

OFFICE OF THE ATTORNEY GENERAL
OF THE STATE OF NEW YORK

In the Matter of

**Investigation by Andrew M. Cuomo,
Attorney General of the State of New York, of**

Assurance No. AOD 10-008

David Harris Shulman

**ASSURANCE OF DISCONTINUANCE
PURSUANT TO EXECUTIVE LAW § 63(15)**

In April 2008, the Office of the Attorney General of the State of New York (“OAG”) began to investigate, pursuant to New York Executive Law Section (“EL §”) 63(12) and Article 23-A of the General Business Law (the “Martin Act”), the sale and marketing of auction rate securities by UBS Securities LLC and UBS Financial Services, Inc. (“UBS”). The investigation concerned, among other subjects, David Shulman’s personal trading of auction rate securities (the “Investigation”).

This Assurance of Discontinuance (“Assurance”) contains the findings of the OAG’s Investigation with regard to Shulman and the relief agreed to by the OAG and Shulman (collectively, “the parties”).

FINDINGS

The OAG finds as follows:

Summary

1. Shulman, the highest ranking executive with day-to-day responsibility for UBS’s auction rate securities program, sold \$1.45 million in personal holdings of student loan auction

rate securities on December 13, 2007 after learning material, non-public information that UBS's student loan auction rate securities program was in distress and that there was concern that upcoming auctions in student loan auction rate securities could fail. Shulman then sold his personal holdings of student loan auction rate securities before those auctions occurred directly to the UBS auction rate securities desk, a group under his supervision.

2. Earlier in December 2007, Shulman had placed orders to sell all of his auction rate securities when they next auctioned. At that time Shulman held \$1.45 million in student loan auction rate securities the last of which were set to be auctioned in January 2008.

3. Between December 11 and 13, 2007, Shulman learned of significant dislocation in UBS's auction rate securities market, and specifically its student loan auction rate securities market. Shulman was regularly updated as to UBS's auction rate securities inventory levels. UBS's student loan auction rate securities inventory increased significantly, from \$1,984,125,000 to \$3,152,775,000 between the morning of December 11th and the evening of December 13th.

4. Inside UBS, the serious dislocations in UBS's student loan ARS market became unmistakable. On December 11th, UBS's Managing Director in charge of Flow Trading and Sales for the Municipal Securities Group e-mailed Shulman – his immediate supervisor – and others that the group was “very concerned” about certain issues related to UBS's student loan auction rate program and its continuing support for that program. In that e-mail, he stated that “[t]he auction product is flawed” Early the following morning, the same direct report e-mailed Shulman that “The auction product does not work ... our options are to resign as remarketing agent or fail or ?” In a December 12, 2007 e-mail, the direct report advised

Shulman in no uncertain terms that with respect to student loan auction rate securities, “The Entire book needs to be restructured out of Auctions”

5. In light of “the continued deterioration of the auction rate market” and other developments, a meeting was set up for December 13, 2007 to discuss the state of the auction rate market and steps to be taken. Before the meeting, Shulman e-mailed the Investment Bank’s head of public finance that “we are in a difficult spot right now”

6. Shulman had previously instructed his broker to sell all of his auction rate securities, and understood that each security would be sold when it next auctioned. The next auctions for his student loan auction rate securities were scheduled to take place on December 21, 2007, and January 4 and 9, 2008, a period of concern for Shulman and other UBS executives. On December 13, 2007, Shulman contacted his UBS financial adviser and instructed him to sell his \$1.45 million in student loan auction rate securities immediately, in between auctions. On the same day, they were purchased in-between auctions by UBS’s auction rate desk, the same desk that was under Shulman’s supervision. This was the first and only time that Shulman sold his personal holdings of auction rate securities in between auctions.

7. The next day, Shulman participated in another meeting set to address the dislocation in UBS’s auction rate securities market. The materials prepared for the meeting made clear that one of UBS’s “Possible solutions” was to “Fail to support the auctions.” As Shulman made clear in a December 15, 2007 e-mail to UBS’s Chief Risk Officer, “our concern is clearly on the upcoming auctions through the 28th of December.”

8. Thus, Shulman sold his student loan auction rate securities while in possession of the material non-public information that there was concern that UBS’s upcoming student loan auctions could fail, while UBS’s customers were kept in the dark on the issue.

Shulman

9. David Harris Shulman was employed from August 2006 to August 2008 as the Global Head of the Municipal Securities Group and Head of Fixed Income for the Americas of UBS Securities LLC, a financial services firm specializing in asset management, investment banking, and securities services. The Short Term Trading Desk traded all of UBS's auction rate securities. During the relevant time, Shulman was the senior UBS official with day-to-day supervisory responsibility for UBS's auction rate securities desk.

Shulman Becomes Aware of Dislocation in UBS's Auction Rate Securities Market

10. From the late summer of 2007 to the widespread failures on February 13, 2008, Shulman recognized that UBS's auction rate securities business only continued as a result of UBS placing support bids. Shulman knew that UBS's practice was to support all auctions in which it acted as the lead broker dealer, which was accomplished by having UBS's Short Term Trading Desk, which was under his supervision, place support bids to cover any gap in investor demand.

11. These support bids, in turn, led to an increase in UBS's inventory, at a particularly inopportune time for the bank, which was facing increased balance sheet exposure from the fallout of the sub prime lending market. UBS support bids began to fill the increasing gap in the demand for auction rate securities. As a result, UBS's auction rate securities inventory grew significantly, requiring UBS to exceed its risk management limits on its auction rate securities many times.

12. By August 2007 the dislocation occurring in the auction rate securities market became apparent to Shulman; this dislocation grew throughout the Fall of 2007. At regular weekly meetings conducted by Shulman, the increasing dislocation in UBS's auction rate

securities market was discussed. In an October e-mail, Shulman described the auction rate program as “a huge albatross.” By late Fall 2007, Shulman received auction rate securities inventory reports at least daily.

Shulman Instructs His Broker to Sell All of His Auction Rate Securities When They Next Auction

13. On December 7, 2007, Shulman instructed his broker to sell all of his remaining auction rate securities in the amount of \$5.5 million, which included both municipal auction rate securities and student loan-backed auction rate securities. At the time, Shulman knew that there was no pre-clearance requirement which meant he could sell his holdings without obtaining approval of the compliance department.

14. A few hours later, Shulman and his broker exchanged the following electronic messages, confirming the instructions Shulman gave his broker earlier in the day:

Broker: WE NO LONGER NEED TO GO THROUGH COMPLIANCE TO SELL WEEKLIES WE ARE SELLING ALL YOURS AS THEY COME UP

Shulman: Reply: thank you ... you selling the arcs right?

Broker: Reply: YES ... AS THEY COME UP

Shulman: Reply: thank you

Broker: Hang tough ... you are the man!!!!!!

15. Pursuant to Shulman’s instructions, most of his non-student loan auction rate securities were sold at auction over the course of the following week. The \$1.45 million in 35-day student loan auction rate securities were to participate in auctions set to take place in late December 2007 and early January 2008.

Between December 11–13, 2007, Shulman Learns About Significant Dislocation in UBS’s Student Loan Auction Rate Securities Market

16. Between December 11 and December 13, 2007, Shulman continued to

receive information questioning the viability of UBS's auction rate securities market. In particular, UBS's inventory of student loan auction rate securities increased dramatically over this brief period. In daily e-mails that Shulman received from the Head of the Short Term Trading Desk, Shulman learned that the student loan auction rate securities inventory increased to \$3,152,775,000 by December 13th. Between the morning of December 11th and the evening of December 13th, UBS's student loan auction rate securities inventory increased from \$1,984,125,000 to \$3,152,775,000. At the time, Shulman was the senior actor at UBS addressing this crisis.

17. In addition, to address these developments, for the first time, with the knowledge of its senior executive, Shulman, the Municipal Securities Group created a calendar showing the amount of auctions, inventory levels and levels of UBS support in the auctions for each day on which auctions were to occur for the remainder of December 2007.

18. The Head of the Short Term Trading Desk explained that one reason the calendar was created was to allow UBS to "see the average of what we were supporting and then perhaps apply those averages to forward calendar to say where we might end up [in terms of inventory levels] come December 31st." The Head of the Short Term Trading Desk noted that:

historically [the Municipal Securities Group] would be able to give a guesstimate and most people would be comfortable because the rest of the world was fine in other years past, year ends in the past, [but] this was a different year than most, and [the Municipal Securities Group] wanted to be ... more clear in our response, so this ... gave us a nice road map for where we were to end up.

19. On the morning of December 11, 2007, Shulman – as well as his immediate supervisor, the Global Head Fixed Income – received an e-mail from UBS's Chief Risk Officer saying that he was:

very nervous about getting long a bunch of paper. ... [W]e are now slightly over limit in ARC's. **I also know that there is a risk that [Wealth Management] clientele pressure us to support auctions. We can't afford to have another blow up at the [Investment Bank]** You must get below your limit

(emphasis added.) The same morning, Shulman responded that he was well aware of the need to reduce UBS's inventory levels and added that he was pursuing steps to do so.

20. Specifically, Shulman wrote:

I understand completely the need to move this paper down [T]he ARCS product -as you know does not go away. ... Despite being very hostage to the [Wealth Management] franchise for distribution of these products (we are pressing as hard as we can), we are reaching deep into the institutional client base to take these.

(emphasis added).

21. Shortly thereafter, in an e-mail on the same day to UBS's Co-Head of Student Loans, Shulman relayed the increasing inventory concerns and advised the executive that: "we need to move this paper and have to explore all angles possible... we need to do this as quickly as possible."

22. Over the course of the next 48 hours, UBS's inventory levels of municipal and student loan auction rate securities increased dramatically. On the morning of December 11th, UBS's inventory of auction rate securities was \$2,565,845,000; on the evening of December 13th, the inventory had risen to \$3,947,565,000. In particular, the student loan auction rate securities increased from \$1,984,125,000 to \$3,152,775,000. Shulman, in an e-mail on December 15, 2007, had pointed out that the yearly average had been approximately \$1.3 billion. Thus, by December 13th, the inventory had reached an amount that was more than double the yearly average.

23. Later on December 11th, UBS's Managing Director in charge of Flow Trading and Sales for the Municipal Securities Group e-mailed Shulman – his immediate supervisor – and others that the group was “very concerned” about certain issues related to UBS's student loan auction rate program and its continuing support for that program. In the e-mail, Shulman's direct report stated that “[t]he **auction product is flawed**” (emphasis added).

24. Early the following morning, UBS's Managing Director in charge of Flow Trading and Sales for the Municipal Securities Group e-mailed Shulman with a subject line of “stud loans,” forwarding an e-mail he received earlier that morning from the Investment Bank's Head of Public Finance. Again, he warned Shulman that continued support for student loan auctions could result in “a tremendous amount [of] paper com[ing] back **The auction product does not work ... our options are to resign as remarketing agent or fail or ?**” (emphasis added).

25. On December 12, 2007, UBS's Managing Director in charge of Flow Trading and Sales for the Municipal Securities Group e-mailed Shulman and other executives in the Municipal Securities Group, responding to more questions from the Investment Bank's Head of Public Finance about restructuring UBS's student loan auction rate program. In his e-mail, Shulman's direct report wrote that “**The Entire book needs to be restructured out of Auctions**” (emphasis added).

26. Later that day, the Investment Bank's Head of Public Finance e-mailed his team, as well as Shulman and several other executives in the Municipal Securities Group, announcing that, due to “the continued deterioration of the auction rate market,” at 10:00 the following morning (December 13, 2007) there would be a “mandatory meeting” to discuss what to do. Shulman replied forty minutes later: “I appreciate you taking the ball here and pushing – we are

in a difficult spot right now” When questioned under oath, the Investment Bank’s Head of Public Finance stated his interpretation of Shulman’s remark that UBS was in a “difficult spot”:

the issue of taking on inventory had certainly started, and difficult spot means that we are taking on a lot of inventory and quite possibly by this point we are exceeding what the firm would like our year end limits to be. Obviously it is December 12th and December 31st is coming up quickly.

December 13, 2007: Shulman Instructs His Broker To Sell His Student Loan Auction Rate Securities Immediately, In Between Scheduled Auctions

27. Shulman knew that, based on his prior conversations with his broker, his auction rate securities were being sold as they auctioned. His student loan auction rate securities were not set to auction until December 21, 2007, and January 4 and 9, 2008, a period of concern to Shulman and other UBS executives. On December 13, 2007, Shulman contacted his broker and instructed him to sell his \$1.45 million in student loan auction rate securities immediately, in between auctions.

28. That same day, the broker contacted the UBS Short Term Trading desk to carry out Shulman’s instructions. The UBS employee who received the instructions testified that the “request was for inter-auction liquidity, obviously not sales at the auction.” The broker noted to the desk that his client had “just missed” the auction date with respect to one issue, and also mentioned Shulman’s name, in requesting the immediate sales. This was the first and only time Shulman sold his personal holdings of auction rate securities in between auctions.

29. As a result of Shulman’s instructions, on December 13, 2007, the UBS auction rate securities desk, which was under Shulman’s supervision, purchased Shulman’s personal holdings of student loan auction rate securities in advance of the auctions Shulman was concerned about.

The Next Morning: Shulman Participates with Senior Management in a Special Meeting Where Auction Failure is Discussed

30. At 11:30 a.m. the next morning, December 14, 2007, Shulman participated in a meeting with senior UBS executives to discuss the growing problems in auction rate securities. Materials prepared for the meeting outlined “possible solutions,” the first being “[f]ail to support the auctions”

31. According to UBS’s Chief Risk Officer, “the prospect of these things [auctions] failing came up in [the meeting].” After the meeting, UBS’s Chief Risk Officer e-mailed that “[m]ost of our potential trouble is in sarcs [student loan auction rate securities]” and noted that UBS “will have to make a very tough decision” about failing its auctions if the bank has to buy up “more than \$1.5 billion of additional paper or more than 25% of the issues”

32. Also on December 14, 2007, following this meeting, Shulman e-mailed his immediate supervisor, the Global Head of Fixed Income, and reported the growing “concern” among UBS’s senior management over a “failed auction scenario” The following day, Shulman e-mailed UBS’s Chief Risk Officer, noting his group’s establishment of a task force to look into possible restructuring of student loan auction rate securities. Shulman, who noted “that the fundamental mechanism of the ARCS [auction rate securities] structure [was] not working in a liquidity squeezed environment,” also asked for guidance from the Chief Risk Officer and the UBS Group CEO on UBS’s “overall position and philosophy as it relates to continuing to support” its markets in auction rate securities.

33. Shulman stated, “[a]s we know the issue currently is Student Loan ARCS [auction rate securities] (given that they are an ABS instrument) and broader ARCS [auction rate securities] product in general.” Shulman also expressed concern that problems in the student loan market could lead to market-wide disruptions.

34. Thus, Shulman sold \$1.45 million – his entire student loan auction rate holdings – back to his firm’s trading desk, while in possession of material nonpublic information. By the time of the February 13, 2008 UBS auction failures (which resulted when UBS and all other major broker-dealers refused to continue to support these auctions), Shulman had completely liquidated his auction rate securities holdings. Unlike Shulman, more than 50,000 customer accounts at UBS were left holding more than \$30 billion in illiquid investments.

Shulman Violated the Martin Act

35. Shulman’s trading and conduct violated Section 352-c of the General Business Law. Shulman committed fraud in connection with a securities transaction by misappropriating confidential information for securities trading purposes in breach of a duty owed to the source of the information.

36. Here, Shulman obtained by early December 2007, through various e-mails, meetings and presentations, material, nonpublic information that the auction rate securities market was under severe duress. Shulman owed UBS, his employer, the duty of confidentiality that he breached when he sold his auction rate securities directly to UBS on the basis of such information.

PROSPECTIVE RELIEF

WHEREAS, Shulman neither admits nor denies the OAG’s Findings (1)-(36) above;

WHEREAS, the OAG is willing to accept the terms of this Assurance pursuant to New York EL § 63(15) and to discontinue its Investigation of Shulman; and

WHEREAS, the parties each believe that the obligations imposed by this Assurance are prudent and appropriate;

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the parties, that:

37. In consideration of the making and execution of this Assurance, and within 10 business days thereafter, Shulman agrees that he will pay by wire transfer, certified or bank check payable to the State of New York \$2.75 million in penalties, fees and costs. If the payment is in the form of a certified or bank check, it shall be made out to "State of New York" and mailed to: Office of the Attorney General of the State of New York, 120 Broadway, 23rd Floor, New York, New York, 10271, Attn: David A. Markowitz, Chief, Investor Protection Bureau.

38. Any payments and all correspondence related to this Assurance must reference Assurance # AOD 10-008.

39. In further consideration of the making and execution of this Assurance, Shulman agrees that he shall not be employed by or associated with a broker dealer for a total of 30 months (accruing from his July 2008 suspension by UBS), such prohibition to end after January 1, 2011.

40. The amount ordered to be paid as civil penalties, fees and costs pursuant to this Assurance shall be treated as penalties paid to the government for all purposes, including tax purposes.

41. Shulman agrees that he shall not seek or accept, directly or indirectly, reimbursement or indemnification, including, but not limited to, payment made pursuant to any insurance policy, with regard to any or all of the amount payable pursuant to this Assurance.

Miscellaneous

42. The OAG has agreed to the terms of this Assurance based on, among other things, any representations made to the OAG by Shulman and his counsel, and the OAG's own factual Investigation as set forth in Findings (1)-(36) above. To the extent any material representations

made by Shulman or his counsel are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

43. To the extent not already provided under this Assurance, Shulman shall, upon request by the OAG, provide all documentation and information necessary for the OAG to verify compliance with this Assurance.

44. All notices, reports, requests, and other communications to any party pursuant to this Assurance shall be in writing and shall be directed as follows:

If to Shulman, to:

Morvillo, Abramowitz, Grand, Iason, Anello & Bohrer, P.C.
565 Fifth Avenue
New York, New York 10017
Attn: Robert J. Anello, Esq.
Telephone: 212-856-9600
Facsimile: 212-856-9494

If to the OAG, to:

Office of the Attorney General of the State of New York
120 Broadway, 23rd Floor
New York, New York 10271
Attn: David A. Markowitz, Esq.
Telephone: 212.416.8198
Facsimile: 212.416.6042

45. This Assurance may not be amended except by an instrument in writing signed on behalf of all the parties to this Assurance.

46. Shulman consents to the jurisdiction of the OAG in any proceeding or action to enforce this Assurance.

47. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made or relied upon by Shulman in agreeing to this Assurance.

48. This Assurance constitutes the entire agreement between the OAG and Shulman and supersedes any prior communication, understanding or agreement, whether written or oral, concerning the subject matter of this Assurance.

49. This Assurance shall be binding on and inure to the benefit of the parties to this Assurance and their respective successors and assigns, provided that no party, other than the OAG, may assign, delegate, or otherwise transfer any of its rights or obligations under this Assurance without the prior written consent of the OAG.

50. Shulman and his counsel represent and warrant, through the signatures below, that Shulman has approved the terms and conditions, and execution of this Assurance. Shulman agrees not to take any action or to make any public statement denying, directly or indirectly, any finding in this Assurance, the propriety of this Assurance, or expressing the view that this Assurance is without factual basis. Nothing in this paragraph affects Shulman's (a) testimonial obligations or (b) right to take legal or factual positions in defense of litigation or other legal proceedings to which the OAG is not a party. This Assurance is not intended for use by any third party in any other proceeding and is not intended, and should not be construed, as an admission by Shulman.

51. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

52. Acceptance of this Assurance by OAG shall not be deemed approval by the OAG of any of the practices or procedures referenced herein, and Shulman shall make no representation to the contrary.

53. The OAG retains the right under New York EL § 63(15) to compel compliance with this Assurance. Pursuant to EL § 63(15), evidence of a violation of this Assurance shall constitute *prima facie* proof of violation of the applicable law in any action or proceeding thereafter commenced by the OAG.

54. If a court of competent jurisdiction determines that Shulman has breached this Assurance, Shulman shall pay to the OAG the cost, if any, of such determination and of enforcing this Assurance, including without limitation legal fees, expenses, and court costs.

55. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. The OAG is willing to accept this Assurance pursuant to EL § 63(15), in lieu of commencing a statutory proceeding. This Assurance and any dispute related thereto shall be governed by the laws of the State of New York without regard to any conflicts of laws principles.

56. Nothing contained herein shall be construed as to deprive any person of any private right under the law.

57. Upon the execution by the parties of this Assurance, the OAG agrees to discontinue its investigation as against Shulman pursuant to New York Executive Law section 63(15).

IN WITNESS WHEREOF, this Assurance is executed by the parties hereto on February

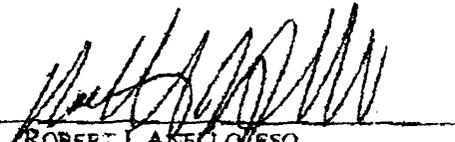
17, 2016.

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By: _____
DAVID A. MARKOWITZ
Special Deputy Attorney General
for Investor Protection

By: 

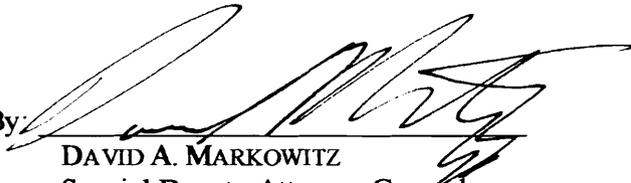
DAVID SHULMAN

By: 

ROBERT J. ANELLO, ESQ.
Attorney for David Shulman

IN WITNESS WHEREOF, this Assurance is executed by the parties hereto on February
18, 2010.

ANDREW M. CUOMO
Attorney General of the State of New York
120 Broadway, 23rd Floor
New York, New York 10271
(212) 416-8198

By: 
DAVID A. MARKOWITZ
Special Deputy Attorney General
for Investor Protection

By: _____
DAVID SHULMAN

By: _____
ROBERT J. ANELLO, ESQ.
Attorney for David Shulman