UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

SECURITIES AND EXCHANGE COMMISSION, **Plaintiff,** **v.** **MORGAN KEEGAN & COMPANY, INC.,** **Defendant.**	**Civil Action No.** 1:09-CV-1965

COMPLAINT

Plaintiff Securities and Exchange Commission ("Commission") alleges the following against defendant Morgan Keegan & Company, Inc. ("Morgan Keegan" or "Defendant"):

NATURE OF THE ACTION

1. Beginning in late 2007, Morgan Keegan misled thousands of its customers regarding the fundamental nature and increasing risks associated with auction rate securities ("ARS") that Morgan Keegan underwrote, marketed, and sold. ARS are bonds issued primarily by municipalities and student loan entities, or preferred stock issued by closed-end mutual funds, each of which provide for interest rates or dividend yields that are

periodically reset through auctions, typically every seven, fourteen, twenty-eight or thirty-five days.

2. In the latter part of 2007 and early 2008, Morgan Keegan became aware of mounting evidence of potential liquidity risks associated with auction rate securities. Investor concerns about the creditworthiness of monoline insurance companies (which insured certain ARS), higher than normal ARS inventory levels at Morgan Keegan, auction failures in certain segments of the ARS market, and increased clearing rates for auctions managed by Morgan Keegan and other broker-dealers that underwrote ARS collectively indicated that the risk of auction failures had materially increased.

3. Beginning on February 12, 2008, ARS auctions managed by other broker-dealers began to fail on a widespread basis as the broker-dealers stopped supporting those auctions by placing bids for their own accounts. However, Morgan Keegan accelerated ARS sales to its customers in an attempt to prevent the auctions that it managed from failing.

4. On February 27, 2008, Morgan Keegan determined to cap its own inventory of ARS, effectively withdrawing the firm's support for the auctions that it managed. As a result, ARS auctions managed by Morgan Keegan began to fail on a widespread basis.

5. Morgan Keegan, through its brokers and marketing materials, nevertheless, continued to market ARS to the firm's customers as safe, highly liquid investments that were equivalent to cash or money-market funds. As a result, numerous customers invested their savings in Morgan Keegan's ARS with the understanding that those funds would be available on a short-term basis. In fact, as a result of Morgan Keegan's conduct, thousands of Morgan Keegan customers were unable to liquidate approximately $1.2 billion of ARS holdings.

6. Morgan Keegan did not update its ARS disclosures until March 20, 2008, when the firm enacted an "enhanced disclosure policy" requiring customers who purchased ARS to sign an "Auction Rate Securities Disclosure Letter" describing ARS auction failures and the resulting loss of liquidity for those securities.

7. By engaging in the conduct described in this Complaint, Defendant violated, and unless enjoined will continue to violate, Section 17(a) of the Securities Act of 1933 ("Securities Act") [15 U.S.C. § 77q(a)], Sections 10(b) and 15(c) of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §78j(b) and 15 U.S.C. § 78o(c)] and Rule 10b-5 [17 CFR § 240. 10b-5] thereunder. Accordingly, the Commission seeks: (a) entry of a permanent injunction prohibiting Morgan Keegan from further violations of

the relevant provisions of the Securities Act and the Exchange Act; (b) the imposition of a civil penalty against Morgan Keegan; (c) disgorgement of ARS underwriting, auction management, and distributor fees; (d) an order requiring Morgan Keegan to repurchase from its customers all ARS that the firm sold prior to March 20, 2008; and (e) any other relief that this Court deems necessary and appropriate under the circumstances.

JURISDICTION AND VENUE

8. This Court has jurisdiction over this matter pursuant to Sections 21(d)(1), 21(e), 21(f), and 27 of the Securities Exchange Act of 1934 ("Exchange Act") [15 U.S.C. §§ 78u(d)(1), 78u(e), 78u(f), and 78aa].

9. Morgan Keegan, directly or indirectly, used the mails and means and instrumentalities of interstate commerce and the means and instruments of transportation and communication in interstate commerce, in connection with the acts, practices, and courses of business alleged herein.

10. Venue is appropriate in this District pursuant to Section 27 of the Exchange Act because Morgan Keegan transacts business in this District. In particular, Morgan Keegan operates full-service branch offices in this District, and, between November 1, 2007 and March 20, 2008, sold ARS to at least 60 customers who are residents of this District. As of August 29, 2008, Morgan Keegan's Georgia retail customers, many of whom reside in

this District, held approximately $122 million of ARS, more than the aggregate retail customer ARS holdings for any other state.

DEFENDANTS

11. Morgan Keegan is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act, an investment adviser registered with the Commission pursuant to Section 203 of the Investment Advisers Act of 1940, and a member of the Financial Industry Regulatory Authority. Morgan Keegan maintains its principal offices in Memphis, Tennessee. Morgan Keegan is a wholly owned subsidiary of Regions Financial Corporation, a financial holding company headquartered in Birmingham, Alabama. With over 1,200 brokers and 300 offices in the Southeast, Morgan Keegan offers products and services including securities brokerage, asset management, financial planning, mutual funds, securities underwriting, sales and trading, and investment banking.

FACTUAL ALLEGATIONS

Description of Auction Rate Securities

12. ARS are bonds issued primarily by municipalities and student loan entities, or preferred stock issued by closed-end mutual funds, each of which provide for interest rates or dividend yields that are periodically reset through auctions, typically every seven, fourteen, twenty-eight or thirty-five

days. ARS are usually issued with maturities of 30 years, but the maturities can range from five years to perpetuity. Thus, while ARS are long-term obligations, they re-price frequently using short-term interest rates, which typically are lower than long-term rates.

13. The issuer of each ARS selects one or more broker-dealers to underwrite the offering and manage the periodic auctions. If there is more than one broker-dealer, then the issuer designates one of the broker-dealers as the "lead broker-dealer," which typically places bids for its own account as necessary in order to ensure that the auctions clear, i.e., that there is a buyer for all ARS sought to be sold at each auction. The other broker dealers are designated as co-broker dealers. Co-broker dealers typically do not place bids for their own accounts.

14. Each participating broker-dealer accepts orders from its customers, as well as from non-participating broker-dealers, and then submits the orders to the auction agent, which runs the auction. Customers bid the lowest interest rate or dividend they are willing to accept. The auction clears at the lowest rate bid that is sufficient to cover all of the ARS for sale, and that rate applies to all of the ARS in the auction until the next auction.

15. If there are not enough bids to cover the securities for sale, then the auction fails. If an auction fails, then the issuer pays a maximum rate, which is either a flat rate or a rate set by a pre-determined formula in the offering documents. The maximum rate may be higher or lower than the prior auction rates or the rates available on similar securities of similar credit quality and duration in the marketplace.

Morgan Keegan's Role in the Auction Rate Securities Market

16. Prior to March 20, 2008, Morgan Keegan served as an underwriter, auction manager, and reseller of ARS. By 1998, Morgan Keegan began reselling ARS underwritten by other broker-dealers. By 2002, Morgan Keegan began underwriting ARS. Morgan Keegan primarily underwrote and sold tax-free, AAA-rated ARS issued by municipalities. By March 20, 2008, Morgan Keegan had underwritten at least 60 ARS issues, with a total par value of approximately $1.1 billion. By March 20, 2008, Morgan Keegan had also resold to its customers approximately $1.1 billion of ARS that were underwritten by other broker-dealers.

17. Morgan Keegan served as either a lead broker-dealer or co-broker dealer for the ARS that the firm underwrote. Prior to February 27, 2008, for those ARS issues for which Morgan Keegan served as the lead broker-dealer, Morgan Keegan managed the auction process and routinely

placed bids for its own account to buy any ARS offered for sale that had not been bid on by other customers, thus causing the auctions to "clear" and avoiding failed auctions.

18. Between 2002 and February 27, 2008, Morgan Keegan placed bids for its own account in a majority of the auctions for which the firm served as the lead broker dealer. A majority of these auctions would have failed but for Morgan Keegan's participation. Prior to February 27, 2008, no auctions for which Morgan Keegan acted as the lead manager had ever failed.

19. On or about February 12, 2008, auctions for ARS underwritten by other broker-dealers began to fail on a widespread basis. Beginning on February 27, 2008, Morgan Keegan declined to place bids in most of the auctions for which it served as lead broker dealer and in which the bids of other market participants were insufficient to satisfy all the sell orders. Consequently, the auctions began to fail on a widespread basis.

20. As a result of ARS auction failures, as of March 20, 2008, Morgan Keegan customers were left holding approximately $1.2 billion of illiquid ARS, instead of the liquid, short-term investments Morgan Keegan had represented ARS to be.

21. As of July 15, 2009, Morgan Keegan customers held approximately $272 million of illiquid ARS. Approximately $50 million of these ARS were underwritten by Morgan Keegan, the remaining ARS were underwritten by other broker-dealers and resold by Morgan Keegan.

22. Morgan Keegan earned underwriting fees, broker-dealer fees, and distributor fees for ARS. From June of 2007 through February of 2008, Morgan Keegan earned approximately $4.3 million in such fees, inclusive of certain commissions paid to its brokers.

Morgan Keegan's Organizational Structure for ARS Sales

23. In 2007 and 2008, Morgan Keegan's ARS auction management and sales operations fell within the firm's Fixed Income Capital Markets division, which included separate "institutional" and "retail" ARS desks.

24. Morgan Keegan's institutional ARS desk was responsible for managing auctions for ARS underwritten by Morgan Keegan and selling ARS to institutional customers. The head of the institutional ARS desk reported to the head of Morgan Keegan's Short Term Products desk, which handled Morgan Keegan's proprietary trading in ARS and other products. The head of that desk reported to John Carson ("Carson"), the president of Morgan Keegan's Fixed Income Capital Markets division, and Carson reported to Morgan Keegan's Chief Executive Officer.

25. Morgan Keegan's retail ARS desk, headed by Frank Phillips ("Phillips"), was responsible for selling ARS to retail customers. Phillips reported to Kevin Giddis ("Giddis"), the head of Retail Fixed Income Trading. Giddis reported to Carson.

26. In January 2008, Giddis was promoted to the head of fixed-income trading. On February 27, 2008, Carson was promoted to CEO of Morgan Keegan.

<u>Morgan Keegan Brokers and Marketing Materials Misrepresented that ARS are Cash Alternatives</u>

27. Through its brokers, Morgan Keegan marketed ARS to its customers as cash alternatives that could be liquidated at the customer's demand on the next auction date. As a result, many customers placed money in these investments that they might need in the short-term. Morgan Keegan did not advise these customers that, under certain circumstances, the funds invested for short-term needs could be tied up indefinitely, and that other products that it marketed as cash alternatives did not carry this same risk.

28. Morgan Keegan brokers told various customers that ARS carried "zero risk" or were "guaranteed" and were "fully liquid," "cash alternatives," "just like a money market," "as liquid on a weekly basis as cash," a "liquid and safe investment," or a "totally liquid (7 day) money parking account."

29. By 2005, Morgan Keegan's Fixed Income Capital Markets division prepared an ARS marketing brochure, which described ARS as an "attractive alternative" to money markets, commercial paper, and treasuries and appropriate for investors whose objective was liquidity. That brochure also mentioned potential "liquidity risks" associated with ARS.

30. However, Morgan Keegan did not have a policy requiring brokers to give the ARS marketing brochure to customers who purchased ARS, and Morgan Keegan's brokers routinely failed to provide the brochure to customers who purchased ARS.

31. Morgan Keegan never disclosed to its brokers or customers the level of the firm's participation in the auctions for which it served as lead broker-dealer.

32. On March 20, 2008, approximately <u>five weeks</u> after ARS auctions began failing on a widespread basis, Morgan Keegan instituted an "enhanced disclosure" policy requiring customers who wished to purchase ARS to sign an "Auction Rate Security Disclosure Letter," which states, in relevant part: "I understand that my auction rate securities are currently, or have been recently, failing at auction. I understand that it may be a considerable period of time before liquidity returns to this investment and I view this with a longer term time horizon."

Morgan Keegan Conducted Insufficient Training for its Brokers Concerning ARS Liquidity Risks

33. Morgan Keegan did not provide sufficient training for its brokers concerning the potential liquidity risks associated with ARS.

34. By 2007, only approximately 100 Morgan Keegan brokers received semi-annual, formal training about ARS in connection with Morgan Keegan's "bond school" program. Written bond school training materials described ARS as an "alternative to cash assets invested in money market funds." These materials also instructed brokers to "consider" ARS for customers "willing to accept the risk of a failed auction."

35. Morgan Keegan did not instruct its brokers that "the risk of a failed auction" posed a long-term liquidity risk. Instead, brokers understood that if an auction failed, "the issue would typically sell off the next time it came up for auction."

36. In 2007 and 2008, Morgan Keegan's "Credit Committee" was responsible for monitoring, and limiting, the firm's inventory of various financial products. The Credit Committee, which was not directly affiliated with Morgan Keegan's board of directors, typically met on an ad-hoc basis to discuss issues associated with specific inventory categories.

37. On August 30, 2007, Morgan Keegan's Credit Committee met to discuss the firm's sales and marketing practices for ARS. In addition to John Carson, the president of the Fixed Income Capital Markets division, attendees at this meeting included Morgan Keegan's Chief Financial Officer, General Counsel, Director of Fixed Income Compliance, as well as several "desk heads" who supervised trading in various financial products.

38. During the August 30, 2007 Credit Committee meeting, the committee reevaluated the firm's inventory limits for ARS and two other related products that comprised the Short Term Products desk. Specifically, the committee determined to reduce its holdings in another short-term product by $50 million in order to provide "flexibility" to exceed the firm's ARS inventory cap by that amount.

39. At this same meeting, when discussing the mechanics of ARS auctions, Morgan Keegan's General Counsel expressed concern during the meeting "about how [the Fixed Income Division] are selling [ARS]," and the president of the Fixed Income Capital Markets division, "asked how we can make sure people know [ARS are] not a money market." The General Counsel advised that Morgan Keegan was developing some additional literature and there was some suggestion that brokers should receive additional training on ARS.

40. However, Morgan Keegan never revised its disclosures or required brokers to take any additional training.

Morgan Keegan Knew of Significant and Increasing Risks Associated with ARS

41. Morgan Keegan was aware of emerging liquidity risks concerning ARS in late 2007 and 2008.

42. In August 2007, "monoline" insurance companies (which insured certain ARS and guaranteed timely repayment of bond principal when an issuer defaults) began to experience credit problems. Many monoline insurers had insured subprime mortgage related bonds and with the subprime crisis, concerns grew that the insurers lacked sufficient capital to cover issuer defaults.

43. On November 13, 2007, a fixed income analyst at Morgan Keegan who covered ARS issues, prepared a research report that discussed the increased credit problems of insurers that backed ARS.

44. Also in November 2007, Morgan Keegan became aware of a small number of failed auctions related to ARS backed by collateralized debt obligations, securities that were not underwritten or generally resold by Morgan Keegan.

45. On November 27, 2007, the head of Morgan Keegan's retail ARS desk, observed in an e-mail that "inventories in ARS paper on the street have rose [sic] significantly during the past few weeks" and "in [the] midst of a fearful market and a rush to safety," the yields for ARS were rising.

46. On January 18, 2008, the worsening credit environment caused the downgrade of a monoline insurance company that backed a substantial amount of ARS underwritten by Morgan Keegan. That day, the head of Morgan Keegan's retail ARS desk e-mailed the head of Fixed Income Trading about the downgrade. The e-mail warned that the downgrade "could create a sell off in some ARS paper that Morgan Keegan underwrites" and "could potentially cause a failed auction."

47. Beginning in late January 2008, Morgan Keegan saw its own ARS inventory (mostly tax-exempt municipal ARS) increase dramatically. That inventory, which had historically been capped by the credit committee at $70 million, averaged approximately $20 million in late 2007 and early 2008. Between January 22 and February 13, 2008, however, Morgan Keegan's ARS inventory increased from approximately $20 million to $75 million, surpassing the $70 million inventory limit previously set by the Credit Committee.

48. By February 21, 2008, Morgan Keegan's inventory had increased to approximately $180 million. On February 27, 2008, Morgan Keegan's Credit Committee definitively capped the firm's ARS inventory at $185 million, effectively withdrawing the firm's support for future auctions. Morgan Keegan-managed auctions then began to fail on a widespread basis.

49. Senior management at Morgan Keegan closely monitored the firm's growing ARS inventory level during this period. For example, on February 1, 2008, the head of Morgan Keegan's Municipal Trading desk sent an e-mail to Carson, the president of the Fixed Income Capital Markets division stating, "...We are under 375 [million dollars in short term products] with 42 [million dollars of that amount] in ARS. The ARS inventory is growing slowly as a result of maximum rates."

50. In addition, Morgan Keegan was aware that, beginning in February 2008, auctions for all categories of ARS, including tax-exempt municipal ARS, began to fail on a widespread basis. In a February 14, 2008 e-mail, Kevin Giddis, the head of Retail Fixed Income Trading recognized that "nearly every other primary dealer has allowed some proportion of their auctions to fail." This included auctions for ARS co-managed and resold by Morgan Keegan.

51. Morgan Keegan recognized that widespread auction failures would impact Morgan Keegan's continued support of its own auctions. For example, on February 12, 2008, the head of the municipal trading desk Nordstrom sent an e-mail to John Carson stating, "The failed auctions of others will impact us here."

Morgan Keegan Accelerated Sales of ARS in Late 2007 and 2008

52. Between November 1, 2007, and March 20, 2008, Morgan Keegan sold approximately $925 million of ARS to its customers.

53. Morgan Keegan sold approximately $352 million of ARS to its customers between January 22, 2008, shortly after the downgrade of one of the primary insurers of the ARS and the increase in the firm's own ARS inventory, and March 20, 2008, when the firm instituted an enhanced disclosure policy for ARS sales. Of this $352 million, approximately $230 million (65 percent) was underwritten by Morgan Keegan.

54. Nevertheless, Morgan Keegan did not impose any requirement that the firm's brokers begin providing the ARS marketing brochure or other written ARS materials to the firm's customers. In fact, Morgan Keegan did not change any of its ARS sales practices until March 20, 2008, almost a month after it withdrew its support for auctions, when the firm instituted a policy of "enhanced disclosures" for ARS sales.

55. Rather than revising its ARS disclosures, Morgan Keegan made a concerted effort to accelerate ARS sales in an attempt to avoid any failed auctions for the ARS that the firm underwrote.

56. Notes from a meeting of the Credit Committee held on February 19, 2008, several days after other firms' ARS auctions started failing on a widespread basis, state,

> "John Carson [the president of the Fixed Income Capital Markets division] and Tim Herberger [head of the institutional ARS desk] are introducing STP's [short-term products, including ARS and variable rate demand notes] to the general sales force in the Continuing Education meeting today to **broaden the demand** for the products. We are trying not to fail on the auctions.... The more this gets out to the media, the more sellers they will have." (Emphasis supplied.)

Morgan Keegan Downplayed Liquidity Risks to Its Brokers and Customers

57. From late 2007 through February 2008, Morgan Keegan continued to push its brokers to sell ARS, and downplayed the emerging liquidity risks. For example, the head of Morgan Keegan's retail ARS desk sent e-mails to brokers in November and December 2007 ("Check out Santa's ARS Specials...I've got gifts for all tax brackets") and January 2008 ("Many of you might be cautious about why yields from ARS are so attractive relative to other sectors right now. The reason: seasonality"), noting that Morgan Keegan had plenty of ARS inventory with attractive

yields. At least one of these e-mails (the November 2007 e-mail) was reviewed and approved by the head of Retail Fixed Income Trading, Morgan Keegan's ARS analyst, and the head of Morgan Keegan's institutional ARS desk.

58. A December 10, 2007 research report sent to Morgan Keegan's retail brokerage force advised that increased ARS yields presented "an opportunity to generate attractive risk-adjusted yields for investors seeking alternatives to money market products." That report, which was circulated to John Carson, also advised that, while there was no guarantee, broker-dealers managing the auctions would likely step in to prevent auction failures if customer demand slacked, given the firms interest in retaining their underwriting business. Given these incentives, the report opined that "the risk of failed auctions of any meaningful magnitude . . . appears quite low."

59. Even after the downgrade of certain ARS insurers and the increase in clearing rates for tax-exempt municipal ARS signaled the onset of liquidity problems, Morgan Keegan attempted to discourage its brokers from selling their customers' ARS holdings.

60. In a January 23, 2008 e-mail sent to its retail brokerage force, dealing with the downgrades of bond insurers, Morgan Keegan advised,

> "The decision to buy/sell/hold [ARS] ultimately depends on the client's particular circumstances, but we believe it is likely that this situation will be resolved in short order. **Selling into an uncertain market is rarely a prudent or successful investment strategy.**" (Emphasis supplied.)

61. On February 15, 2008, after Morgan Keegan's inventory had risen to approximately $130 million and other firms' auctions had begun to fail on a widespread basis, Morgan Keegan distributed an internal "talking points" memo to brokers emphasizing that the credit quality of ARS was not impacted by other firms' auction failures and that "those investors who aren't seeking to liquidate their position actually benefit by virtue of the higher yields they are receiving." The memo, which was reviewed by Kevin Giddis, and cc'd to John Carson, stressed that "Morgan Keegan has not experienced any failed auctions among the deals in which it acts as lead underwriter," and stated, "we maintain our commitment to supporting the ARS market to the extent possible, but this is only possible with your cooperation." The memo speculated that ARS liquidity issues would likely "sort themselves out" due to issuer redemptions and the emergence of "non-traditional" buyers such as hedge funds. The memo concluded,

> "We stress the importance of ignoring the impulse to 'test' the process by selling your clients' ARS holdings in a wholesale manner simply because you or your clients might be worried you will not be able to sell them."

62. On February 27, 2008, Morgan Keegan stopped supporting ARS auctions, in part, because the widening imbalance between supply and demand made it increasingly difficult to continue supporting the auctions. However, Morgan Keegan never alerted its customers, or instructed its brokers to advise customers about the firm's decision to withdraw support for ARS auctions. Nor did Morgan Keegan take any steps to alert customers of the ARS auction failures until March 20, 2008, when the firm instituted its "enhanced disclosure" policy for ARS sales.

63. In fact, on February 28, 2008, the head of Morgan Keegan's retail ARS desk, sent an e-mail to the firm's brokers providing a "quick reminder" on the mechanics of placing online ARS orders. That e-mail, which attached a copy of the firm's unrevised ARS brochure, made no reference to ARS auction failures or the associated liquidity risks.

CLAIMS FOR RELIEF

COUNT I

Securities Fraud
Violations of Section 17(a)(1) of the Securities Act

64. Paragraphs 1 through 63 above are incorporated herein by reference.

65. Defendant, in the offer or sale of the securities described above, by the use of means or instruments of transportation or communication in

interstate commerce, or by the use of the mails, directly or indirectly, employed devices, schemes or artifices to defraud.

66. In connection with the above-described acts and omissions, Defendant, through its officers or members of its senior management, acted knowingly or recklessly.

67. By reason of the foregoing, Defendant violated Section 17(a)(1) of the Securities Act [15 U.S.C. § 77q(a)].

COUNT II

Securities Fraud
Violations of Sections 17(a)(2) and (3) of the Securities Act

68. Paragraphs 1 through 63 above are incorporated herein by reference.

69. Defendant, in the offer or sale of the securities described above, by the use of means or instruments of transportation or communication in interstate commerce, or by the use of the mails, directly or indirectly: (a) obtained money or property by means of untrue statements of material facts or omissions to state material facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (b) engaged in transactions, practices or courses of business which operated or would operate as a fraud or deceit upon purchasers of the securities.

70. In connection with the above-described acts and omissions, Defendant, through its officers or members of its senior management, acted at least negligently.

71. By reason of the foregoing, Defendant violated Sections 17(a)(2) and (3) of the Securities Act [15 U.S.C. § 77q(a)].

COUNT III

Securities Fraud
Violations of Section 10(b) of the Exchange Act and Rule 10b-5

72. Paragraphs 1 through 63 above are incorporated herein by reference.

73. Defendant, in connection with the purchase or sale of the securities described above, by the use of means or instruments of transportation or communication in interstate commerce, or by the use of the mails, directly or indirectly: (a) employed devices, schemes or artifices to defraud; (b) made untrue statements of material fact and omitted facts necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; or (c) engaged in acts, practices or courses of business which operated or would operate as a fraud or deceit upon any person.

74. In connection with the above-described acts and omissions, Defendant, through its officers or members of its senior management, acted knowingly or recklessly.

75. By engaging in the foregoing conduct, the Defendant violated will continue to violate, Section 10(b) of the Exchange Act [15 U.S.C. §78j(b)] and Rule 10b-5 [17 CFR § 240. 10b-5] thereunder.

COUNT IV

Securities Fraud
Violation of Section 15(c) of the Exchange Act

76. Paragraphs 1 through 63 are realleged and incorporated by reference as if set forth fully herein.

77. As described above, the Defendant made use of the mails or means or instrumentalities of interstate commerce to effect transactions in, or to induce or attempt to induce the purchase or sale of, securities: (a) by means of a manipulative, deceptive, or other fraudulent device or contrivance, and (b) in connection with which Defendant engaged in a fraudulent, deceptive, or manipulative act or practice.

78. By engaging in the foregoing conduct, the Defendant violated Section 15(c) of the Exchange Act [15 U.S.C. § 78o(c)].

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Commission respectfully prays that the Court:

I.

Make Findings of Fact and Conclusions of Law pursuant to Rule 52 of the Federal Rules of Civil Procedure, finding that the Defendant committed the violations alleged herein.

II.

Issue an order permanently enjoining the Defendant and its respective agents, servants, employees, attorneys, assigns and all those persons in active concert or participation with Defendant who receive actual notice of the injunction by personal service or otherwise, from directly or indirectly engaging in violations of Section 17(a) of the Securities Act [15 U.S.C. § 77q(a)], Sections 10(b) and 15(c) of the Exchange Act [15 U.S.C. §78j(b) and 15 U.S.C. § 78o(c)] and Rule 10b-5 [17 CFR § 240. 10b-5] thereunder.

III.

Issue an order requiring the Defendant to repurchase all ARS that the Defendant sold prior to March 20, 2008.

IV.

Issue an order requiring disgorgement of all ill-gotten gains or unjust enrichment by the Defendant.

V.

Issue an order requiring the Defendant to pay civil monetary penalties pursuant to Section 20(d) of the Securities Act [15. U.S.C. § 77t] and Section 21(d)(3) of the Exchange Act [15 U.S.C. §78u(d)(3)].

VI.

Issue an Order retaining jurisdiction over this action in order to implement and carry out the terms of all orders and decrees that may have been entered or to entertain any suitable application or motion by the Commission for additional relief within the jurisdiction of this Court.

VII.

Grant such other and further relief as may be necessary and appropriate.

Dated: July 21, 2009.

Respectfully submitted,

William P. Hicks
William P. Hicks
Regional Trial Counsel
Georgia Bar No. 351649

Alana R. Black
Alana R. Black
Senior Trial Counsel
Georgia Bar No. 785045

Counsel for Plaintiff
U.S. SECURITIES AND EXCHANGE COMMISSION
3475 Lenox Road, N.E., Suite 1000
Atlanta, Georgia 30326-1232
Telephone: (404) 842-7675
Fax: (404) 842-7679
hicksw@sec.gov
blacka@sec.gov