

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 20080130571**

TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: US Bancorp Investments, Inc.

Pursuant to FINRA Rule 9216 of FINRA's Code of Procedure, US Bancorp Investments, Inc. ("USBII" or the "Firm") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described below. This AWC is submitted on the condition that, if accepted, FINRA will not bring any future actions against the Firm alleging violations based on the same factual findings described herein.

I.

ACCEPTANCE AND CONSENT

Respondent hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of FINRA, or to which FINRA is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by FINRA:

BACKGROUND

USBII has been a registered broker-dealer and a member of FINRA (f/k/a National Association of Securities Dealers or NASD) since 1986. USBII is a full service brokerage firm headquartered in St. Paul, Minnesota.

RELEVANT DISCIPLINARY HISTORY

The firm has no relevant disciplinary history.

OVERVIEW

During the period from May 31, 2006 through February 28, 2008 ("the relevant period"), USBII violated NASD rules relating to communications in its marketing and sale of auction rate securities ("ARS") and failed to maintain adequate supervisory procedures concerning its sales and marketing activities regarding ARS, as required by NASD and MSRB rules.

During the relevant period, USBII used internal marketing materials prepared by other securities firms (hereinafter "sales materials") for ARS that were not fair and balanced and did not provide a sound basis for evaluating the facts in regard to purchases of ARS. Among other things, the materials did not contain adequate disclosure of the risks of ARS, including

that investments in ARS could become illiquid, that customers might be unable to obtain access to funds invested in ARS for substantial periods of time and, as to some materials, the risk that ARS auctions could fail. The materials thus violated NASD Rule 2211.

USBII also failed to establish and maintain adequate supervisory procedures concerning the marketing and sale of ARS. For instance, USBII failed to maintain policies and procedures that were reasonably designed to ensure that registered representatives: (a) accurately described ARS to customers and (b) provided customers with full disclosure of the risks of ARS investments. USBII also failed to provide adequate training to registered representatives regarding the features and characteristics of ARS, especially those affecting liquidity.

As a result of the foregoing, USBII violated NASD Rules 2211, 3010, and 2110 and MSRB Rule G-27.

FACTS AND VIOLATIVE CONDUCT

Background: Auction Rate Securities

ARS are long-term securities with interest rates or dividend yields that are reset periodically through an auction process.¹ Historically, ARS were held mainly by institutional investors, but in recent years a retail market developed for these securities, with a typical minimum investment of \$25,000. Although the maturity periods of ARS range from five years to 30 years or more for debt obligations and no stated maturity for closed-end fund preferred shares, auctions provide the primary source of liquidity for ARS investors and typically occur every 7, 14, 28 or 35 days.

ARS can become illiquid when an auction fails. ARS auctions fail when the supply of ARS being auctioned exceeds the demand for the securities in that auction. When an ARS auction fails, investors receive a penalty interest rate or dividend until the next auction but are unable to sell their securities at that time. As a result, ARS may not be appropriate for investors who have a short-term need for the funds they are investing.

Securities firms play different roles in the ARS market. An Underwriter brings the ARS to market as an intermediary for the issuer of the security. An Auction Agent, which can be a bank, conducts the ARS auction by collecting orders from broker-dealers, determines the "clearing rate," the highest rate accepted in the auction that becomes the interest or dividend rate that applies until the next auction, and calculates the allocation of the securities among Auction Dealers. An Auction Dealer or Remarketing Agent is a broker-dealer that solicits bids for the securities from their customers, submits them to the Auction Agent and usually receives a fee paid by the issuer. Firms acting in these capacities are sometimes known as "upstream" firms. In the past, certain upstream firms placed bids for ARS for their

¹ The primary types of ARS are municipal bonds, student loan-backed auction rate certificates issued by trusts that hold student loans, and preferred shares issued by closed-end funds and collateralized by the assets in the funds.

proprietary accounts in order to, among other things, support the auctions and prevent them from failing.

In contrast to upstream firms, firms sometimes known as “downstream” firms do not act as agents for issuers in any capacity. Instead, downstream firms act in the traditional broker role as agents for their customers and place bids with Auction Dealers and Remarketing Agents on the customers’ behalf to purchase and sell ARS. Most downstream firms are paid fees by Auction Dealers and Remarketing Agents (which may vary by dealer and type of security) for effecting trades in ARS held in dealers’ inventories.

Beginning in May 2006, the Securities and Exchange Commission brought a series of enforcement actions against underwriters, auction dealers and auction agents in the ARS market.² During the summer of 2007, ARS auctions began to fail, and by February 2008, ARS auctions failed on a widespread basis. Many of those failures have continued until the present time, notwithstanding that certain ARS issuers redeemed particular ARS in the period since the widespread failures. Nevertheless, many investors, including those who need access to their funds, continue to be unable to sell their ARS holdings.

ARS ACTIVITIES BY USBII

USBII acted as a downstream broker of ARS during the Relevant Period and sold approximately \$672,525,000 of ARS during that same period. USBII sold mostly preferred ARS during that period. As of February 29, 2008, approximately \$278,525,000 of ARS were held by retail customers at USBII. As of September 5, 2008, when USBII began its voluntary purchase program, as described below, \$164,150,000 of ARS were held in USBII customer accounts.

VIOLATIONS

Institutional Sales Material: NASD Rule 2211

NASD Rule 2211 provides that materials distributed to registered or associated persons must also meet the requirements of NASD Rule 2210(d)(1) which requires that:

All member communications with the public shall be based on principles of fair dealing and good faith, must be fair and balanced, and must provide a

² See Bear Stearns & Co., Inc.; Citigroup Global Markets, Inc.; Goldman Sachs & Co.; J.P. Morgan Securities, Inc.; Lehman Brothers Inc.; Merrill, Lynch Pierce, Fenner & Smith Inc.; Morgan Stanley & Co. Inc. and Morgan Stanley DW Inc.; RBC Dain Rauscher Inc.; Banc of America Securities LLC; A.G. Edwards & Sons, Inc.; Morgan Keegan & Co., Inc.; Piper Jaffray & Co.; Suntrust Capital Markets Inc.; and Wachovia Capital Markets, LLC (Securities Act of 1933, Release No. 53888, May 31, 2006); Deutsche Bank Trust Company Americas, the Bank of New York, and Wilmington Trust Co. (Securities Act of 1933, Release No. 8767, January 9, 2007); Citigroup Global Markets, Inc., successor by merger to Legg Mason Wood Walker, Inc. (Securities Exchange Act of 1934, Release No. 55712, May 7, 2007); and First Southwest Company (Securities Exchange Act of 1934, Release No. 57869, May 27, 2008).

sound basis for evaluating the facts in regard to any particular security or type of security, industry or service.

USBII violated NASD Rule 2211 by using three pieces of sales material that were not fair and balanced and did not provide a sound basis for evaluating the facts in regard to purchases of ARS.

Among other things, the materials used by USBII failed to adequately disclose the risks of investing in ARS, that investments in ARS could become illiquid, and that customers might be unable to obtain access to funds invested in ARS for substantial periods of time.

For example, sales materials available to USBII registered representatives described ARS as a “great place for short-term money” and a “cash alternative,” but failed to reflect the liquidity risk inherent in the auction rate preferred stock, in violation of Rule 2210(d)(1)(A) and (B). Other materials included a piece of sales literature that compared ARS yields to those of other money market securities but failed to adequately disclose the material differences among these investments, including differences in liquidity, safety, guarantees or insurance and potential fluctuation of return.

As a result of the foregoing, USBII violated NASD Rule 2211.

Supervisory Procedures: NASD Rules 3010(a) and 3010(b) and MSRB Rule G-27

NASD Rule 3010 requires each member firm to establish and maintain a system, including written procedures, to supervise the activities of its employees that is reasonably designed to achieve compliance with the federal securities laws and NASD rules.

MSRB Rule G-27 requires each broker, dealer and municipal securities dealer to supervise the conduct of its municipal securities activities to ensure compliance with MSRB rules and the federal securities laws, and requires each firm to establish and maintain a system, including written procedures, to supervise municipal securities activities that is reasonably designed to achieve compliance with the federal securities laws and MSRB rules.

USBII violated NASD Rule 3010 and MSRB Rule G-27 by failing to establish and maintain adequate procedures, including written procedures, that were reasonably designed to ensure that it marketed and sold ARS in compliance with the federal securities laws and applicable NASD and MSRB rules. For instance, USBII failed to maintain procedures reasonably designed to ensure that its registered representatives accurately described ARS to customers during sales presentations and that representatives provided customers with adequate disclosure of the risks of ARS, including the risk that ARS auctions could fail and that investments in ARS could therefore become illiquid. Moreover, ARS were added to the Firm’s approved product list without first being subjected to the Firm’s usual due diligence process. USBII also failed to provide adequate training to its registered representatives regarding the features and characteristics of ARS and the differences between ARS and other investments.

As a result of the foregoing, USBII violated NASD Rules 3010(a) and 3010(b), NASD Rule 2110, and MSRB Rule G-27.

OTHER FACTORS

In determining the appropriate sanctions in this matter, FINRA took into account that the Firm has taken significant steps to address potential harm sustained by customers as a result of the illiquidity in the ARS market that began in February 2008. USBII took the following actions to address potential harm sustained by customers as a result of the illiquidity in the ARS market:

In September 2008, USBII made an offer to purchase all ARS held in customer accounts at that time at par value, plus accrued and unpaid interest. The offer was made to all customers whose accounts at USBII held ARS, and USBII included in its voluntary ARS purchase program ARS holdings that had not been purchased at USBII. USBII purchased \$152,325,000 of ARS from customers at par.

In addition, in assessing the appropriate sanctions, FINRA notes that USBII has also agreed to undertake the additional actions described below to address harm that may have been sustained by customers of the Firm as a result of the illiquidity in the ARS market that began in February 2008.

SANCTIONS

Respondent also consents to the imposition of the following sanctions:

1. A censure;
2. A fine in the amount of \$275,000.

Respondent agrees to pay the monetary sanction(s) upon notice that this AWC has been accepted and that such payment(s) are due and payable. Respondent has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed.

Respondent specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction(s) imposed in this matter.

Investors Eligible for Relief

3. As noted above, USBII has completed a voluntary purchase at par of ARS that were subject to auctions that were not successful and were not subject to current calls or redemptions (“Eligible ARS”) from all investors in the Relevant Class, as described below. For purposes of this AWC, the Relevant Class is comprised of all Individual Investors who purchased Eligible ARS from USBII at any time between May 31, 2006 and February 28, 2008 into accounts maintained at USBII.

In addition to natural persons, the following entities will also be treated as Individual Investors:

- a. Any account with the following beneficial owner:
 1. non-profit charitable organizations; and
 2. religious corporations or entities.

- b. Any account with the following beneficial owner the value of which at the time of any ARS purchase made through USBII did not exceed \$10 million:
 1. trusts;
 2. corporate trusts;
 3. corporations;
 4. Employee pension plans/ERISA and Taft Hartley Act plans;
 5. educational institutions;
 6. incorporated non-profit organizations;
 7. limited liability companies;
 8. limited partnerships;
 9. non-public companies;
 10. partnerships;
 11. personal holding companies; and
 12. unincorporated associations.

Relief for Investors Who Sold Below Par

4. USBII shall undertake reasonable efforts to identify all investors in the Relevant Class who sold Eligible ARS below par between February 28, 2008 and February 27, 2009. No later than ninety days after the acceptance of this AWC by FINRA, USBII shall pay all such investors the difference between par and the price at which the investor sold the ARS.

Consequential Damages Claims

5. USBII agrees to arbitrate claims for consequential damages filed by investors in the Relevant Class relating to Eligible ARS through a Special Arbitration Program (SAP) in accordance with rules set forth by FINRA Dispute Resolution under the authority of this AWC. Such rules are available to USBII and investors through FINRA's web site. No later than sixty (60) days after the date of acceptance of this AWC by FINRA, USBII shall notify investors in the Relevant Class that they are eligible to seek consequential damages related to Eligible ARS through the SAP. This process is voluntary on the part of qualifying investors and does not preclude those investors who elect not to participate in the SAP from pursuing other available remedies. Arbitration under the SAP shall be conducted by a single public arbitrator, unless the claim for consequential damages is \$1,000,000 or greater, in which case, a panel of three public arbitrators may be appointed if both parties agree.

6. Any investors who choose to pursue such claims shall bear the burden of proving that they suffered consequential damages and that such damages were caused by investors' inability to access funds consisting of investors' ARS purchases through USBII. USBII shall be able to defend itself against such claims provided, however, solely for the purposes of the SAP, USBII shall not contest liability related to the sale of ARS; and provided further that USBII shall not be able to use as part of its defense an investor's decision not to sell ARS holdings prior to the acceptance of this AWC nor the investor's decision not to borrow money from USBII if such loan facility was made available to ARS holders.

Reports Concerning Compliance with Settlement

7. No later than one-hundred and twenty days (120) following the date this AWC is accepted by FINRA, USBII shall provide FINRA with a report setting forth the names, account numbers and payment amounts for each investor to whom USBII paid the difference between par and the price at which the investor sold the ARS, as required by paragraph 4 above. The accuracy of such report shall be certified by the Chief Executive Officer of USBII.

The sanctions imposed herein shall be effective on a date set by FINRA staff.

For good cause shown, and upon receipt of a timely written request from USBII, FINRA staff may extend any of the dates set forth above.

II.

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the Firm;
- B. To be notified of the Formal Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the National Adjudicatory Council ("NAC") and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, Respondent specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

Respondent further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of FINRA Rule 9143 or the separation of functions prohibitions of FINRA Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

III.

OTHER MATTERS

Respondent understands that:

- A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to FINRA Rule 9216;
- B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the Firm; and
- C. If accepted:
 1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against the Firm;
 2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about the Firm's disciplinary record;
 3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with FINRA Rule 8313; and
 4. The Firm may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any finding in this AWC or create the impression that the AWC is without factual basis. The Firm may not take any position in any proceeding brought by or on behalf of FINRA, or to

which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects Respondent's right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

- D. Respondent may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by FINRA, nor does it reflect the views of FINRA or its staff.

Respondent certifies that it has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it; that it has agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce Respondent to submit it.

Date

1-7-10

Respondent

U.S. Bancorp Investments, Inc.

By:

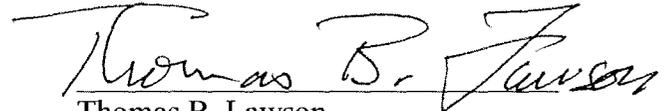


William Benjamin, Chief Executive Officer

Accepted by FINRA:

Feb 12, 2010
Date

Signed on behalf of the
Director of ODA, by delegated authority



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