

# Banks Say Auction-Rate Investors Can't Have Their Money Back

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By Darrell Preston

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**Bloomberg** - Franklin Biddar wants his money, and says Bank of America Corp. won't let him have it.

The 65-year-old real estate investor from Toms River, New Jersey, said he hasn't had access to money the bank invested for him in auction-rate preferred shares ever since the market seized up in mid-February. Even when Biddar agreed to sell \$100,000 worth of the securities to Fieldstone Capital Group, Charlotte, North Carolina-based Bank of America wouldn't release the bonds, saying the transaction wasn't in his interest, he said.

"I can't do anything," said Biddar, who was so eager to unlock his money that he was willing to accept 11 percent less than what he paid for the securities. "Bank of America got me into these securities that are supposed to be as safe as a money market, and now they won't get me out."

Bank of America, UBS AG, Wachovia Corp. and at least four dozen other firms that sold \$330 billion of securities with rates set through periodic bidding are thwarting attempts to create a secondary market that would allow investors to access their cash, according to investors. Dealers claim they are saving customers from needless losses on securities they marketed as similar to cash-like instruments.

"By allowing customers to sell at a discount, the banks allow customers to establish damages," said Bryan Lantagne, the securities division director for Massachusetts Secretary of State William Galvin. Lantagne is head of a task force for nine states looking at whether brokers misrepresented the debt as an alternative to money-market investments.

## Investor Lawsuits

At least 24 proposed class action suits have been filed since mid-March against brokerages over claims investors were told the securities were almost as liquid as cash.

Investors ranging from retirees to Google Inc. in Mountain View, California, have been trapped in auction-rate debt for more than three months after dealers that ran the bidding suddenly stopped supporting the market as their losses mounted on debt linked to subprime mortgages. Before February, dealers routinely bought securities that went unsold, reassuring investors that they could get their money back on a moment's notice.

About 99 percent of public auctions for auction-rate securities sold by student-loan agencies and closed-end funds fail, as do 48 percent of those for municipals, according to data compiled by Bloomberg. UBS, which cut the value of auction-rate securities held for its customers by 5 percent in March, said yesterday it plans to close its

municipal bond business.

### **'Only Choice'**

**"For someone needing their cash, the only choice is to go to the secondary market and sell them with a haircut," said Steven Caruso, an attorney at Maddox Hargett & Caruso in New York who is representing investors in lawsuits against dealers. "I don't think brokerage firms have any interest in selling these."**

Fieldstone managing director Robert Franz declined to comment on potential auction-rate purchases by the New York-based investment firm. Bank of America spokesman Matt Card said the bank isn't "talking about specifics of the auction-rate securities topic." Calls to Biddar's broker, Thomas Cali, and Cali's regional manager, Jon Foster, weren't returned.

UBS told Chris Longman, 35, a lawyer in San Diego, and his wife, Paige Hazard, 30, that it wouldn't try to find a buyer for their \$375,000 of auction-rate securities in the secondary market because "it's inefficient and results in low prices," said Longman. They were willing to take a discount on the Franklin Templeton Limited Duration Income Trust shares because they want the money available to buy a house, Longman said. "The secondary market is inefficient compared to what?" asked Longman. "The primary market doesn't even exist any more."

### **'Very Illiquid'**

Karina Byrne of UBS said the secondary market for auction-rate securities is "generally very illiquid," though the Zurich firm "will seek to execute client sell orders, where available, at the best price we can find."

"We are actively working with the issuers of these securities to refinance them, which is the ultimate answer," John Thain, chief executive officer of New York-based Merrill Lynch & Co., told reporters in Mumbai on May 8. "The securities are significantly over-collateralized, so we are confident that our investors will eventually get the par. In fact, as the securities get refinanced, they do get that par back."

States, cities and other municipal issuers refinanced, converted or disclosed plans to redeem by July 18 at least \$76.1 billion of auction-rate securities, according to data compiled by Bloomberg. Mutual-fund companies have redeemed or said they would refinance about \$19.8 billion.

### **Loans Offered**

After David Wilner, a 32-year-old New Yorker, found a buyer for \$200,000 of auction-rate securities issued by Chicago-based Nuveen Investments Inc., Wachovia refused to complete the sale for him, he said. Instead, the bank offered to lend him money at 5 percent interest, using the securities as collateral, he said. At the time, Wilner said he was getting only 2 percent interest.

"They said no without an explanation," Wilner said. "Then they offered to loan me my money. What can I do? I am handcuffed."

Justin Gioia, a spokesman for Charlotte-based Wachovia, declined to comment. Frank Russo, a Wachovia attorney Wilner said he was directed to, said he isn't allowed to comment on clients.

Documents governing auction-rate securities typically say there is no obligation for dealers to support a secondary market, said John Duvall Sr., a former Merrill Lynch broker in Milan, New York, who is now an expert witness in securities fraud cases.

### **'Sounds Like Stonewalling'**

An investor who finds a buyer should be able to move the securities to another dealer or take possession to complete the transaction, said Vincent DiCarlo, who worked as a lawyer at the SEC's enforcement division.

"If a dealer is refusing to complete a transaction it sounds like stonewalling," said DiCarlo, who is now a securities lawyer in Davis, California.

The Securities Industry and Financial Markets Association, a New York-based association for dealers, put a list of secondary market resources on its Web site. It said in a statement that it "has undertaken a number of projects to be helpful in this period of dislocation in the auction-rate securities market."

Officials at the Financial Industry Regulatory Authority, the self-regulatory group for securities dealers in Washington, declined through spokesman Herb Perone to respond to questions.

Restricted Stock Partners has handled "a few hundred" secondary market trades for auction-rate investors, said Barry Silbert, chief executive officer of the New York-based firm.

"It's securities dealers' duty to facilitate the transactions," Silbert said.

### **High Rates**

Some investors who didn't need immediate access to their cash initially enjoyed high returns for about two months as auction failures drove up rates.

The rate on municipal auction-rate bonds with weekly bidding shot up to 6.89 percent for the week ended Feb. 20 from 3.90 percent at the start of the year, according to an index compiled for Sifma. The rate has since fallen to 3.12 percent.

Maxwell Stokes, 30, a commodities trader with Hoya Capital in New York, said he was told by his broker at Wachovia eight weeks ago that he was stuck in \$50,000 of auction-rate preferred shares issued by money manager Cohen & Steers Inc. in New York. Needing the cash for an Oct. 12 wedding and to buy a house, Stokes said he moved his account to online brokerage TD Ameritrade Corp. of Omaha, Nebraska.

"When I bought these I wanted a safe security and I was told they were redeemable at par," said Stokes. "Then when the market failed and I wanted a secondary market to trade out, I was told that Wachovia doesn't make a secondary market."

Biddar, the New Jersey investor, said he plans to press Bank of America to complete the trade with Fieldstone, even if he has to put a billboard on a trailer complaining about how he was treated and take it to the bank's branches. "I'm going to do what I have to," Biddar said. "I want them to sell my securities."

Following is a chart of largest issuers of outstanding municipal auction-rate securities, 2000-2007.

1. Citigroup, \$39.73 billion \*
2. UBS, \$31.50 billion
3. Morgan Stanley, \$20.13 billion
4. Goldman Sachs, \$17.80 billion
5. JP Morgan, \$15.72 billion
6. Bear Stearns, \$12.61 billion
7. Merrill Lynch, \$12.37 billion
8. Bank of America, \$11.03 billion
9. RBC Dain Rauscher, \$10.25 billion
10. Lehman Brothers, \$9.74 billion

\*Includes Salomon Smith Barney.

Source: Bloomberg data.