

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

AIMIS ART CORPORATION and All  
Others Similarly Situated,

Plaintiff,

v.

NORTHERN TRUST SECURITIES, INC.,  
NORTHERN TRUST CORPORATION,  
and NORTHERN TRUST COMPANY,

Defendants.

**CIVIL ACTION NO. 08 Civ. 8057(VM)**

**AMENDED CLASS ACTION COMPLAINT  
FOR VIOLATIONS OF  
FEDERAL SECURITIES LAWS**

**JURY TRIAL DEMANDED**

RECEIVED  
09 JAN -5 PM 7:39  
U.S. DISTRICT COURT  
S.D.N.Y.

**INTRODUCTION**

1. This is a class action under Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 (the "Exchange Act") on behalf of all persons or entities which purchased auction rate securities (also known as auction rate preferred stock, auction market preferred stock, variable rate preferred securities, money market preferred securities, periodic auction rate securities and auction rate bonds) from or through Northern Trust between September 16, 2003 and February 13, 2008, inclusive (the "Class Period").

2. Northern Trust represented to class members that their accounts were equivalent to cash or money market funds; were highly liquid, safe investments for short-term investing; and that the cash would be available in a matter of days.

3. Defendants knew, but failed to disclose to class members, material facts about auction rate securities. In particular, Defendants knew, but failed to disclose that these auction rate securities were not cash alternatives, but were instead, complex, long-term financial instruments with 30 year maturity dates, or longer.

4. Northern Trust continued to make these representations even after auctions of auction rate securities began to fail in July 2007.

5. Among the auction rate securities which Northern Trust purchased for its customers were auction rate securities issued by Nuveen Investments, Inc., (“Nuveen”) and upon information and belief a substantial portion of the auction rate securities which Northern Trust purchased for class members were Nuveen auction rate securities. As set forth hereafter, Northern Trust and Nuveen have a close relationship and Northern Trust was motivated to buy for its customers risky Nuveen auction rate securities because of Northern Trust’s close relationship with Nuveen and because of the substantial commissions Northern Trust earned from its sales of auction rate funds. Indeed, Northern Trust employees were encouraged by Northern Trust management and incentivized to sell auction rate funds without disclosing the substantial risks, lack of liquidity and other material facts concerning auction rate securities. Northern Trust solicited plaintiff and class members to purchase auction rate securities and thereby supported the market for auction rate securities.

6. On February 13, 2008, the risks that Northern Trust failed to disclose to plaintiff and the class members occurred when 87% of all auctions of auction rate securities failed and the market for auction rate securities collapsed, leaving the holders of auction rate securities, including those sold by or through Northern Trust, with no means of liquidating the investments which Defendants had solicited as a suitable alternative to money market funds and other short term cash management vehicles.

#### **JURISDICTION AND VENUE**

7. This Court has jurisdiction over the subject matter of this action pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa). The claims asserted herein arise under Sections 10(b)

and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)), and Rule 10b-5 promulgated thereunder by the Securities Exchange Commission (“SEC”) (17 C.F.R. 240.10b-5).

8. Venue is proper in this District pursuant to Section 27 of the Exchange Act. Defendants regularly conduct business within this District.

9. In connection with the acts alleged in this Amended Complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce including, but not limited to, the mails, interstate telephone communications and the facilities of the national securities markets.

### **PARTIES**

10. In August 2007, Northern Trust purchased auction rate securities for Lead Plaintiff Aimis Art Corporation (“Aimis Art”) and Aimis Art continued to hold such auction rate securities as of February 13, 2008. Aimis Art previously filed a certification with the Court.

11. Defendant Northern Trust Corporation (the “Corporation” or “NTC”) is a Delaware corporation headquartered in Chicago, Illinois. NTC describes itself as “a financial holding company that is a leading provider of investment management, asset and fund administration, fiduciary, and banking solutions for corporations, institutions, and affluent individuals.”

12. Defendant Northern Trust Securities, Inc. (“NTS”) is a Delaware corporation, a member of the Financial Industry Regulatory Authority (“FINRA”), and a wholly-owned subsidiary of NTC. NTS is registered with the SEC as a broker-dealer pursuant to Section 15(b) of the Exchange Act.

13. Defendant Northern Trust Company (the “Bank”) is an Illinois banking corporation headquartered in Chicago and is NTC’s principal subsidiary.

14. Unless specifically noted, “Northern Trust” and “Defendants” refers collectively to NTC, NTS and the Bank.

## **GENERAL ALLEGATIONS**

### **Background**

15. The term “auction rate security” refers to either municipal or corporate debt securities or preferred stocks that are long term or perpetual-variable-rate securities and which pay interest at rates set at periodic “auctions.” Auction rate securities generally have long-term maturities, typically 30 years, and in the case of preferred stocks, no maturity date.

16. Auction rate securities were auctioned at par value, so the return on the investment to the investor and the cost of financing to the issuer were determined by the interest rate or dividend yield set through the auction. Generally, the auctions were held every 7, 28, or 35 days, with interest paid at the end of the auction period.

17. The auction itself was of the type commonly referred to as a “Dutch” auction, i.e. one where the price was initially set at a presumably economically unattractive level and then made more attractive to purchasers throughout the course of the auction. For auction rate securities, bids with successively higher rates were offered until all of the securities at the auction were sold.

18. At the end of the auction, the rate at which all of the securities were sold was set uniformly and was called the “clearing rate.” The clearing rate was determined by finding the lowest rate bid that was sufficient to cover all of the securities for sale in the auction. If several bidders had bids at the clearing rate, and there were more bids than shares, the shares were divided pro-rata between the clearing rate bidders. The auction agent, at the end of the auction, allocated the shares per the formula.

19. If there were not enough orders to purchase all the shares being sold at the auction, a failed auction occurred. If the auction failed then none of the current shareholders could sell their shares, no matter what type of order they issued. All shareholders of failed auctions would be capped by what is referred to as the “maximum rate.” The maximum rate for many auction rate securities, particularly those invested in corporate debt securities or preferred stocks, was relatively low, however. As a result, if the auction failed, owners unable to sell their shares would receive limited interest on their illiquid investments.

20. The issuer of each auction rate security, selected one or more broker-dealers to underwrite the offerings and to manage the auction process. Investors could only submit orders through the selected broker-dealers. The issuer paid an annualized fee to each broker-dealer engaged to manage an auction.

21. Investors were required to submit an order to the broker-dealer by a deadline set by the broker-dealer. The broker-dealer generally set this deadline early enough so that it had time to process and analyze the orders before having to submit the orders to the auction agent. This gave the broker-dealer enough time to determine what, if any, orders the broker-dealer wished to place for its own account.

22. Northern Trust was aware of the above facts, how the auction rate market functioned, the attendant liquidity risks inherent in this market and that these investments were extremely risky. Nevertheless, Northern Trust solicited plaintiff and class members to purchase auction rate securities without disclosing these risks and thereby supported the market for auction rate securities.

**During the Class Period, Northern Trust Materially Misrepresented the Liquidity of and Risks Associated with Auction Rate Securities and Omitted Material Facts about the Auction Market**

23. Auction rate securities were profitable for Northern Trust. Northern Trust had a significant financial incentive to sell auction rate securities, especially auction rate securities issued by Nuveen since: (1) Northern Trust received substantial commissions for selling funds containing auction rate securities and (2) as set forth hereinafter, Northern Trust and Nuveen have had an extremely close relationship and based upon this relationship and the substantial commissions Northern Trust received, it solicited investment in Nuveen funds containing auction rate securities. Northern Trust and Nuveen had the following relationship, among others:

- Both Northern Trust and Nuveen are based in Chicago.
- On May 9, 2007, Nuveen's Annual Meeting of Shareholders was held in the 6<sup>th</sup> floor auditorium of Northern Trust's Chicago headquarters. At least two additional Nuveen annual shareholder meetings (July 28, 2008 and April 11, 2008) were also held at Northern Trust's offices.
- A November 2008 SEC filing by Northern Trust Corporation indicates that it had holdings in more than one dozen Nuveen funds.
- As of November 28, 2008, Northern Trust was among Nuveen Symphony Mid-Cap Core Fund's top 10 portfolio holdings.
- On June 22, 2006, two Northern Trust subsidiaries (Northern Trust Global Advisors, Inc. and Northern Trust Investments, N.A.) signed an investment sub-advisory agreement with Tradewinds NWQ Global Investors, LLC, a subsidiary of Nuveen Investments, Inc. ("Tradewinds"). Tradewinds currently manages a portion of the assets of Northern Multi-Manager International Equity Fund, a Northern Trust fund.

- Moreover, many former Northern Trust executives have served in various positions at Nuveen including:

- Lawrence H. Brown who was a Senior Vice President at Northern Trust Corporation until August 1989. In 1993, Brown became a director of the Nuveen Municipal Income Fund and in 1997 was appointed as a Trustee for several Nuveen entities, Nuveen Municipal Trust, Nuveen Multistate Trusts I, II, III & IV. In 2003, Brown became a director of additional Nuveen funds, including Nuveen Investment Trust and Nuveen Investment Trust II.

- Terrance J. Toth was employed by Northern Trust Corporation from 1982 until 1986 and again from 1994 until 2007. From 2003 until 2007, he was President of NT Global Investments. During his tenure at Northern Trust, he was, at various times, a Board Member of Northern Trust Mutual Funds (2005-2007); Board Member of Northern Trust Japan (2004-2007), Board Member of Northern Trust Securities Inc. (2003-2007) and a Board Member of Northern Trust Hong Kong Board (1997-2004). On February 17, 2006, Toth was appointed to the Board of Trustees for Northern Funds, a Delaware statutory trust and an affiliate of the Defendants (“Northern Funds”). Toth was a Trustee for Northern Funds when Tradewinds was chosen as a sub-manager for at least one fund affiliated with Northern Trust. Since 2007, Toth has been a Board Member of at least fifteen (15) Nuveen funds and in October, 2008, Toth was named as a director for Nuveen Insured California Tax-Free Advantage Municipal Fund.

- George P. Webb is a managing director for Nuveen's Institutional Services Group and currently oversees Nuveen's institutional distribution effort. Webb had held senior marketing positions at Northern Trust Global Investors.
- Robert Soraparu joined Nuveen in 2006, and is currently a Vice President in Nuveen's Institutional Services Group where he is responsible for Nuveen's distribution effort focusing on corporate, public, and non-profit institutions and their consultants in the eastern United States. Prior to joining Nuveen, Soraparu served as a consultant for Northern Trust Global Investments.

24. In order to sell as many auction rate securities as possible, Northern Trust represented to investors that auction rate securities were the same as cash and were highly liquid, safe investments for short-term investing. Northern Trust represented to current and potential Northern Trust clients that the auction rate securities offered by Northern Trust were equivalent to cash or money market funds and were safe, highly liquid short-term investment vehicles and that cash could be received in a matter of days.

25. Northern Trust failed to disclose to purchasers of auction rate securities material facts about these securities.

26. Northern Trust failed to disclose that these securities were not cash alternatives, like money market funds, and were instead, complex, long-term financial instruments with 30 year maturity dates, or longer.

27. Further, Northern Trust failed to disclose the risks inherent in the auction rate securities market, including the risk that auctions could fail.

#### **The Risks Which Defendants Failed to Disclose Occur**

28. In the summer of 2007, some auctions for auction rate securities backed by sub-prime debt began to fail. In the autumn-winter of 2007, more auctions began to fail. Even though

a number of auctions failed in the summer and autumn of 2007, Northern Trust continued to encourage its customers to purchase auction rate securities and continued to represent to investors that these securities were the same as cash or money markets and were highly liquid, safe investments for short-term investing, without any disclosure of the risks associated with the securities.

29. In August 2007 both Mary Prado and Shirley Flagler of Northern Trust told Evelyn Aimis, the President of Aimis Art, that Northern Trust offered an instrument that would yield a higher interest rate than Aimis Art's existing rollover account at Northern Trust. Both of them represented that this instrument was as good as cash and cash could be received in a matter of days. Aimis Art gave \$1.15 million dollars to Northern Trust believing that this was an investment offering a slightly higher yield but was as good as cash. At no time did Ms. Prado or Ms. Flagler disclose that they were purchasing auction rate securities and they did not make any disclosure of any risks associated with those securities.

30. With the proceeds that Aimis Art gave to Northern Trust, Northern Trust purchased two Nuveen funds, Nuveen Dividend Advantage Muni Fund 3 and Nuveen Premier Municipal Income Fund, both of which contained auction rate securities.

31. On February 13, 2008, the risks which defendants failed to disclose occurred when 87% of all auctions of auction rate securities failed and it was disclosed that auction rate securities were very risky investments and were not equivalent to cash, facts that Northern Trust knew when it solicited plaintiff and class members to purchase auction rate securities without disclosing these facts.

32. Subsequently, Ms. Aimis contacted Northern Trust and was told that her money was with "Nuveen" and the funds were not available. Subsequently, Aimis Art contacted Northern

Trust and had conversations with Mary Prado, Shirley Flagler, Barbara Luis and Richard Peterson but they refused to redeem the auction rate securities which Northern Trust had purchased for Aimis Art. As set forth hereafter, it was not until after Aimis Art commenced this lawsuit that Northern Trust finally agreed to redeem Aimis Art's auction rate securities that Northern Trust had purchased for it.

33. The market for auction rate securities including those sold by Northern Trust was open, well-developed and efficient at all relevant times until the truth emerged and the auction market collapsed. As a result of the materially false and misleading statements and failures to disclose, auction rate securities sold by Northern Trust traded at artificially inflated prices during the Class Period. Plaintiff and other members of the Class purchased and continued to hold auction rate securities sold by Northern Trust relying upon the integrity of the auction market and the market price of those securities, and have been damaged thereby.

34. During the Class Period, Defendants materially misled purchasers of auction rate securities, thereby allowing the auction market to continue and inflating the price of auction rate securities sold by or through Northern Trust by publicly making false and misleading statements and omitting material facts necessary to make Defendants' statements, as set forth herein, not false and misleading. Said statements and omissions were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about the auction rate securities sold by Northern Trust, as alleged herein.

35. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused or were a substantial contributing cause of the damages sustained by plaintiff and other members of the Class. As described herein, during the Class Period, Defendants made or caused to be made a series of materially false or misleading

statements about the auction rate securities sold by or through Northern Trust. These material misstatements and omissions had the cause and effect of perpetuating the auction market and creating in that market an unrealistically positive assessment of the auction rate securities sold by or through Northern Trust, thus causing those securities to be overvalued and artificially inflated at all relevant times. Defendants' materially false and misleading statements during the Class Period resulted in plaintiff and other members of the Class purchasing and continuing to hold auction rate securities sold by or through Northern Trust at artificially inflated prices, thus causing the damages complained of herein. When the information undisclosed by Northern Trust was disclosed the auction rate market collapsed and auctions failed.

36. After the auction rate market collapsed, Northern Trust refused for more than seven months to buy back auction rate securities. As a result, this securities class action was filed on September 17, 2008 and the summonses and complaint were served on Northern Trust Corporation, Northern Trust Securities and Northern Trust Company on September 19, 2008.

37. On September 29, 2008, ten days after plaintiff served the summonses and complaint on Northern Trust and after it had refused for many months to purchase these securities from plaintiff and members of the Class, Northern Trust suddenly issued a press release stating, among other things, that "it will put in place a program offering to purchase certain illiquid auction rate securities." Northern Trust further indicated that "[t]he terms of the offer will be communicated to those clients who qualify for the program."

38. Thereafter, plaintiff's counsel wrote a number of times to counsel for Northern Trust requesting details of the purchase offer, but did not receive a substantive response.

39. Finally on October 31, 2008, about six weeks after Plaintiff filed this suit and after Northern Trust had refused for many months to redeem the auction rate securities which it had sold

to plaintiff and members of the class, Northern Trust posted on its website an offer to purchase at par the auction rate securities which it had sold to its clients. Pursuant to that offer, in December 2008, Northern Trust redeemed at par the auction rate securities which it had purchased for plaintiff. However, Northern Trust has made no effort to compensate Plaintiff and members of the class for the reduced interest earned on the auction rate securities, which would have been higher had the securities not been sold under false pretenses.

40. Moreover, Northern Trust has not offered to establish any mechanism by which persons such as plaintiff, for which Northern Trust purchased auction rate securities, can recover damages which they have suffered as a result of the lack of use of their auction rate funds. Plaintiff is in the art business and has suffered damages due to the fact that it was unable to purchase art at auction during the period of time February-December 2008 that its auction rate securities were illiquid.

#### **NO SAFE HARBOR**

41. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this complaint. The statements pleaded herein were not identified as “forward-looking statements” when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded herein, Defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the particular speaker knew that the particular forward-looking statement

was false, and/or the forward-looking statement was authorized and/or approved by an executive officer of Northern Trust who knew that those statements were false when made.

### **LOSS CAUSATION/ECONOMIC LOSS**

42. During the Class Period, as detailed herein, Defendants engaged in a scheme and course of conduct which acted to artificially inflate the price of auction rate securities sold by or through Northern Trust that supported the market for auction rate securities and operated as a fraud or deceit on purchasers of auction rate securities sold by or through Northern Trust by misrepresenting the liquidity of and risks associated with such securities. Defendants achieved this by making false and misleading statements about the auction rate securities Northern Trust purchased for Lead Plaintiff and members of the Class. When Northern Trust's prior misrepresentations and omissions were disclosed and became apparent to the investing public, the market for auction rate securities collapsed and the auction rate securities became illiquid. As a result of their purchases of auction rate securities from or through Northern Trust during the Class Period, plaintiff and other members of the Class suffered economic loss, i.e., damages under the federal securities laws in that the securities have substantially less value than that represented by Defendants.

### **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

43. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all persons and entities who purchased auction rate securities from or through Northern Trust between September 16, 2003 and February 13, 2008, inclusive, and continued to hold such accounts and auction rate securities as of February 13, 2008 (the "Class"). Excluded from the Class are Defendants, the officers and

directors of any defendant, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which any defendant has or had a controlling interest.

44. The members of the Class are so numerous that joinder of all members is impracticable. Northern Trust purchased for its customers a significant amount of auction rate securities while the market for such securities existed. While the exact number of Class members is unknown to plaintiff at this time and can only be ascertained through appropriate discovery, plaintiff believes that there are hundreds of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Defendants and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

45. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(a) Whether the federal securities laws were violated by Defendants' acts as alleged herein;

(b) Whether statements made by Defendants to class members during the Class Period misrepresented or omitted material facts about the liquidity of and risks associated with auction rate securities and the market for such securities; and

(c) To what extent the members of the Class have sustained damages and the proper measure of damages.

46. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by Defendants' wrongful conduct in violation of federal law that is complained of herein.

47. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

48. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. There will be no difficulty in the management of this action as a class action.

49. In the alternative, the Class may be certified under the provisions of Fed. R. Civ. P. 23(b)(1) and/or 23(b)(2) because: (a) the prosecution of separate actions by individual Class members, would create a risk of inconsistent or varying adjudications with respect to individual Class members which would establish incompatible standards of conduct for Defendants; (b) the prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them which would, as a practical matter, be dispositive of the interests of other Class members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; and (c) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief with respect to the Class as a whole.

### **BASIS OF ALLEGATIONS**

50. Plaintiff has alleged the following based upon the investigation of plaintiff's counsel, and plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

## COUNT I

### **Violation of Section 10(b) of the Exchange Act against All Defendants**

51. Plaintiff repeats and realleges each and every allegation set forth in the paragraphs above as if fully set forth herein. Plaintiff brings this cause of action on behalf of Aimis Art and the Class.

52. During the Class Period, Defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive the plaintiff and other Class members, as alleged herein; (ii) enable Defendants to sell tens of millions of dollars of auction rate securities to current and prospective Northern Trust clients, and on which Northern Trust made substantial commissions; and (iii) cause plaintiff and other members of the Class to purchase auction rate securities at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, Defendants, jointly and individually (and each of them) took the actions set forth herein.

53. Defendants (a) employed devices, schemes, and artifices to defraud; (b) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (c) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of auction rate securities which caused the market prices for such securities to be artificially inflated in violation of Section 10(b) of the Exchange Act and Rule 10b-5. All Defendants are sued either as primary participants in the wrongful and illegal conduct charged herein or as controlling persons as alleged below.

54. Defendants, individually and in concert, directly and indirectly, by the use, means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about the auction rate securities sold by Northern Trust, as specified herein.

55. Defendants employed devices, schemes and artifices to defraud, while in possession of material adverse information, and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors that auction rate securities were the same as cash and were highly liquid, safe short-term investment vehicles suitable for almost all investors, which included the making of, or the participation in the making of, untrue statements of material facts and omitting to state material facts necessary in order to make the statements made about the auction rate securities in the light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon plaintiff and members of the class during the Class Period.

56. Defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts. Defendants' material misrepresentations and/or omissions were done knowingly or deliberately and for the purpose and effect of concealing the truth about the liquidity of and risks associated with auction rate securities from Plaintiff and members of the class.

57. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market and market price of the auction rate securities sold by or through Northern Trust were artificially inflated during the Class Period. In ignorance of the fact that the market prices of auction rate securities were artificially inflated, and relying directly or indirectly on the false and misleading statements made by Defendants, or upon the integrity of the auction market in which the auction rate securities were traded, and/or on the absence of material adverse information that was known to or recklessly disregarded by

Defendants but not disclosed in public statements by Defendants during the Class Period, plaintiff and the other members of the Class acquired and continued to hold auction rate securities purchased for them by or through Northern Trust during the Class Period at artificially high prices and were damaged thereby.

58. At the time of said misrepresentations and omissions, plaintiff and other members of the Class were ignorant of their falsity, and believed them to be true. Had plaintiff and the other members of the Class and the marketplace known the truth regarding the liquidity of and risks associated with the auction rate securities sold by or through Northern Trust, which were not disclosed by Defendants, plaintiff and other members of the Class would not have purchased and continued to hold their auction rate securities, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices which they paid or they would have earned a higher rate of interest on their auction rate securities.

59. By virtue of the foregoing, Defendants have violated Section 10(b) of the Exchange Act, and Rule 10b-5 promulgated thereunder.

60. As a direct and proximate result of Defendants' wrongful conduct, plaintiff and the other members of the Class suffered damages in connection with their respective purchases of auction rate securities during the Class Period.

## **COUNT II**

### **Violation of Section 20(a) of the Exchange Act against Defendant Northern Trust Corporation**

61. Plaintiff repeats and realleges each and every allegation set forth in the paragraphs above as if fully set forth herein. Plaintiff brings this cause of action on behalf itself, and the Class.

62. Defendant Northern Trust Corporation acted as a control person of Defendants Northern Trust Securities Inc. and Northern Trust Company within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of its 100% ownership of Northern Trust Securities Inc. and Northern Trust Company, Northern Trust Corporation had the power to influence and control and did influence and control, directly or indirectly, the decision-making by Northern Trust Securities Inc. and Northern Trust Company, including the content and dissemination of the various statements which plaintiff contends are false and misleading.

63. As set forth above, Northern Trust Securities Inc. and Northern Trust Company violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this complaint. By virtue of its position as a controlling person, Northern Trust Corporation is liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of Defendants' wrongful conduct, plaintiff and other members of the Class suffered damages in connection with their purchase and retention of auction rate securities from or through Northern Trust during the Class Period.

#### **PRAYER FOR RELIEF**

**WHEREFORE**, plaintiff prays for relief and judgment, as follows:

A. Determining that this action is a proper class action, and certifying plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure and plaintiff's counsel as Lead Counsel;

B. Awarding compensatory damages in favor of plaintiff and the other Class members against all Defendants, jointly and severally, for all damages sustained as a result of Defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

C. Awarding plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees;

D. Awarding extraordinary, equitable and/or injunctive relief as permitted by law, equity and the federal statutory provisions sued hereunder; and

E. Such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

Dated: January 5, 2009

**KAPLAN FOX & KILSHEIMER LLP**

By: \_\_\_\_\_ /s/ Robert N. Kaplan

Robert N. Kaplan  
Linda P. Nussbaum  
Jeffrey P. Campisi  
850 Third Avenue; 14<sup>th</sup> Floor  
New York, NY 10022  
Telephone: (212) 687-1980  
Facsimile: (212) 687-7714  
Email: [rkaplan@kaplanfox.com](mailto:rkaplan@kaplanfox.com)  
[lnussbaum@kaplanfox.com](mailto:lnussbaum@kaplanfox.com)  
[jcampisi@kaplanfox.com](mailto:jcampisi@kaplanfox.com)

Norman E. Siegel  
Matthew L. Dameron  
**STUEVE SIEGEL HANSON LLP**  
460 Nichols Road, Suite 200  
Kansas City, MO, 64112  
Telephone: (816) 714-7100  
Facsimile: (816) 714-7101  
Email: [siegel@stuevesiegel.com](mailto:siegel@stuevesiegel.com)  
[dameron@stuevesiegel.com](mailto:dameron@stuevesiegel.com)

Michael E. Criden  
**CRIDEN & LOVE, P.A.**  
7301 Southwest 57<sup>th</sup> Court  
South Miami, F.L. 33143  
Telephone: (305) 357-9000  
Facsimile: (305) 357-9050

Email: [mcriden@cridenlove.com](mailto:mcriden@cridenlove.com)

*Co-Lead Counsel for Lead Plaintiff Aimis Art Corporation*