

ARS Settlements: Corporate Investors Remain In Limbo

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SUMMARY OF ARTICLE

Recent auction rate securities settlements may help some individual investors, but they leave corporate ARS holders with more questions than answers. The majority of recent ARS deals offer few specifics of liquidity solutions for corporate investors, with Wall Street banks agreeing to vague commitments of working with institutional investors to turn their ARS holdings into cash several years down the road.

Until then, many corporate finance officers face a future in limbo - and their companies saddled with billions of dollars in illiquid auction rate securities.

Following the collapse of the \$330 billion auction rate securities in February, thousands of investors who had been sold the securities as safe, cash alternative investments were unable to liquidate their holdings. New York Attorney General Andrew Cuomo subsequently launched a six-month investigation into the matter, targeting Wall Street firms that sold nearly \$60 billion in auction rate securities to investors.

As of August, Cuomo reached agreements with eight investment banks - Citigroup, JP Morgan Chase, Merrill Lynch, UBS, Wachovia, Morgan Stanley, Goldman Sachs and Deutsche Bank - to buy back approximately \$50 billion in auction rate securities from retail investors and pay \$525 million in fines.

In general, however, the settlements are coming up short for corporate investors, and provide few specifics in terms of when their liquidity issues will be resolved. In its agreement with the New York attorney general, Citigroup - the first bank to settle claims of misrepresenting auction rate securities to investors - offered up only a commitment to use its best efforts to repurchase auction rate securities from institutional holders.

More recently, the settlement offers by Merrill Lynch, Goldman Sachs and Deutsche Bank simply stated they will "work with" institutional investors to find markets for their ARS holdings.

The unknown aspect of the auction rate securities settlements leaves institutional and corporate investors with few options. **They can take legal action, cut deals with their broker, sell or hold the securities until something changes in the auction market. Says Philip Aidikoff, a securities lawyer in California, in the Aug. 25 edition of Financial Week:**

"I tell my clients to get what they can and then go after the haircut."

Because of the economic relationship between a company and its broker, the more likely it is institutional investors will have an upper hand when it comes to negotiating a resolution for their auction rate securities investments.

Some corporate treasurers are taking more drastic action, however, abandoning Wall Street altogether and thereby putting the fees for bankers who arrange bond sales, mergers and public offerings in jeopardy, according to an Aug. 21 article on Bloomberg.com.

At an Aug. 14 press conference on the auction rate settlements and the apparent omission of a definitive resolution for corporate investors, New York Attorney General Cuomo said his focus all along has been on “retail investors because they have fewer resources to begin with.”

And while that may very well be the case, it’s also true that many corporate investors - just like retail investors - bought auction rate securities because Wall Street banks represented them as safe, cash-like alternatives. With payroll to make, retirement plans to fund and a business to operate, waiting several years for a resolution might not be a viable option for a number of institutional investors with illiquid auction rate securities.

Our affiliation of securities lawyers is actively involved in advising individual and institutional investors in evaluating their legal options when confronted with subprime and other mortgage-related investment losses.