct toward Hutchinson was part of a broader fraudulent scheme causing UBS's retail and institutional brokerage customers to lose the ability to access billions of dollars worth of the same or similar ARS. As noted, that conduct has been the subject of investigations by the SEC, FINRA, NYAG, MAG and other regulatory authorities.

116. In June and July of 2008, the MAG and the NYAG filed separate complaints, respectively, against Defendants UBS Financial Services Inc. and UBS Securities LLC. The complaints allege that UBS acted fraudulently.

117. In addition, the SEC's staff has publicly stated its view that UBS's conduct with respect to ARS was fraudulent.

118. On September 19, 2008, Linda Chatman Thomsen, Director of the Division of Enforcement for the SEC, testified before the U.S. House of Representatives Committee on Financial Services regarding ARS.

119. During her testimony, Ms. Thomsen stated that "[t]hrough their sales forces, marketing materials, and account statements, firms [like UBS] misrepresented to their customers that ARS were safe, highly liquid investments that were equivalent to cash or money market funds."

120. Ms. Thomsen also noted that the firms, like UBS, "failed to disclose the increasing risks associated with ARS, including their reduced ability to support the auctions. By engaging in this conduct, **those firms violated the Federal securities laws, including the broker-dealer antifraud provisions**." (Emphasis added).

121. Ms. Thomsen noted several particular misrepresentations made by UBS and Citigroup, the two largest ARS market participants:

> Our investigative record shows that both firms made material misrepresentations and omissions to their customers in connection with their marketing and selling of ARS. The SEC's investigation further shows that, until the ARS market seized, Citigroup and UBS marketed ARS to their customers as safe and highly liquid investments with characteristics similar to money market instruments. These firms misleadingly characterized ARS as 'cash

> alternatives' or 'money market and auction instruments.' These representations were made in oral communications from brokers to customers and on customer account statements. Further, the investigation showed that the firms failed to adequately disclose to customers the liquidity and investment risks of ARS. Among other things, the firms failed to disclose that in late 2007 and early 2008, ARS liquidity risks had materially increased, when the firms knew that there was an increased likelihood that they and other broker-dealers would no longer support the auctions.

UBS Settles

122. In August 2008, UBS reached an agreement in principle with the regulatory authorities (the "Settlement"). The terms of the Settlement are so onerous for UBS that the Settlement can be regarded as nothing less than an admission of wrongdoing.

123. Nevertheless, the terms do not return Hutchinson to the position it would otherwise be in but for UBS's fraud.

124. Pursuant to the Settlement, UBS has agreed to redeem all ARS held by its customers at par. However, the settlement provides that the purchases will take place over several years, and corporations with positions of more than $10 million (like Hutchinson) will not be able to start selling their positions to UBS until June 30, 2010.

125. Pursuant to the Settlement, UBS also agreed to extend to firms like Hutchinson liquidity loans at no net cost at up to 75% of market value in most cases. However, in those transactions the client remains obligated to repay the loan on demand even if the value of the ARS declines.

126. In light of the onerous settlement obligations and the current market climate, it is uncertain whether UBS will have the means to satisfy its obligations, or indeed survive as a firm.

127. The Settlement does not resolve the dispute between Hutchinson and UBS, as it does not meet Hutchinson's needs: Under the Settlement, Hutchinson would not be eligible to redeem its ARS until June 30, 2010. Hutchinson has needs for liquidity well in advance of that date, including redemption of its own issuance of $150 million worth of convertible notes that come due on March 15, 2010 ($90.1 million of which remain outstanding). Meanwhile, it is quite possible that UBS will not survive as a firm until June 30, 2010, especially given the well-publicized fate of similar financial services firms like Bear Stearns and Lehman Brothers. In addition, Hutchinson would be obligated to repay any loan under the Settlement even if the value of the ARS continues to decline. Thus, the Settlement does not put Hutchinson in the same position as it otherwise would have been absent UBS's conduct.

128. Consequently, Hutchinson now brings this action against UBS.

Hutchinson Has Been Damaged

129. Hutchinson has been damaged by UBS's fraudulent conduct.

130. Approximately $70 million of Hutchinson's funds are now stuck in failed ARS. Meanwhile, Hutchinson needs those funds. Hutchinson's industry is highly capital intensive, and Hutchinson requires liquid capital to meet its needs based on volatility in the technology sector, cyclical economic changes, capital intensity, research and development costs, and costs associated with technological conversions, as well as to satisfy obligations such as redeeming $150 million in convertible notes due in March 2010 ($90.1 million of which remain outstanding).

131. Moreover, the value of the approximately $70 million investment has dropped considerably. Hutchinson has had to mark down the value of these ARS from their par value of approximately $70 million to $63.2 million. This mark-down damages Hutchinson, including by potentially negatively impacting the price of its stock.

132. By letter dated August 8, 2008, Hutchinson demanded that UBS cure the violation of its Investment Policy by purchasing the SLARS at par, plus accrued but unpaid interest, within 60 days. UBS has not done so.

133. Instead, on October 14, 2008, UBS sent Hutchinson a form letter, attached hereto as Exhibit F. In that letter, UBS stated, "In many instances we recommended [ARS] to clients. I am sorry that ***we did not get it right*** . . . ." (Emphasis added.)

UBS's Conduct Showed a Deliberate Disregard For and Indifference To Hutchinson's Rights

134. In representing to Hutchinson that ARS were safe, liquid, cash-equivalent securities, while simultaneously not disclosing the impending collapse of the ARS market and their own efforts to reduce their exposure to ARS, Defendants' conduct was reprehensible and in blatant violation of law and policy. Their conduct, including their acts and failures to act, evidences recklessness and a callous, deliberate disregard and indifference to Hutchinson's rights.

135. UBS had knowledge of facts or intentionally disregarded facts that created a high probability of injury to Hutchinson's rights, but nevertheless deliberately proceeded to act in conscious or intentional disregard or with indifference to the high probability of injury to Hutchinson's rights.

TENDER OF HUTCHINSON'S ARS

136. Hutchinson hereby tenders its ARS to UBS in exchange for par value plus all interest accrued.

COUNT I
VIOLATION OF SECTION 10b-5 OF THE EXCHANGE ACT AGAINST UBS (ALL DEFENDANTS)

137. Hutchinson restates and realleges the foregoing allegations as if fully set forth herein.

138. At all relevant times, UBS, by use of means or instrumentalities of interstate commerce, employed a device, scheme, or artifice to defraud, made misrepresentations and omitted to state material facts necessary to make the statements not misleading, all of which was intended to and did deceive Hutchinson as alleged above and enabled UBS to purchase ARS on Hutchinson's behalf.

139. UBS deceived Hutchinson into believing that it was purchasing safe, liquid securities that were "cash alternatives" or "cash equivalents." UBS deceived Hutchinson into believing that it was purchasing securities that were suitable to Hutchinson's investment objectives and were within Hutchinson's Investment Policy. UBS deceived Hutchinson into believing that it was acting in Hutchinson's best interests.

140. Meanwhile, UBS did not disclose the various material facts as alleged herein, which material facts rendered UBS's conduct deceptive, and its statements, representations and omissions false and misleading, including but not limited to the material facts set forth in Paragraph 55 above.

141. UBS acted with fraudulent intent in that it knew (or was reckless in not knowing) that its conduct was deceptive and that its statements were false and/or misleading.

142. Hutchinson acted in reliance on UBS's representations and omissions when it permitted UBS's purchases in its investment account, and has been damaged thereby.

143. UBS's misrepresentations and omissions are the proximate cause of the damage to Hutchinson resulting from its ownership of ARS.

144. By virtue of the foregoing, Defendants have violated Section 10(b) of the Exchange Act, 15 U.S.C. §78j(b), and SEC Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5.

COUNT II
VIOLATION OF SECTION 20(a) OF THE EXCHANGE ACT AGAINST DEFENDANT UBS AG

145. Hutchinson restates and realleges the foregoing allegations as if fully set forth herein.

146. UBS AG acted as a control person of UBS Financial Services and UBS Securities, LLC within the meaning of Section 20(a) of the Exchange Act as alleged above. By virtue of its 100% ownership of UBS Financial Services and UBS Securities LLC, UBS AG had the power to influence and control and did influence and control, directly or indirectly, the decision-making by UBS Financial Services and UBS Securities, LLC including the content and dissemination of the various statements which Hutchinson contends are false and misleading. UBS AG was provided with or had unlimited access to copies of the statements Hutchinson alleges are misleading before

and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

147. By virtue of the foregoing, Defendant UBS AG is liable as a control person for the violations of Section 10(b) of the Exchange Act, 15 U.S.C. §78j(b), and SEC Rule 10b-5 promulgated thereunder, 17 C.F.R. § 240.10b-5, committed by the other Defendants.

COUNT III
VIOLATION OF THE MINNESOTA SECURITIES ACT, MINN. STAT. § 80A.68 AGAINST UBS (ALL DEFENDANTS)

148. Hutchinson restates and realleges the foregoing allegations as if fully set forth herein.

149. UBS received consideration from Hutchinson for UBS Financial Services' advising Hutchinson as to the value of securities for their purchase or sale.

150. At all relevant times, UBS employed a device, scheme, or artifice to defraud, made misrepresentations and omitted to state material facts necessary to make the statements not misleading, in connection with the offer and sale of ARS to Hutchinson, all of which was intended to and did deceive Hutchinson as alleged above and enabled UBS to sell ARS to Hutchinson.

151. At all relevant times, UBS engaged in acts, practices, and a course of business which operated as a fraud or deceit upon Hutchinson in connection with the offer and sale of ARS to Hutchinson. UBS's acts, practice, and course of business deceived Hutchinson as to the liquidity of and risks associated with ARS by supporting the artificially inflated price and market for those securities for its own gain.

152. Hutchinson reasonably acted in reliance on Defendants' representations when it purchased and held ARS through its UBS investment account, and is damaged thereby.

153. Defendants' misrepresentations and omissions are the proximate cause of Hutchinson's injury resulting from its ownership of ARS, and UBS is entitled to all relief available under Minn. Stat. § 80A.76.

COUNT IV
VIOLATION OF THE MINNESOTA SECURITIES ACT, MINN. STAT. § 80A.69 AGAINST UBS (ALL DEFENDANTS)

154. Hutchinson restates and realleges the foregoing allegations as if fully set forth herein.

155. UBS received consideration from Hutchinson for advising Hutchinson as to the value of securities for their purchase or sale.

156. At all relevant times, UBS employed a device, scheme, or artifice to defraud, made misrepresentations, omitted to state material facts necessary to make the statements not misleading, all of which was intended to and did deceive Hutchinson as alleged above and enabled UBS to sell ARS to Hutchinson, artificially inflating the ARS market and earning UBS commissions on those sales.

157. At all relevant times, UBS engaged in acts, practices, and a course of business which operated as a fraud or deceit upon Hutchinson. UBS's acts, practice, and course of business deceived Hutchinson as to the liquidity of and risks associated with ARS by supporting the artificially inflated price and market for those securities for its own gain.

158. Hutchinson reasonably acted in reliance on UBS's representations when it purchased and held ARS through its UBS account, and is damaged thereby.

159. UBS's misrepresentations and omissions are the proximate cause for Hutchinson's injury, and Hutchinson is entitled to all relief available under Minn. Stat. § 80A.76.

COUNT V
VIOLATION OF THE MINNESOTA SECURITIES ACT, MINN. STAT. § 80A.76(g) AGAINST UBS AG

160. Hutchinson restates and realleges the foregoing allegations as if fully set forth herein.

161. UBS AG acted as a control person of UBS Financial Services and UBS Securities, LLC within the meaning of Minn. Stat. § 80A.76(g) as alleged above. By virtue of its 100% ownership of UBS Financial Services and UBS Securities LLC, UBS AG had the power to influence and control and did influence and control, directly or indirectly, the decision-making by UBS Financial Services and UBS Securities, LLC including the content and dissemination of the various statements which Hutchinson contends are false and misleading. UBS AG was provided with or had unlimited access to copies of the statements Hutchinson alleges are misleading before and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

162. By virtue of their positions as controlling persons, Defendants UBS AG is liable under Minn. Stat. § 80A.76(g) for the forgoing violations of the Minnesota Securities Act committed by the other Defendants.

COUNT VI
COMMON LAW FRAUD
AGAINST UBS (ALL DEFENDANTS)

163. Hutchinson restates and realleges the foregoing allegations as if fully set forth herein.

164. At all relevant times, UBS made misrepresentations and omitted to state material facts necessary to make the statements not misleading, all of which was intended to and did deceive Hutchinson as alleged above and enabled UBS to sell ARS to Hutchinson.

165. UBS had actual knowledge of the misrepresentations and omissions set forth herein, or acted with deliberate disregard for the truth in that it failed to ascertain and to disclose such facts. UBS's material misrepresentations and/or omissions were done knowingly or deliberately and for the purpose and effect of concealing the truth about the liquidity of and risks associated with auction rate securities from Hutchinson and supporting the artificially inflated price and market for those securities for their own gain.

166. Hutchinson reasonably acted in reliance on Defendants' representations when it purchased and held ARS through its UBS investment account, and is damaged thereby.

167. Defendants' misrepresentations and omissions are the proximate cause of the damage to Hutchinson resulting from its ownership of ARS.

COUNT VII
LACK OF SUITABILITY
AGAINST UBS FINANCIAL SERVICES

168. Hutchinson restates and realleges the foregoing allegations as if fully set forth herein.

169. UBS Financial Services is a member of FINRA and is required to follow FINRA Conduct Rules.

170. FINRA Conduct Rule 2310 provides: "In recommending to a customer the purchase, sale or exchange of any security, a member shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his other security holdings and as to his financial situation and needs."

171. In addition, Rule 10b-5 prohibits a broker from purchasing securities unsuited to the buyer's needs, where the broker knows or reasonably believes that the securities are unsuited to the buyers, and the broker makes material misrepresentations (or, owing a duty to the buyer, fails to disclose material information) relating to the suitability of the securities.

172. At all relevant times, UBS Financial Services was aware of Hutchinson's financial situation and liquidity needs. In fact, Hutchinson spelled out its investment goals in its Investment Policy, which was incorporated into Hutchinson's contract with UBS Financial Services.

173. Hutchinson disclosed to UBS Financial Services that its investment objectives were: 1) preservation and safety of capital; 2) maintenance of necessary liquidity; and 3) maximization of rate and return within the stated guidelines. Hutchinson also identified the types of securities UBS was authorized to purchase on its behalf. That list includes three types of ARS available in the market: (1) Money Market Auction Notes; (2) Auction Rate Preferreds; and (3) Auction Rate Taxable Municipals.

174. UBS Financial Services recommended and purchased SLARS for Hutchinson without reasonable grounds for believing that those investments were suitable for Hutchinson.

175. In fact, SLARS were not suitable or authorized, as they grew increasingly risky into 2008, and ultimately became illiquid.

176. Hutchinson was damaged by Defendants' unreasonable recommendations and purchases.

COUNT VIII
UNAUTHORIZED TRADING
AS TO UBS FINANCIAL SERVICES

177. Hutchinson restates and realleges the foregoing allegations as if fully set forth herein.

178. UBS Financial Services had a responsibility to purchase only those ARS listed as authorized securities in the Investment Policy and to manage Hutchinson's account in accordance with the investment objectives set out in the Investment Policy.

179. Nevertheless, UBS Financial Services conducted transactions on behalf of Hutchinson for the purchase of SLARS, which were not among the authorized securities

in the Investment Policy. These transactions were not authorized. In the second half of 2007 and early 2008, SLARS were becoming increasingly risky investments, and the auctions providing SLARS with liquidity were in danger of failing.

180. Instead of investing Hutchinson's funds in accordance with the terms of the Investment Policy, UBS Financial Services inappropriately placed Hutchinson's funds in SLARS.

181. As a direct and proximate cause of the unauthorized purchases, Hutchinson has suffered and continues to suffer damages as set forth herein.

COUNT IX
BREACH OF CONTRACT
AGAINST UBS FINANCIAL SERVICES

182. Hutchinson restates and realleges the foregoing allegations as if fully set forth herein.

183. Hutchinson had an agreement with UBS Financial Services. Hutchinson's investment guidelines are incorporated into Hutchinson's investment agreement with UBS Financial Services.

184. Hutchinson's investment guidelines clearly state that its investments must preserve the safety of Hutchinson's capital, maintain liquidity, and maximize return within those objectives.

185. Investments in ARS did not meet the objectives set forth by Hutchinson, as ARS grew increasingly risky into 2008, and ultimately became illiquid.

186. Furthermore, Hutchinson's Investment Policy clearly sets out the types of securities that may be purchased with Hutchinson's funds.

187. Hutchinson's Investment Policy does not authorize UBS Financial Services to purchase SLARS.

188. At all relevant times, UBS Financial Services knew ARS did not meet the objectives set forth by Hutchinson, but promoted Hutchinson's continued investment in ARS. Furthermore, UBS Financial Services knew SLARS were not authorized by Hutchinson, but promoted Hutchinson's continued investment in SLARS.

189. UBS breached its agreement with Hutchinson by failing to comply with the terms of Hutchinson's investment guidelines.

190. Hutchinson has suffered damages as a result of UBS's breach.

COUNT X
BREACH OF FIDUCIARY DUTY
AS TO UBS FINANCIAL SERVICES

191. Hutchinson restates and realleges the foregoing allegations as if fully set forth herein.

192. As Hutchinson's broker with discretionary trading authority, UBS Financial Services owe Hutchinson a broad fiduciary duty.

193. UBS Financial Services occupied a position of superior knowledge and authority in the area of investments. Hutchinson accordingly placed its trust and confidence in UBS Financial Services and its recommendations.

194. As a result of this fiduciary duty, UBS Financial Services was obligated to observe the utmost good faith and fidelity in its dealings with Hutchinson.

195. Furthermore, UBS Financial Services was obligated to manage Hutchinson's investments with reasonable care.

196. UBS Financial Services knew, or had reason to know, that Hutchinson placed its trust and confidence in its recommendations on purchases.

197. UBS Financial Services breached its fiduciary duty to Hutchinson by misrepresenting and failing to disclose material facts about the ARS market to Hutchinson, failing to invest Hutchinson's money in a manner consistent with Hutchinson's Investment Policy, failing to provide Hutchinson with its loyalty, and engaging in self-dealing transactions while selling unsuitable investments to Hutchinson.

198. Hutchinson has been injured by Defendants' breach of fiduciary duty.

COUNT XI
NEGLIGENCE
AS TO UBS FINANCIAL SERVICES

199. Hutchinson restates and realleges the foregoing allegations as if fully set forth herein.

200. As investment managers and advisors for Hutchinson, UBS Financial Services owed Hutchinson a duty of care.

201. UBS Financial Services breached that duty of care by negligently purchasing SLARS on Hutchinson's behalf that were unauthorized, unsuitable, unlawful, inappropriate, and in violation of Hutchinson's Investment Policy and the mutual understanding of the parties.

202. UBS Financial Services failed to use reasonable care when purchasing SLARS on Hutchinson's behalf.

203. Hutchinson has been injured by Defendants' negligence.

COUNT XII
CONSUMER FRAUD
AGAINST UBS (ALL DEFENDANTS)

204. Hutchinson restates and realleges the foregoing allegations as if fully set forth herein.

205. UBS used fraud, false pretenses, false promises, misrepresentations, misleading statements, and/or deceptive practices in connection with the sale of SLARS to Hutchinson.

206. UBS intended that Hutchinson rely on those false pretenses, false promises, misrepresentations, misleading statements, and/or deceptive practices.

207. UBS thereby violated the provisions of Minn. Stat. § 325F.69, subd.1.

208. UBS's conduct has also harmed the public. UBS's representations that ARS were functionally equivalent to cash or money market funds and were safe, highly-liquid, short-term investments were held out to the public in violation of Minn. Stat. § 325F.69. UBS's fraudulent and deceptive practices concern and harm the public, particularly when they result in illiquidity of investments in these difficult economic times. The public has an interest in preventing fraud in its financial markets, and the relief sought by Hutchinson will also benefit the public.

209. Hutchinson has been injured by UBS's violation of the Consumer Fraud statute, and is entitled to all relief available under Minn. Stat. § 8.31, subd. 3a.

COUNT XIII
UNLAWFUL TRADE PRACTICES
AGAINST UBS (ALL DEFENDANTS)

210. Hutchinson restates and realleges the foregoing allegations as if fully set forth herein.

211. UBS, in connection with the sale of ARS, knowingly misrepresented, directly and/or indirectly, the true quality of those securities as alleged above, regarding the liquidity and safety of ARS, in violation of Minn. Stat. § 325D.13.

212. UBS's conduct also harms the public. UBS's representations that ARS were functionally equivalent to cash or money market funds and were safe, highly-liquid, short-term investments were held out to the public in violation of Minn. Stat. § 325D.13. UBS's fraudulent and deceptive practices concern and harm the public, particularly when they result in illiquidity of investments in these difficult economic times. The public has an interest in preventing fraud in its financial markets, and the relief sought by Hutchinson will also benefit the public.

213. Hutchinson has been injured by UBS's violation of the Unlawful Trade Practices Act, and is entitled to all relief available under Minn. Stat. § 8.31, subd. 3a.

COUNT XIV
DECEPTIVE TRADE PRACTICES
AGAINST UBS (ALL DEFENDANTS)

214. Hutchinson restates and realleges the foregoing allegations as if fully set forth herein.

215. UBS is in the business of providing investment services to customers like Hutchinson.

216. In the course of this business, UBS represented that ARS securities had cash-like qualities of safety and liquidity. In reality, the ARS sold to Hutchinson by UBS did not have those qualities.

217. UBS thereby violated the provisions of Minn. Stat. § 325D.44.

218. UBS's conduct also harms the public. UBS's representations that ARS were functionally equivalent to cash or money market funds and were safe, highly-liquid, short-term investments were held out to the public in violation of Minn. Stat. § 325D.44. UBS's fraudulent and deceptive practices concern and harm the public, particularly when they result in illiquidity of investments in these difficult economic times. The public has an interest in preventing fraud in its financial markets, and the relief sought by Hutchinson will also benefit the public.

219. Hutchinson has been injured by UBS's violation of the Deceptive Trades Practices Act, and is entitled to all relief available under Minn. Stat. § 8.31, subd. 3a.

COUNT XV
CONVERSION
AGAINST UBS (ALL DEFENDANTS)

220. Hutchinson restates and realleges the foregoing allegations as if fully set forth herein.

221. UBS exercised control over Hutchinson's investments and cash by reason of its relationship with Hutchinson and its superior knowledge and authority in the area of investments.

222. UBS intentionally used its control and authority to recommend ARS to Hutchinson, and to invest millions of Hutchinson's dollars in ARS.

223. At the same time, UBS exerted its control to manipulate the ARS markets, ultimately withdrawing its support and rendering Hutchinson's investment illiquid.

224. All of Hutchinson's ARS investment is now illiquid, thereby depriving Hutchinson from the use of its cash for an indefinite period of time.

225. Hutchinson has suffered damages as a direct and proximate cause of UBS's conduct.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for relief and judgment as follows:

A. Awarding compensatory damages in favor of Plaintiff for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

B. Awarding Plaintiff punitive damages under New York law in an amount to be determined at trial;

C. Awarding Plaintiff its reasonable costs and expenses incurred in this action, including counsel and expert fees;

D. Awarding Plaintiff rescission of its agreement with Defendants, and ordering Defendants to accept Plaintiff's tender of the securities at par value;

E. Awarding extraordinary, equitable, and/or injunctive relief as permitted by law, equity and the federal statutory provisions sued hereunder; and

F. Such other and further relief as the Court may deem just and proper.

Dated: November 14, 2008

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