

**THE STATE OF NEW HAMPSHIRE  
SECRETARY OF STATE**

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**IN THE MATTER OF:** )  
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**UBS Securities, LLC** )  
CRD# 7654 )  
COM08-10, COM08-12 and COM08-13 )  
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\_\_\_\_\_)

**MOTION TO AMEND STAFF PETITION FOR RELIEF**

NOW COMES the State of New Hampshire, by and through the Secretary of State, Bureau of Securities Regulation (“the Bureau”), and hereby amends its Staff Petition for Relief dated August 14, 2008 to add the attached exhibits 11 and 12, and insert the following two paragraphs on page 2 of the preliminary statement between the paragraph ending “. . . more than any other state in the country”, and the paragraph beginning “US was the investment adviser . . .”:

Given the years of sophisticated service and advice provided by US to NHHELCO concerning SARS, NHHELCO reposed confidence and trust in US. Furthermore, US encouraged NHHELCO to rely exclusively on its advice. NHHELCO did so, fully trusting US. US thus owed NHHELCO a fiduciary duty. “Once a person becomes a fiduciary, the law places him in the role of a moral person and pressures him to behave in a selfless fashion while contract law does not go beyond the morals of the market place where self-interest is the norm.” *Clark & Lavey Benefits Solutions, Inc. v. Education Development Center, Inc.*, \_\_\_ N.H. \_\_\_, \_\_\_, 949 A.2d 133, 139 (2008). US, moreover, fully recognized its moral obligation. E.g., Exhs. 11 and 12. Indeed, a senior US official said, “[T]he moral obligation runs very deep.... [T]he relationships ... specifically with the Student Loan issuers ... are

broad and deep.” Exh. 11. Similarly, a US paper on the SARS market said, “[US] has ... a moral commitment to backstop paper in the auction at par.” Exh. 12. See also Exhs. 13 and 14, attached hereto.

However, in late 2007 and early 2008, US violated its moral obligation. It misled NHHELCO by omitting to disclose material facts about the depth of US's concern with the continued viability of the SARS market and US's related concern with the growth of its own inventory of SARS certificates. Having thus misled NHHELCO, it induced NHHELCO to agree to pay the maximum rate for NHHELCO bonds, a step that exposed NHHELCO to significant financial risk if the auction system were to fail. Shortly thereafter, however, US in fact let the auction system fail. Through all of these omissions and actions, US put its own self-interest ahead of NHHELCO's interest. US thus violated its “very deep” moral obligation to NHHELCO, and breached its fiduciary duty.

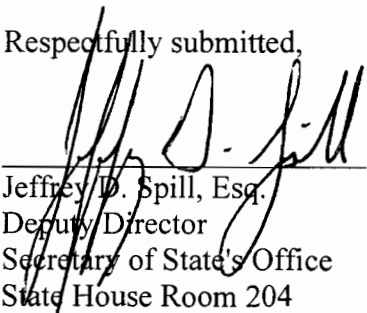
WHEREFORE, the State of New Hampshire, by and through the Secretary of State, Bureau of Securities Regulation, hereby respectfully requests that the hearings officer:

- 1) Grant leave for the Bureau to amend the state's Staff Petition For Relief filed on August 14, 2008.
- 2) Grant such other and further relief as deemed just and proper.

9/9/08

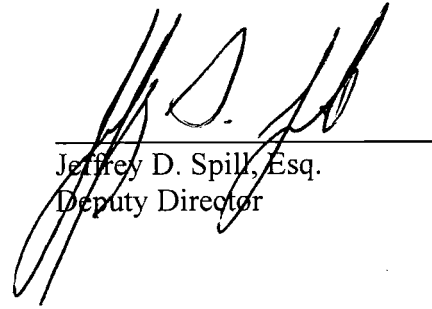
Dated

Respectfully submitted,

  
Jeffrey D. Spill, Esq.  
Deputy Director  
Secretary of State's Office  
State House Room 204  
Concord, New Hampshire 03301

I hereby certify that a copy of the foregoing motion has been forwarded via fax and 1<sup>st</sup> class mail this 9th day of September, 2008 to Attorney Cereseny.

9/9/08  
Dated



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Jeffrey D. Spill, Esq.  
Deputy Director

**Peter Fallon**

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**From:** Shulman, David+ [david.shulman@ubs.com]  
**Sent:** Monday, December 17, 2007 7:40 AM  
**To:** Bass, Jon  
**Subject:** FW: MSG--ARCS action and game plan follow up  
**Attachments:** Auction Calendar Thru Year End.xls; Copy of SLARC\_12\_14\_07.xls  
  
**Categories:** Green Category

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**From:** Shulman, David+  
**Sent:** Saturday, December 15, 2007 11:58 AM  
**To:** Scoby, Joseph  
**Cc:** Threadgold, Andrew; Esteves, Andre  
**Subject:** MSG--ARCS action and game plan follow up

Joe - to summarize and highlight a few points that I think are relevant

Total ARCS market 280billion

Total- ARCS UBS SENIOR MANAGED PROGRAMS OUTSTANDING 43 billion  
 Broken down as follows:

MUNI ARCS (traditional muni core issuers)- 17.2 billion program size outstanding  
 Student Loan ARCS- 25.8 billion program size outstanding

Student Loan ARCS approximate breakdown  
 16.5 billion-taxable 28 day --resetting between 6.70- 7.00 (depending on the program +135-+150 to libor) at max rates currently

9.5 billion -tax exempt 35 day-resetting between 5.75-6.00 (max rates)

Current INVENTORY - as of Dec 14th close - Total ARCS 4.030 billion of which 2.930 billion is Student Loan paper- (yearly avge been approx 1.3bill)

We estimate UBS WM holds total ARCS exposure within FA'S AND CORP CASH MGMT of approx 33billion  
 We estimate that UBS WM CORP CASH MANAGEMENT areas CURRENTLY hold approx 17billion of 25.8billion of Student Loan ARCS exposure -( our current inventory of Student Loan Arcs.is 2.93billion)

We estimate that WM core FA'S within the retail network control approximately 4billion of Student Loan-ARCS

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As we discussed yesterday ,our concern is clearly on the upcoming auctions through the 28th of December. In addition to establishing a task force mentioned below which will draw on all areas of the organization to develop potential strategies to restructure these ARCS instruments, 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 WM and all the reputational dynamics that go along with this decision , establishing somewhat of a framework is critically important in advance. I will be speaking to Michael Weisberg this weekend to discuss at length with him all the issues. What is clear is that the fundamental mechanism of the ARCS structure is not working in a liquidity squeezed environment-where the only real outlet for distribution is WM and corp cash management . The very nature of the security structure was never designed to service institutional clients- this has always been a retail and corp cash product..thereby now creating a situation where the dealer community is for the most part supporting this product . As you know we are currently pressing some of our best relationships on the institutional side and have leaned hard on those relationships to buy these products from us and many of our key clients have bot . The concern is the spillover to traditional muni ARCS products where

confidence if blown in Student Loans will in my opinion cause a major disruption from retail . As we know the issue currently is Student Loan ARCS (given that they are an ABS instrument ) and broader ARCS product in general ,

The only viable answer that will satisfy the pressure currently is creating a liquidity put or backstop facility like the VRDO market (which is quite healthy and orderly amidst the turmoil ) that will convert these products to be 2A7 eligible . I am working to determine feasibility and timing of such and will be back shortly on that . As was discussed in previous emails...even doing potentially a portion -would demonstrate viability and confidence in the market . I do believe this is being pursued as an option by BOA,CITI, JPM...will let you know what we find out as well

Lastly -going back to one other concern ...if an RBC or smaller dealer that can't take the balance sheet exposure to their ARCS position...and either will look to the larger dealer community to help support these auctions to step in so as to avoid a failed auction ...this clearly is a possibility that we are watching ..

Last point // 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 always 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.

Our MSG group here is very knowledgeable and capable on these products. ). I am confident that their market intelligence is sound and the relationships with specifically with the Student Loan issuers (15 year relationships ) are broad and deep-so our access to information is good. Please note --The MSG group within the IB as you know is the servicing arm for all WM municipal needs. This mini group provides all products, back office systems, allocations , risk pricing etc for WM nationally . The MSG group is highly dependent on WM for distribution and they look to IB for all their product and risk needs. ...please see below with some additional action plans...I am available anytime to talk further of course....cell 203-543-0320...thank you ..David

*David*  
*Deep*

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The desk is monitoring the overall position size and we will give a daily update to Joe Scoby and Andy Threadgold. We will continue to monitor the overall % of deals we are supporting and update the group if our support rate is over 30% on any given day. Enclosed are the upcoming auctions thru year end and the % of deals we have been supporting this week.

<<...>>

MSG has set up a Student Loan Task Force with representatives from the Student Loan Banking Group, Muni Risk Mgmt, Muni Credit Strategy, Muni Lending (credit book), Muni Structured Solutions, Legal, Derivative Credit Exposure, Syndicate, Muni Business Mgmt, Senior Mgmt from MSG Public Finance and Capital markets. The task force is working on ways to restructure the outstanding deals, monitor the credit exposure, monitor current status of the rating agencies, max rate analysis, etc.

We continue to monitor our competitors position size and support of the product. We have pushed all the deals to the highest maximum rates and will continue to do so.

Attached is the breakdown of the entire program FFELP vs. Private Collateral (also the % of FFELP in the Private deals) with an executive summary and a deal by deal breakdown.

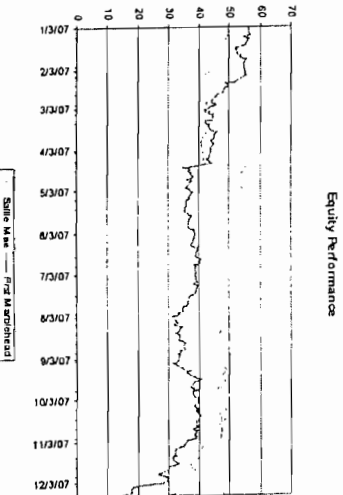
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From: Adrian Salzman Dec 13, 2007

To: Ross Sachman, Paul Mozniak, Amy Monblat  
Student Loan ABS Market Fred: From Sachman to

David Schulman & Duane Rodgers

- 2006 Student Loan ABS issuance \$82.4bn
- Approx \$16.6 bn (20%) backed by private student loans (not govt guaranteed)
- Approx \$65.8 bn (80%) backed by FEELP (Federal Family Education Loans Program) loans, guaranteed by the US Department of Education for at least 97% of defaulted principal and accrued interest
- Private Student Loans:
  - Not concentrated in lower FICO bands
  - 50-80% of loans have a co-signer (often a parent or legal guardian)
  - Loan pools are geographically diverse
  - In-School Deferment: majority of private loans are currently not in repayment
  - Borrower characteristics and the macroeconomic environment are primary drivers of student loan performance, not housing
  - Not dischargeable in bankruptcy
- On 12/4 Moody's put approx \$900mm of First Marblehead Student Loans ABS on credit watch for possible downgrade, affecting 1 all subordinate deals from 2003-2007. Downgrade due to worse than expected performance of underlying student loans. UBS is remarketing agent for 2 of the affected tranches on credit watch with total \$90mm as broker/dealer.
- Concern: current holders will look to sell their paper in the upcoming auctions, likely causing upward pressure on UBS's balance sheet by year end. UBS currently has an inventory of paper that is growing as less investors are taking paper in the auctions.
- Sallie Mae private subordinated loans are offered ~ 80 cents on the dollar, no bid
- JC Flowers pulling bid on MAC clause
- Equity performance:
  - Sallie Mae -40% since Nov, -40% YTD
  - First Marblehead -62% YTD, -74% since Nov
  - (announced quarterly dividend cut from 27.5 to 12c)



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# Auction Rate Securities

➤ UBS Total Short Term Market Exposure: \$88bn

➤ Auction Rate Securities:  
\$15 bn Municipals, \$26bn Student Loans (all USD)

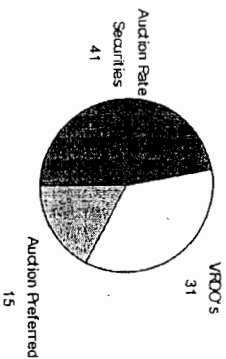
➤ Student Loan Breakdown:  
- \$8 bn AAA FFELP (97% Govt Guaranteed)  
- \$1bn A Subordinated FFELP Loans (<3% attachment, 97% govt guaranteed)  
- **\$16 bn Private Loans** (not govt guaranteed)

thereof:  
15bn AAA Private Loans, of which 8.5bn A but wrapped to AAA: by AMBAC (7b) & MBIA (1.5bn)  
1bn Subordinated A Private Loans (<10% attachment)

➤ Approx 25% of Private Loans include FFELP backing

➤ UBS Auction Rate Securities Exposure: \$41 bn (total market \$280 bn)  
(7, 28, 35 day auction securities of 30 yr final tenor)

➤ UBS has no firm commitment but a **moral commitment** to backstop paper in the auction at par  
➤ If an Auction fails due to UBS pulling out of the market the entire market will likely follow suit

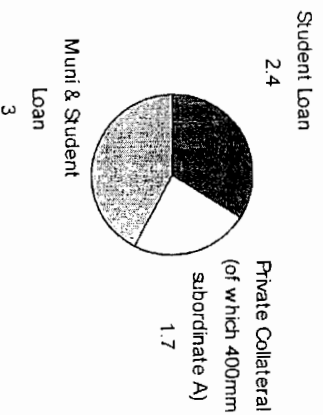


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# Auction Rate Securities

- Concern: Private student loan collateral credit quality
  - "First Marble Head" put on rating watch following increasing student loan default rates
  - no hard bank backstop (unlike VRDO's) that support the package.

- Current UBS Inventory:



- Inventory is growing rapidly
  - \$700mm put back to UBS on 11th Dec
  - there are 8 more auctions in 2007
- RBC is a program manager that is looking to resign its position to another manager.
- **Possible solutions:**
  - 1) Fail to support the auctions – would bring the entire \$280bn market to a halt and cause franchise and headline risk
  - 2) Find a new manager
- Worst Case Scenario: UBS does not act and owns the entire credit risky portion of collateral, i.e. 17bn of 30yr paper yielding a predefined cap rate of which 2bn is subordinated A and another 8.5bn is subordinated but wrapped. **Loss potential 2-3bn.**

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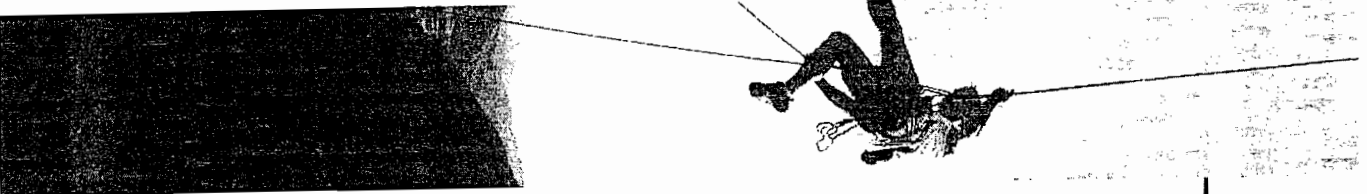


# Auction Rate Securities

➤ Possible solutions:

- 1) Fail to support the auctions – would bring the entire \$280bn market to a halt and cause franchise and headline risk
- 2) Find a new manager
- 3) Restructure ARC securities to term mode or VRDO (3-6 months process)
- 4) Most structures allow ability to sell of the debt, i.e. sell of the portfolio of assets into the marketplace and pay off debt in 28 days (next auction period)

- Worst Case Scenario: UBS does not act and owns the entire credit risky portion of collateral, i.e. 17bn of 30yr paper yielding a predefined cap rate of which 2bn is subordinated A and another 8.5bn is subordinated but wrapped. **Loss potential 2-3bn.**



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**Peter Fallon**

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**From:** Mohanty, Seema [Seema.Mohanty@ubs.com]  
**Sent:** Sunday, January 13, 2008 5:58 PM  
**To:** Jackman, Ross; Shulman, David+; Scruggs, Jeffrey-J; Gallichio, Joe+  
**Subject:** Re:  
**Attachments:** ATT06773.txt  
**Categories:** Green Category

I agree. Once again it comes down to either we are in it or we are not. At this point there is not much to discuss - the firm needs to make a decision. I am willing to stand by the decision to provide an loc ( I am sure no one in the control functions will step up).

----- Original Message -----

**From:** Jackman, Ross  
**To:** Shulman, David+; Scruggs, Jeffrey-J; Mohanty, Seema; Gallichio, Joe+  
**Sent:** Sun Jan 13 17:15:12 2008  
**Subject:** Re:

I think our greatest risk is further indecision if we are going to be a solution and give us the necessary tools to restructure. We started discussing six weeks ago and our stud loan inventory was two bill now we have five. The inventory will prob only increase. We need a decision and for it to be communicated to the control functions.

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 Sent from my BlackBerry Wireless Handheld

----- Original Message -----

**From:** Shulman, David+  
**To:** Scruggs, Jeffrey-J; Jackman, Ross; Mohanty, Seema; Gallichio, Joe+  
**Sent:** Sun Jan 13 16:58:11 2008  
**Subject:** RE:

yup

-----Original Message-----

**From:** Scruggs, Jeffrey-J  
**Sent:** Sunday, January 13, 2008 4:39 PM  
**To:** Jackman, Ross; Mohanty, Seema; Shulman, David+; Gallichio, Joe+  
**Subject:**

This decision is the seminal issue for this firm in the overall financial securities industry. Very interesting (I know it is a warped use of the word) how wide the impact will be on the entire firm-wide client base by deciding to resign or fail. The more I think about it, the more I arrive at the conclusion that you cannot just resign or fail the student loan programs. Will immediately impact taxable munnie investors (of which we have a billion or so if I am not mistaken) and then the WM FAs will run like hell for the hills. They will dump anything with an ARC label. This contagion dramatically affects the municipal tax-exempt market. While it is true that those issuers can always get out pretty quickly (or most of them anyways) by doing VRDBs or fixed rate bonds, this is a very large market to have potential panic selling. On the tax-exempt side, we are not an overwhelmingly large player so a whole bunch of other firms, including many small and minority firms who absolutely cannot provide liquidity, would panic by either resigning or defaulting or pushing issuers to get out. The big issue is that firms and investors will naturally react this way because they will say "if a large firm like UBS does this, what do they know that I do not?". Probably would not be as big an issue if we did not have the current environment but every firm will be naturally jumpy about not catching a short-end of the stick.

**Peter Fallon**

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**From:** Shulman, David+ [david.shulman@ubs.com]  
**Sent:** Sunday, January 13, 2008 4:58 PM  
**To:** Scruggs, Jeffrey-J; Jackman, Ross; Mohanty, Seema; Gallichio, Joe+  
**Subject:** RE:  
**Attachments:** ATT31100.txt

**Categories:** Green Category

yup

-----Original Message-----

**From:** Scruggs, Jeffrey-J  
**Sent:** Sunday, January 13, 2008 4:39 PM  
**To:** Jackman, Ross; Mohanty, Seema; Shulman, David+; Gallichio, Joe+  
**Subject:**

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