

# Structured Auction Rate Notes Create Trap For Investors

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## SUMMARY OF ARTICLE

In agreeing to buy back more than \$50 billion of auction rate securities from retail investors, investment banks may believe they are closing the chapter on one of the uglier periods in Wall Street's history. They may want to think again.

As reported Sept. 3 by *Reuters*, some brokerages potentially could face billions of more dollars in claims connected to "structured auction rate notes." According to the article, "unlike typical auction-rate securities - which are based on liquid instruments like municipal debt - structured auction rate notes are connected to higher risk debt that has caused banks to take billions of dollars in write-downs in recent months. For instance, some auction rate notes are linked to securitizations of subprime mortgages.

What auction rate notes do have in common in with auction rate securities is the financial devastation they've created for investors - in this case, corporate treasuries and wealthy individuals.

As in the case with retail investors, holders of auction rate notes contend they, too, were misled about the liquidity risks of the instruments. According to the Reuters article, private lawsuits already are cropping up. MetroPCS Communications Inc., a Dallas-based mobile phone company, has filed a lawsuit over the issue, alleging in a Texas state court that Merrill Lynch & Co. failed to disclose the risks of auction rate notes and ignored the firm's instructions to invest in securities that could easily be sold.

**"I can assure you that more suits are going to be brought," said Boyd Page, a senior partner at law firm Page Perry in Atlanta, in the Reuters story.**

Investors holding structured auction securities may have plenty of ammunition at their disposal. Recent settlements by Citigroup, UBS and others to resolve state and federal claims that they fraudulently sold auction rate securities could provide key information for future legal claims.

The biggest sellers of structured securities issued as part of securitizations of subprime mortgages and other toxic debt include Merrill Lynch, Deutsche Bank and Lehman Brothers.

As reported in the Reuters story, Lehman Brothers sold more than \$4.5 billion of structured securities; Deutsche Bank more than \$2.5 billion; and Merrill Lynch at least \$1.8 billion.

**"Investors are likely to sue for losses, as well as damages," said Page in the article, leaving these banks responsible for a large portion of the issuance.**

And that could be costly. Some structured securities are now worth just 20 cents on the dollar, and may sell for even less on the secondary market, according to analysts. Even

worse: Auction rate notes are extremely difficult to restructure because they are issued by trusts.

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.