

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF KENTUCKY  
CENTRAL DIVISION  
AT LEXINGTON  
ELECTRONICALLY FILED**

ASHLAND INC. and ASHTHREE LLC,	x	
	:	
<b>Plaintiffs,</b>	:	<b><u>COMPLAINT</u></b>
	:	
<b>- against -</b>	:	<b>JURY TRIAL DEMANDED</b>
	:	
OPPENHEIMER & CO., INC.,	:	<b>CIVIL ACTION NO. _____</b>
	:	
<b>SERVE:</b>	:	
CSC - Lawyers Incorporating	:	
Service Company	:	
421 West Main Street	:	
Frankfort, KY 40601	:	
	:	
<b>Defendant.</b>	:	
	x	

Plaintiffs Ashland Inc. and AshThree LLC (collectively, “Ashland” or the “Company”) for their complaint against defendant Oppenheimer & Co., Inc. (“Oppenheimer”), allege upon knowledge as to themselves, and otherwise upon information and belief, as follows:

**PRELIMINARY STATEMENT**

1. This action arises out of Oppenheimer’s false and misleading statements to, and material omissions from, Ashland aimed at inducing the Company to purchase auction rate securities (“ARS”) from Oppenheimer, and convincing Ashland to hold and to continue purchasing those securities at a time when Oppenheimer knew the market for those ARS was collapsing.
  
2. ARS are long-term bonds and preferred stock with interest rates or dividend yields that are reset through periodic auctions, typically held every 7, 14, 28, or 35 days. ARS auctions are typically conducted by the same large financial institutions that provide the issuers

of the ARS with underwriting services (the “Lead Underwriters”). The auctions are intended to enable investors to easily liquidate their ARS at the end of each period. Based on the short intervals between auctions, ARS pay interest rates or dividend yields consistent with lower, short-term rates, but typically higher than those paid by treasuries or money market instruments. Both the Lead Underwriters and downstream brokers, including Oppenheimer, marketed ARS as advantageous to investors, representing that ARS were as safe and liquid as money market instruments, but with a slightly higher yield to compensate for the time intervals – or “holding periods” – between auctions.

3. In May 2007, Ashland engaged Oppenheimer to provide investment and cash management services to the Company. As part of that engagement, Oppenheimer induced Ashland to purchase Oppenheimer-brokered ARS by representing those ARS as safe, liquid instruments that were suitable to the Company’s conservative investment policies. Moreover, Oppenheimer represented that the Oppenheimer-brokered ARS had superior liquidity as compared to other ARS because Oppenheimer-brokered ARS were based on only the highest quality assets and, accordingly, were always in demand from third-party investors. Oppenheimer also represented that Ashland would never be left holding illiquid ARS because Oppenheimer-brokered ARS were of a quality and type that had never experienced failed auctions. Indeed, Oppenheimer represented to Ashland that, in the event of any disequilibrium in the ARS market (which Oppenheimer represented to be a very rare occurrence), the Lead Underwriters would step in and place sufficient proprietary bids to prevent auction failure. Thus, Oppenheimer represented that Ashland would never be left holding illiquid Oppenheimer-brokered ARS.

4. Oppenheimer did not disclose to Ashland Oppenheimer's substantial financial interest in selling Oppenheimer-brokered ARS rather than *bona fide* cash management investments to the Company. Nor did Oppenheimer disclose to Ashland the Oppenheimer internal policy that was designed to dissuade clients such as Ashland from liquidating their holdings.

5. Further, Oppenheimer did not disclose to Ashland that, contrary to Oppenheimer's representations, the Lead Underwriters' substantial and continuing purchases of Oppenheimer-brokered ARS for their own inventory were not rare or hypothetical occurrences, but rather were nearly daily necessities required to maintain liquidity in the ARS market due to a lack of sufficient third-party demand to provide genuine liquidity for those ARS. Oppenheimer also failed to disclose to Ashland that these proprietary purchases of Oppenheimer-brokered ARS by the Lead Underwriters were restricted by internal inventory limits, or that the market for Oppenheimer-brokered ARS would collapse if and when the Lead Underwriters stopped buying the ARS.

6. By August 2007, unbeknownst to Ashland, whatever genuine, third-party demand that had existed for ARS evaporated. In an effort to preserve its fee generating business at the expense of clients like Ashland, Oppenheimer concealed from Ashland the distress in the ARS market, and continued to represent ARS as safe, liquid securities suitable to Ashland's conservative investment policies. Oppenheimer also continued to represent that Ashland would never be left holding illiquid Oppenheimer-brokered ARS.

7. In late 2007, Oppenheimer responded to Ashland's concerns regarding the burgeoning global financial crisis and the stability of monoline bond insurers by advising the Company to shift its investment in ARS away from tax-exempt ARS based on municipal

government bonds and to invest instead in ARS based on student loan obligations (“SLARS”). Oppenheimer touted the credit ratings of SLARS and represented that SLARS were of a “higher quality” than other ARS because they were insured by the United States government under the Federal Family Education Loan Program (“FFELP”).

8. As with other types of Oppenheimer-brokered ARS marketed to Ashland, Oppenheimer repeatedly represented to the Company that, in the “rare” case of disequilibrium in the ARS market, the Lead Underwriters conducting SLARS auctions would place sufficient proprietary bids to prevent auction failure and preserve the safety and liquidity of Ashland’s Oppenheimer-brokered SLARS.

9. Oppenheimer did not disclose, however, that SLARS were as susceptible to illiquidity as other ARS in the event of a collapse of the ARS market, regardless of their credit rating and FFELP guarantee.

10. On or about February 12, 2008, the ARS market collapsed, primarily due to the Lead Underwriters’ decision to cease placing proprietary bids sufficient to prevent auctions from failing. For more than six months prior to this collapse, Oppenheimer was well aware of significant problems in the ARS market, as well as a systemic risk to the ARS market, but failed to alert Ashland to these problems. Instead, even as Oppenheimer became aware of the impending collapse of the ARS market in late 2007 and early 2008, and even as Oppenheimer executives frantically dumped their own personal ARS holdings, Oppenheimer continued to market SLARS to the Company aggressively, based on the purported safety and liquidity of such securities.

11. In reliance on Oppenheimer’s representations and omissions, Ashland purchased ARS from Oppenheimer continuously between June 2007 and February 2008. The collapse of

the ARS market rendered completely illiquid these supposedly “safe” Oppenheimer-broker SLARS that Ashland held, stranding Ashland with approximately \$194 million of illiquid Oppenheimer-brokered SLARS.

12. In November 2008, the Enforcement Section of the Office of the Secretary of the Commonwealth of Massachusetts, Securities Division (“Massachusetts Enforcement Section”) filed an administrative complaint against Oppenheimer in connection with Oppenheimer’s marketing of ARS to investors. The Massachusetts Enforcement Section’s complaint alleging multiple violations of Massachusetts securities laws has brought to light relevant Oppenheimer communications and conduct, key aspects of which are incorporated herein.

### **THE PARTIES**

13. Plaintiff Ashland Inc. is a corporation created and existing under the laws of Kentucky, with its principal place of business in Covington, Kentucky and offices of its Treasury Department in Lexington Kentucky. Ashland is a leading diversified global chemical company and its division, Valvoline, makes a variety of specialized and widely known oil products. On November 13, 2008, Ashland acquired specialty chemical company, Hercules, Inc. Ashland has sales and operations in the United States and over 100 countries around the globe, and currently employs approximately 15,000 people in the United States and worldwide.

14. Plaintiff AshThree LLC is a limited liability company created and existing under the laws of Delaware in which Ashland Inc. is the only member. AshThree LLC is the current holder of the Oppenheimer-brokered ARS at issue in this complaint.

15. Oppenheimer & Co., Inc. is a New York corporation with its principal place of business in New York, New York.

## **JURISDICTION AND VENUE**

16. This Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 78aa and 28 U.S.C. §§ 1331, 1332, and 1367.

17. Venue is proper in this district pursuant to 15 U.S.C. § 78aa, because the defendant transacts business in this district.

## **FACTS**

### **I. Ashland's Conservative Investment Policy**

18. Ashland's business generally requires it to keep substantial funds readily available in the form of cash or highly-liquid assets so Ashland can satisfy a variety of business contingencies. Ashland uses these funds to pay employees and service providers, satisfy tax obligations, invest in new business opportunities, and respond to unexpected business exigencies. To ensure the Company's assets are managed appropriately, Ashland had and continues to have an Investment Policy ("Investment Policy") setting forth the Company's investment objectives as well as guidelines restricting investment of the Company's assets to instruments consistent with those objectives.

19. Ashland's Investment Policy sets forth the Company's investment objectives, in order of importance, as: (i) "Safety – to protect principal"; (ii) "Liquidity – to provide funds to meet Ashland's obligations as they become due"; and (iii) "Yield – to maximize the return of all investments within the constraint of safety and liquidity."

20. To ensure preservation of capital, Ashland's Investment Policy restricts the Company to purchasing only high-quality, low-risk investments that carry high, investment-grade ratings. The Investment Policy repeatedly makes clear that no investment action is to be taken "at the sacrifice of safety and liquidity."

21. Ashland provides its Investment Policy to Company employees engaged in managing the Company's assets. Ashland also provides the Investment Policy and/or describes its contents to all financial institutions with whom the Company conducts investment or cash management business.

## **II. The MAP Transaction**

22. On June 30, 2005, Ashland completed the sale of its interest in Marathon Ashland Petroleum LLC (the "MAP Transaction"). The MAP Transaction netted Ashland approximately \$1.3 billion in cash, which the Company specifically earmarked for use in a future acquisition (the "Acquisition Principal"). In particular, following the MAP Transaction, Ashland began actively looking to acquire a specialty chemical company.

23. To preserve the safety and liquidity of that Acquisition Principal, Ashland Inc. contributed it as capital to AshThree LLC, a special purpose entity wholly-owned and operated by Ashland Inc., and directed Ashland's Treasury department to ensure that AshThree LLC could access that Acquisition Principal with little or no delay when Ashland needed it. As sole member of AshThree LLC, Ashland Inc. made all investment decisions for AshThree LLC regarding the Acquisition Principal, investing it in various money market instruments, including the ARS referenced herein.

## **III. Oppenheimer Markets ARS To Ashland As Suitable Short-Term Investments for the Acquisition Principal**

### **A. Ashland Describes the Company's Investment Requirements to Oppenheimer**

24. Following the MAP transaction, Ashland was referred to Oppenheimer by TrustCo, a bank with which the Company had a previous investment relationship. In or around May 2007, Ashland's Assistant Treasurer, Joseph R. Broce ("Broce") met with Oppenheimer

personnel, including Oppenheimer's Executive Director, Investments, Sherri L. Castner ("Castner"), and an Oppenheimer Senior Financial Associate, Lenee C. Firlit, to discuss investment alternatives for the Acquisition Principal. This meeting and subsequent communications occurred in and from Broce's office at Ashland's Lexington, Kentucky location. At this initial meeting and in subsequent communications, Ashland explicitly described to Oppenheimer its need for safety and liquidity with respect to the Acquisition Principal. Ashland also provided a copy of the Company's Investment Policy and/or described its contents to Oppenheimer.

25. In response to Ashland's request for investment assistance consistent with its need to preserve the safety and liquidity of the Acquisition Principal and the Company's Investment Policy, Oppenheimer provided the Company with both written and in-person presentations through which Oppenheimer marketed itself aggressively. In particular, Oppenheimer touted the high level of investment and cash management expertise and service with which it could provide the Company.

26. Oppenheimer also emphasized its ability to provide high-quality ARS to Ashland, which Oppenheimer represented as safe and liquid investment instruments suitable to, and consistent with, the Company's need to preserve the safety and liquidity of the Acquisition Principal and the Company's conservative Investment Policy.

27. In reliance on Oppenheimer's representations and omissions, including the written materials Oppenheimer provided to Ashland and Castner's verbal and written statements to Broce and the Company in and around May 2007, Ashland engaged Oppenheimer to provide investment and cash management services to the Company.

28. Also in reliance on Oppenheimer's representations and omissions, Ashland began purchasing Oppenheimer-brokered ARS from Oppenheimer on June 5, 2007.

**B. Auction Rate Securities (“ARS”)**

29. ARS are long-term bonds and preferred stock with interest rates or dividend yields that are reset through periodic auctions, typically held every 7, 14, 28, or 35 days. ARS auctions are typically conducted by the same large financial institutions that provide the issuers of the ARS with underwriting services (the “Lead Underwriters”). The auctions are intended to enable investors to easily liquidate their ARS at the end of each period. Based on the short intervals between auctions, ARS pay interest rates or dividend yields consistent with lower, short-term rates, but typically higher than those paid by treasuries or money market instruments. Both the Lead Underwriters and downstream brokers, including Oppenheimer, marketed ARS as advantageous to investors, representing that ARS were as safe and liquid as money market instruments, but with a slightly higher yield to compensate for the time intervals – or “holding periods” – between auctions.

30. Financial institutions created and brokered ARS that were based on several types of debt obligations and other assets. For example, brokers marketed ARS that were based on: (i) obligations of municipal governments, (ii) assets of closed-end investment funds; (iii) pools of federally insured student loans; and (iv) pools of complex derivative securities tied to various types of debt including subprime residential mortgages and commercial real estate loans.

31. In the event holders of ARS seeking to sell their securities at an auction outnumbered investors bidding for those instruments, the auction would be said to “fail.” In the event of a “failed” auction, none of the investors holding those ARS could sell their securities, and the instruments would be illiquid until the next scheduled auction. During the holding

period following a failed auction, the ARS would pay investors a higher “penalty rate” or “fail rate” to penalize issuers, compensate investors for the temporary illiquidity, and create new liquidity by inducing new investors to step in and purchase the ARS to benefit from the higher interest rate. “Fail rates” varied for different ARS, and would be determined by the terms under which the particular security had been issued.

32. The Lead Underwriters, from whom Oppenheimer obtained the ARS that it brokered to Ashland and other clients, had the option but absolutely no obligation to place proprietary bids in the auctions they conducted. Often, however, the Lead Underwriters placed proprietary bids for large numbers of ARS to ensure that the auctions did not fail.

**C. Oppenheimer’s Material Representations to Ashland Concerning ARS**

33. To induce Ashland to (i) engage Oppenheimer to provide investment and cash management services, and (ii) purchase ARS from Oppenheimer, Castner and others at Oppenheimer represented that the ARS Oppenheimer brokered were of the highest available quality. Oppenheimer represented that Oppenheimer-brokered ARS were comparable to money market instruments in terms of safety and liquidity, representing that Oppenheimer-brokered ARS offered Ashland an ideal means of protecting the safety and liquidity of the Acquisition Principal consistent with the Company’s express directive and Investment Policy.

34. Castner and Oppenheimer repeatedly represented to Ashland that instances of “disequilibrium” in the ARS market were very rare. Oppenheimer represented that the Lead Underwriters and others conducting ARS auctions had never allowed an auction to fail and would continue to act to prevent such an occurrence, thus ensuring that the Company would never be left holding illiquid Oppenheimer-brokered ARS.

35. Oppenheimer also touted the AAA credit ratings from agencies such as Moody's and Fitch in marketing ARS to Ashland, highlighting the ratings as purported evidence of the safety and security of the investments.

**D. Oppenheimer's Material Omissions to Ashland Concerning ARS**

36. Oppenheimer failed to disclose the true liquidity risks associated with Oppenheimer-brokered ARS to Ashland. In particular, Oppenheimer failed to disclose to Ashland (i) the frequency with which there were fewer bidders than sellers at ARS auctions, including auctions for Oppenheimer-brokered ARS; and (ii) the degree to which Lead Underwriters were required to purchase ARS, including Oppenheimer-brokered ARS, for their own inventories in order to provide liquidity for those securities. In fact, as Oppenheimer concealed from Ashland, there was often not sufficient third-party demand for Oppenheimer-brokered ARS to support the market for those securities and, accordingly, without the Lead Underwriters' substantial and continuing ability and/or willingness to purchase ARS, including Oppenheimer-brokered ARS, for their own inventories, those securities would have become illiquid. Oppenheimer's ARS disclosure document, available to customers online, did not disclose that, if auctions failed, investors would be left holding long-term or perpetual securities.

37. Oppenheimer also failed to disclose to Ashland that, contrary to Oppenheimer's representations, the Lead Underwriters were not committed to ensuring liquidity for all Oppenheimer-brokered ARS. Rather, as Oppenheimer knew, but concealed from Ashland, the Lead Underwriters' commitment to providing liquidity for ARS, including Oppenheimer-brokered ARS, would extend only as far as the Lead Underwriters deemed providing such liquidity to be in the Lead Underwriters' own commercial best interests. Moreover, Oppenheimer knew that, to protect themselves, the Lead Underwriters had imposed a limit on

the amount of ARS they would purchase for their own inventories. Thus, Oppenheimer failed to disclose to Ashland that, when the Lead Underwriters reached their ARS inventory limits, they would cease placing proprietary bids for ARS, including Oppenheimer-brokered ARS, which in turn would severely affect the liquidity of Ashland's ARS holdings.

38. Likewise, Oppenheimer failed to disclose to Ashland that the AAA credit ratings that it touted as purported evidence of the safety and liquidity of Oppenheimer-brokered ARS were, in fact, achieved only because the "fail rates" on these ARS were capped at low maximums. Because higher maximum fail rates make it less likely that, in the event of a failure, all security holders will receive interest and principal when due, high maximum fail rates jeopardize AAA ratings. While low maximum fail rates help protect such ratings, they come at the expense of liquidity, because low maximum fail rates are not as attractive to investors. Accordingly, even while Oppenheimer highlighted the AAA ratings on the ARS marketed to Ashland, Oppenheimer failed to disclose to Ashland that AAA-rated ARS were more likely to remain illiquid in the event of auction failure. Oppenheimer's ARS disclosure document, available to customers online, did not inform Ashland of the maximum fail rates on ARS issues in the event of auction failure.

39. Finally, at no time did Oppenheimer disclose to Ashland, the extent of Oppenheimer's financial interest in helping to maintain the ARS market for the purpose of generating fees for itself. Nor did Oppenheimer disclose the degree to which it and its Financial Advisors ("FAs"), including Castner, increased their own profits by selling Oppenheimer-brokered ARS, rather than *bona fide* cash management instruments, to Oppenheimer customers and by ensuring that their clients, such as Ashland, held Oppenheimer-brokered ARS for as long as possible.

40. For example, on July 11, 2007, at the direction of Greg White, Managing Director of Oppenheimer's Auction Rate Department, Oppenheimer circulated an internal policy stating, in relevant part:

"The following applies to all new issue Auction Rate Securities:

Clients are expected to hold 7 day new Auction Rate Securities for a minimum of 4 roll periods from the initial auction date.

Clients are expected to hold 28 and 35 day new issue Auction Rate Securities for a minimum of 2 roll periods from the initial auction date. These holding periods are in place to ensure that Oppenheimer continues to maintain and build positive long term relationships with the underwriters of these securities, continues to be shown these new issues, and receives favorable allocations.

If a client must sell prior to the minimum holding period, the Auction Rate Securities Desk will retract the new issue sales credit less the standard concession equivalent to the ongoing trailer for that security for the initial holding period. If an FA has a client that needs to liquidate a position, this position must be sold into the auction due to the SIFMA Auction Rate Securities Best Practices. If the FA involved has different successful purchase orders for that security that day, only the net liquidations for that new issue security will have their original new issue commissions adjusted."

41. Ashland was never informed of this policy by Oppenheimer. Nor was Oppenheimer informed of the facts contained therein, including:

- i. that Oppenheimer FAs, including Castner, would receive additional compensation in the case of newly issued ARS if Ashland held the ARS for multiple auction cycles;
  - ii. that Oppenheimer FAs, including Castner, could avoid losing commissions for ARS redeemed prior to the "minimum holding period" if they convinced other clients, such as Ashland, to purchase the same ARS;
- and

- iii. that Oppenheimer had expressly put this policy in place to maintain its own business relationships with the Lead Underwriters and issuers of ARS regardless of the effect it might have on its customers.

42. Castner herself was perturbed by White's policy, forwarding White's email to other senior Oppenheimer executives on July 11, 2007 with a note stating, among other things: "Greg [White] has sent out the following email to cover himself and his rules . . . This is an inhouse rule, not necessarily one required by the brokers/dealers. Institutional clients can not always guarantee their cash positions on a specific day, therefore they can not guarantee that they will hold a monthly issue for two extra months."

**IV. Oppenheimer Induces Ashland to Purchase Oppenheimer-Brokered ARS Based on Federally-Insured Student Loans ("SLARS")**

43. Through July 2007, Ashland's ARS purchases from Oppenheimer primarily consisted of Oppenheimer-brokered tax-exempt ARS based on municipal government bonds insured by monoline bond insurers such as MBIA and AMBAC.

44. In mid 2007, Broce discussed with Castner how best to protect the safety and liquidity of Ashland's cash portfolio from the fallout of the crisis in subprime mortgages and their related securities. Castner advised Broce to direct more of Ashland's cash into certain Oppenheimer-brokered ARS – specifically, those based on federally insured student loans ("SLARS").

45. In reliance on Oppenheimer's representations and omissions, Ashland began purchasing Oppenheimer-brokered SLARS from Oppenheimer on July 17, 2007.

**A. Oppenheimer’s Representations to Ashland Concerning the Purported Advantages of SLARS**

46. Castner represented to Broce that Oppenheimer-brokered SLARS would provide Ashland the highest degree of safety, liquidity and protection from the subprime mortgage crisis or otherwise because SLARS: (i) enjoyed reliable demand and liquidity due to their high quality; (ii) were not connected to the market for subprime mortgages and related securities; and (iii) were based on the highest-quality student loans backed by the United States government under the Federal Family Education Loan Program (“FFELP”).

47. Castner highlighted the AAA ratings on Oppenheimer-brokered SLARS as purported evidence of their superior quality and safety and advised Broce that, because SLARS enjoyed the benefit of federal guarantees, their high credit ratings were not dependent on guarantees provided by the so-called “monoline” insurance companies (e.g., MBIA and AMBAC), as was the case with many other ARS types. Castner advised Broce that Oppenheimer was recommending that its cash management clients purchase SLARS, which Castner represented would not be affected by issues relating to the monoline insurers.

48. Castner also repeatedly represented to Broce that no auction for SLARS had ever failed and that, in the event of any disequilibrium in the ARS market, the Lead Underwriters would place proprietary bids to prevent auctions for Oppenheimer-brokered SLARS from failing. Castner also represented that Oppenheimer could ensure immediate liquidity for those SLARS because their high quality and FFELP guarantee would attract other investors to purchase those SLARS.

**B. Oppenheimer’s Omissions to Ashland Concerning SLARS**

49. Ashland was not provided with a prospectus for any of the SLARS sold to it by Oppenheimer until after the auctions had concluded. Oppenheimer presented this practice as

typical and unavoidable because of the rapidity with which the interest rates were set and the auctions conducted by the Lead Underwriters.

50. Throughout the period during which Oppenheimer continued to sell Oppenheimer-brokered SLARS to Ashland, representing that those SLARS were safe, liquid, suitable to the Company's Investment Policy and superior to other types of ARS because they were "FFELP-wrapped," Oppenheimer failed to advise Ashland that: (i) as with other ARS, there were frequently fewer bidders than sellers at SLARS auctions, including auctions for Oppenheimer-brokered SLARS; and (ii) the degree to which Lead Underwriters were required to purchase SLARS, including Oppenheimer-brokered SLARS, for their own inventories to provide liquidity for those securities.

51. Oppenheimer also failed to disclose to Ashland that, contrary to Oppenheimer's representations, the Lead Underwriters were not committed to ensuring liquidity for Oppenheimer-brokered SLARS any more than for other types of ARS. Rather, as Oppenheimer knew, but concealed from Ashland, the Lead Underwriters' commitment to providing liquidity for SLARS would extend only as far as the Lead Underwriters deemed such provision of liquidity to be in their own commercial best interests and, to protect themselves, the Lead Underwriters had imposed a limit on the amount of SLARS they would purchase for their own inventories. Thus, Oppenheimer failed to disclose to Ashland that, when the Lead Underwriters reached their SLARS inventory limits, they would cease placing proprietary bids for SLARS, including Oppenheimer-brokered SLARS, which in turn would severely affect the liquidity of Ashland's SLARS holdings.

52. Oppenheimer also failed to disclose that the AAA ratings associated with Oppenheimer-brokered SLARS were achieved at the expense of maximum "fail rates" or

“penalty rates” high enough to ensure liquidity by attracting secondary market buyers or incentivizing issuers to redeem the ARS in order to avoid paying the high rates.

53. Accordingly, while ARS with particularly high maximum rates, such as municipal bond-backed ARS with maximum rates in the range of 12-15%, continued to have successful auctions even after the implosion of the ARS market in February 2008, the SLARS sold to Ashland by Oppenheimer had low maximum fail rates, insufficient to draw investor interest or incentivize their issuers to offer a redemption. When marketing the SLARS, Oppenheimer failed to disclose these low rates to Ashland, even though Oppenheimer knew or should have known that low rates would negatively impact the liquidity of the SLARS in the event of disruptions in the ARS market.

54. Prior to the collapse of the ARS market, Oppenheimer’s e-mails to Ashland addressing the Company’s existing SLARS holdings or notifying the Company of new SLARS auctions typically listed the name of the SLARS at issue, the amount held, the credit rating associated with the securities and the CUSIP number. The e-mails did not, however, list the maximum fail rate for the SLARS at issue.

55. Following the collapse of the ARS market, however, Oppenheimer suddenly began including maximum fail rate information in its communications to Ashland. Thus, Broce received an e-mail from Castner on February 27, 2008 advising him to “make sure you have been getting paid your interest each week” and providing details on the failed February 15, 2008 auction for Ashland’s \$12,300,000 in “Access to Loans for Learning” SLARS (CUSIP # 004-33T-AC7). Castner’s e-mail included, for the first time, a notation stating “(Max: 5.139%)” and listed the applicable interest rate for the February 15, 2009 auction at 5.119%. Broce was taken aback by the low rate given the fact that the auction had failed and replied to

Castner, asking: “If the auction failed why didn’t we receive the fail rate?” Castner replied the next day, February 28, 2008, stating “this is the fail rate.”

**V. Oppenheimer Fails to Disclose Systemic Risk in the ARS Market, Even as Oppenheimer Executives Dump Personal ARS Holdings**

56. Oppenheimer was aware of auction failures and significant disruptions in the ARS market during August of 2007. For example, Todd Flaman, an Oppenheimer Senior Vice President and trader on Oppenheimer’s ARS desk, told the Massachusetts Enforcement Division that downgrades in monoline insurers were causing increasing noticeable stress on the ARS market by late 2007.

57. Oppenheimer failed to research these failures and disruptions adequately or to disseminate accurate information concerning these issues to Ashland. On the contrary, Oppenheimer took affirmative steps to prevent negative news concerning the ARS market from reaching investors and even lower level Oppenheimer employees. For example, Oppenheimer’s Chairman and CEO, Albert Lowenthal, actually instructed another Oppenheimer executive not to inform all Oppenheimer FAs of the trouble in the ARS market in mid-2007 despite the fact that, beginning no later than August 2007, he received a hand delivered memo each day documenting the status of failed ARS auctions.

58. More importantly, notwithstanding that Oppenheimer was, at all relevant times, aware of Ashland’s need to preserve the safety and liquidity of the Acquisition Principal and of the Company’s conservative Investment Policy, neither Castner nor anyone at Oppenheimer advised Broce or anyone at Ashland that, at the time Oppenheimer was inducing Ashland to purchase Oppenheimer-brokered SLARS, (i) Oppenheimer was aware of substantial disruptions in the market for SLARS and other ARS; (ii) Oppenheimer was aware that the penalty rates on SLARS were too low to ensure liquidity in the event of auction failures; and (iii) certain

Oppenheimer executives were actually dumping personal ARS holdings based on fears of systemic risk to the ARS market.

**A. Lead Underwriter Goldman Sachs Allows an Auction for SLARS to Fail in January 2008**

59. In early January 2008, Ashland learned that Goldman Sachs (“Goldman”), a significant member of the Lead Underwriters, had allowed an auction for SLARS issued by student lender First Marblehead and underwritten by Goldman to fail. While Ashland did not own First Marblehead SLARS, Ashland was alarmed by news of the auction failure. Accordingly, Broce contacted Castner to discuss the First Marblehead situation and to inquire whether there were any potential delays, failures or other issues relating to Oppenheimer-brokered SLARS.

60. Castner downplayed the significance of the First Marblehead failure. At no time did she suggest that the First Marblehead failure was indicative of any systemic risk to the ARS market. On the contrary, Castner called the First Marblehead failure an “aberration” and blamed the failure on Goldman’s “unorthodox” investment approach. Castner represented to Broce that Oppenheimer-brokered ARS remained safe, liquid and suitable investments for Ashland and assured Broce that strong investor demand for the high-quality, Oppenheimer-brokered SLARS would ensure continuing liquidity for those SLARS.

61. In fact, Castner continued to market SLARS to the Company aggressively in mid-January 2008, around the time of the First Marblehead failure. For example, on January 14 and January 15, 2008, Castner sent emails to Broce titled “JOE – Ffelp & Bond Taxable Inventory with NO ACCRUED,” which listed available SLARS, but made no mention of the substantial systemic dangers in the ARS market known to Oppenheimer at that time.

62. In reliance on Oppenheimer's continued representations and omissions, Ashland continued to hold the Oppenheimer-brokered SLARS it had purchased and made additional purchases of Oppenheimer-brokered SLARS.

**B. Oppenheimer Holds Internal Discussions Concerning the Disintegrating ARS Market, but Continues to Market SLARS to Ashland**

63. On January 18, 2008, Greg White, Managing Director of Oppenheimer's Auction Rate Department, sent an e-mail to high-ranking personnel within that Department, asking for their assessment of the risks present in Oppenheimer's ARS business. Louis Gelormino, an Oppenheimer Senior Vice President and the supervisor of Oppenheimer's ARS Desk, responded the same day, stating, among other things: "If a firm through whom we're participating in auctions abruptly exits the business, i.e. . . . has extensive credit issues and decides to quickly exit the business entirely, we would have to quickly find another party to accept our bidding rights and process our orders. If they are the sole participant then we may not be able to process our orders. If a sole participant processes it's [sic] customer orders but declines entering a back bid, we may not be able to sell shares." White later testified to the Massachusetts Enforcement Division that "back bids" referred to the proprietary bids placed by the Lead Underwriters to prevent auction failure and that he, Gelormino and others at Oppenheimer had met on or about January 18, 2008 to discuss the contents of Gelormino's e-mail. Thus, as early as mid-January – *i.e.*, nearly a month before the ARS Market ultimately imploded – Oppenheimer was already considering and evaluating the possibility of and liquidity dangers associated with auction failures.

64. On January 23, 2008, Lehman Brothers ("Lehman"), another substantial Lead Underwriter of ARS, chose not to place a necessary proprietary bid in some auctions, causing these auctions to fail. White testified to the Massachusetts Enforcement Division that he

considered these failures to be “a shot across the bow” by Lehman, indicating that it wanted to exit the ARS business. Todd Flaman, an Oppenheimer Senior Vice President and trader on Oppenheimer’s ARS desk, testified that he contacted Lehman concerning the failure and was told there were more sellers than buyers in the market.

65. Several days after the Lehman failure, Piper Jaffrey (“Piper”), another financial firm that ran and supported ARS auctions chose not to place sufficient proprietary bids and allowed auctions to fail. White testified to the Massachusetts Enforcement Division that Piper cited insufficient buyer interest due to low maximum fail rates as the reason behind the auction failures.

66. Despite recognizing and evaluating these risks, Oppenheimer failed to disclose them to Ashland, even as it continued aggressively to market SLARS to the Company. Indeed, in the days and weeks after January 18, 2008, Oppenheimer regularly communicated with Ashland concerning SLARS but never once mentioned any of the risks identified by senior executives in Oppenheimer’s ARS department.

67. For example, on January 22 and January 23, 2008, Castner sent emails to Broce titled “JOE – inventory without accrued” that listed available SLARS, but made absolutely no mention of the substantial systemic dangers in the ARS market known to Oppenheimer and under discussion within the firm at that time.

68. In reliance on Oppenheimer’s continued representations and omissions, Ashland continued to hold the Oppenheimer-brokered SLARS it had purchased and made additional purchases of Oppenheimer-brokered SLARS.

**C. As Oppenheimer Executives Dump Their Personal ARS Holdings, Oppenheimer Continues to Push SLARS on Ashland**

69. Oppenheimer executives, who were aware of the spate of auction failures in the ARS market in January 2008, grew so concerned with the looming risks in the ARS market that they began dumping their personal ARS holdings in large number around this time. Between December 1, 2007 – when liquidity problems in the ARS market were already well known to Oppenheimer – and the final implosion of the market, Oppenheimer’s Chairman and CEO, Albert Lowenthal, liquidated \$2,650,000 worth of his personal ARS holdings, including \$1,775,000 between January 29, 2008 and the market’s collapse on February 12, 2008.

70. Despite the fact that its executives had identified and discussed the systemic risks in the ARS market by early 2008, and despite the fact that these executives were increasingly dumping their own ARS holdings around this time, Oppenheimer failed to raise any alarm with Ashland, even though it was fully aware that Ashland had invested in Oppenheimer-brokered SLARS expressly because of Oppenheimer’s representations concerning the safety and liquidity of these securities.

71. On the contrary, at the same time that Oppenheimer executives were dumping their own ARS, Castner continued frantically to push SLARS on Ashland. For example, on February 3, 2008, White sold \$100,000 worth of ARS in his wife’s business account due to his concerns with the ARS market. Over the next two days, however (February 4-5, 2008), Castner sent Broce emails titled “JOE!!! Inventory w/no accrued,” which listed available SLARS, but made no mention of the substantial dangers in the ARS market known to Oppenheimer and under discussion at the firm at that time.

72. Likewise, Castner sent Broce and Matthew Spence, another Ashland Treasury employee, e-mails on February 4 and February 5, 2008 notifying them of auctions applicable to

\$12,500,000 in Access to Loans for Learning SLARS, CUSIP # 004-33T-AB9, brokered by Oppenheimer to Ashland on October 18, 2007 and \$9,375,000 in Indiana Secondary Ed. Loans SLARS, CUSIP # 455-900-BJ8, brokered by Oppenheimer to Ashland on November 9, 2007.

73. Despite the fact that Ashland could have exited these two SLARS holdings during these auctions, Castner's email made no mention of the deteriorating conditions in the ARS market or the substantial liquidity dangers faced by Ashland in holding onto these SLARS, all of which were known to Oppenheimer at the time. Accordingly, Ashland held onto these SLARS.

74. The next day – February 6, 2008, Castner turned to poetry, sending an e-mail to Broce titled “JOE – this one's for you! – your poem of the day,” which expressed Oppenheimer's enthusiasm for Ashland's continued purchases of SLARS:

Joe buys some auctions from his Chicago gals  
through a few cocktails we became good pals  
Then after the Bowl game of 08  
A sell of some bonds he did make  
My friend Joe does live down south  
luckily he forgives my sarcastic mouth  
My Pennsylvania humor can sometimes be dry  
And sometimes it can make you laugh till you cry  
To my surprise he will sometimes place a new buy  
For more auctions to which we yell “yeah! Oh my!”  
He made our day just one more time  
To lose his friendship would be a crime

(emphasis added)

75. On February 7, 2008, Goldman allowed additional ARS auctions to fail. White became so concerned that he sold \$275,000 worth of personal ARS holdings from his account that same day. Oppenheimer's Chief Operating Officer Larry Spaulding also unloaded \$100,000 of his own ARS holdings on February 7, 2008. White told the Massachusetts Enforcement Division: “After Goldman Sachs let the auction fail on February 7th at that time I

did not know what was going to happen, and . . . I sold those [ARS] because I did not know what was going to happen.”

76. Despite Oppenheimer’s manifest concern with the continued viability of the ARS market and its executives’ frantic sales of their personal ARS holdings during early February 2008, Oppenheimer still failed to inform Ashland of the growing risks in the ARS market. To the contrary, Oppenheimer’s Castner continued to push SLARS on Ashland. On February 7, 2008, the same day as the Goldman Sachs auction failures, and less than a week before the total implosion of the ARS market, Castner sent Broce another e-mail poem – titled “Poem on [sic] the day” – which encouraged Ashland to roll rather than redeem its SLARS holdings:

She lives in Chicago with her big black dogs  
Stays at home most days drinking some grog  
Takes the train to work on sloopy [sic] snow days  
Cause her car gets stuck in the snow so many ways  
Joe calls her so early in the day  
Anxious to reach her so he can say  
My positions in Auctions, I will roll  
No more money Ash is an a lull

(emphasis added)

77. Also on February 7, 2008, in reliance on Oppenheimer’s continued representations and omissions, Ashland purchased \$15,000,000 worth Ed. Funding South Inc. SLARS, CUSIP # 281-48N-AY9 brokered by Oppenheimer.

78. Four days later, on February 11, 2008, Oppenheimer’s Chairman and CEO, Albert Lowenthal, finally called a meeting with Greg White, Managing Director of Oppenheimer’s Auction Rate Department, Dennis McNamara, Oppenheimer’s General Counsel, Larry Spaulding, Oppenheimer’s Chief Operating Officer, and Robert Okin, an Oppenheimer senior executive, to discuss the ARS market. Lowenthal later testified to the

Massachusetts Enforcement Division that, at the end of this meeting, Oppenheimer had concluded that there were particular problems concerning SLARS, such as those sold to Ashland. By then, however, Oppenheimer’s official “recognition” of facts known to it since at least mid-2007 was too late. The ARS market imploded on or about the next day, February 12, 2008.

**VI. The Collapse of the ARS Market Strands Ashland with More than \$194 Million of Illiquid Oppenheimer-Brokered SLARS**

79. As the implosion of the ARS market unfolded, Ashland directed Oppenheimer to begin liquidating its holdings of Oppenheimer-brokered SLARS. Castner advised Broce, however, that, contrary to Oppenheimer’s repeated representations concerning the safety and liquidity of SLARS, Oppenheimer could not and would not provide liquidity for any Oppenheimer-brokered SLARS held by Ashland, including the Oppenheimer-brokered SLARS Castner had touted as safe and liquid just days earlier.

80. Thereafter, Ashland discovered that, without Lead Underwriters stepping in to provide liquidity for the Oppenheimer-brokered SLARS, those SLARS were illiquid because, contrary to Oppenheimer’s representations, there was not enough third-party demand to keep the auctions from failing, regardless of the SLARS’ purportedly high credit quality and purported guarantee under FFELP. Accordingly, on February 12, 2008, Ashland found itself trapped with more than \$194 million of illiquid Oppenheimer-brokered SLARS, as reflected in the following chart:

<b>Date Purchased</b>	<b>Name</b>	<b>CUSIP</b>	<b>Amount</b>
9/26/07	Sallie Mae	784-42G-HZ2	\$15,000,000
10/02/07	College Loans Trust Corp	194-262-AP6	\$20,000,000
10/18/07	Access to Loans for Learning	004-33T-AB9	\$12,500,000
10/18/07	Access to Loans for Learning	004-33T-AC7	\$12,300,000
11/02/07	Ed. Funding Inc.	281-40V-AE3	\$25,000,000
11/09/07	Indiana Secondary Ed. Loans	455-900-BH2	\$11,125,000

11/09/07	Indiana Secondary Ed. Loans	455-900-BJ8	\$9,375,000
11/16/07	Ky. Higher Ed.	491-30N-AP4	\$12,500,000
11/16/07	Utah State Board	917-546-GG2	\$7,325,000
12/13/07	Miss. Higher Ed.	605-354-ED7	\$20,000,000
1/02/08	Sallie Mae	784-42G-EW2	\$4,550,000
1/11/08	Brazos Stud. Loan	106-23P-DN7	\$20,000,000
1/31/08	Ky. Higher Ed.	491-30N-BP3	\$9,350,000
2/07/08	Ed. Funding South Inc.	281-48N-AY9	\$15,000,000

81. In the days and weeks after the collapse of the market, Oppenheimer sought to conceal from Ashland and other clients that, for at least seven months before the ARS market collapse, Oppenheimer had anticipated, planned for, and positioned itself for that event. In fact, Oppenheimer continued to treat the collapse as a temporary disruption, referring to the implosion as “recent auction market conditions” in an e-mail to Ashland on February 13, 2008.

82. Moreover, in a display of unparalleled audacity, Oppenheimer actually continued to seek ARS buy orders from Ashland and other customers after the collapse of the ARS market. Specifically, on February 13, 2008, Oppenheimer’s Castner sent an e-mail to Broce (copying Greg White) stating: “FYI - Oppenheimer will accept new BUY orders for auction rate securities, however, a QIB letter from your firm must be signed prior to placing additional/new buy orders of public and private issues. If you do not have a QIB form, let us know and we will fax one over to you.” “QIB” stands for “Qualified Institutional Buyer,” as defined under Rule 144a of the Securities Act of 1933. The implication of Castner’s e-mail was clear: Oppenheimer would be more than happy to continue offloading SLARS on Ashland and other clients but – for the very first time – wanted its clients to acknowledge the risks inherent in the SLARS all along by certifying their status as a sophisticated investor.

83. Rather than help Ashland recover the \$194,000,000 in Oppenheimer-brokered SLARS, marketed to the Company as safe and liquid, but rendered inaccessible by the

implosion of the market, Oppenheimer has instead sought to blame the harm suffered by Ashland on “the market” – ignoring the fact that Oppenheimer was aware of the ARS market’s deterioration and dangers posed by SLARS and other ARS from mid-2007 at the very latest.

84. On March 11, 2008, nearly a month after the collapse of the ARS market, Castner again resorted to e-mail poetry, attempting to make light of the situation in the following message to Broce:

Oh where, oh where has our Joey gone,  
Oh where, oh where can he be.  
The days of long talks seem long ago  
Since the markets have tied up his dough

Oh where, oh where has our Joey gone,  
Oh where, oh where can he be.  
He left us behind in the auction cyclone  
Can’t afford nuttin’ to eat but my dog’s dry bone.

Oh where, oh where has our Joey gone,  
Oh where, oh where can he be.  
The high stress levels do abound  
Hopefully safe, he will soon be found.

## **VII. Oppenheimer’s Conduct Has Injured Ashland**

85. Later in 2008, Ashland’s long-sought acquisition opportunity finally materialized in the form of specialty chemical company Hercules, Inc. (“Hercules”). Because of the collapse of the ARS market on or about February 12, 2008, however, Ashland was unable to access the \$194 million in Acquisition Principal that has been tied up in illiquid Oppenheimer-brokered SLARS. As a result, to complete its November 13, 2008 acquisition of Hercules, Ashland was forced to borrow funds. To date, Ashland has incurred millions of dollars in costs and fees associated with being forced to borrow funds to replace the cash currently trapped in Oppenheimer-brokered SLARS. Thus, Ashland has been damaged in an

amount in excess of \$75,000, exclusive of interests and costs, this Court's minimum jurisdictional limit.

## **CLAIMS FOR RELIEF**

### **COUNT I**

#### **(Fraud in Violation of Section 10(b) of the Securities and Exchange Act of 1934 and Rule 10b-5 Promulgated Thereunder)**

86. Ashland repeats and realleges the allegations of paragraphs 1 through 85.

87. As set forth above, Oppenheimer intentionally and/or recklessly: (i) employed a device, scheme and artifice to defraud Ashland with respect to the sale of ARS and SLARS; (ii) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made not misleading; and/or (iii) engaged in acts, practices or courses of business which operated as a fraud and deceit upon Ashland in connection with the sale and purchase of ARS and SLARS, in violation of Section 10(b) of the Securities and Exchange Act of 1934 and Rule 10b-5 promulgated thereunder.

88. Oppenheimer also engaged in a series of fraudulent and deceitful acts or practices, including knowingly: (i) making false statements that Oppenheimer-brokered ARS and SLARS were safe, liquid, comparable to money market instruments, and suitable to the Company's conservative Investment Policy and specific liquidity needs; (ii) making false statements with respect to the Lead Underwriters' willingness to place sufficient proprietary bids to prevent auction failure; (iii) making false statements with respect to the nature, credit quality and risks associated with Oppenheimer-brokered ARS and SLARS; (iv) making false statements with respect to the causes of auction failures for ARS and SLARS brokered by other institutions; (v) making false statements that the safety and liquidity of Oppenheimer-brokered SLARS were not impacted negatively by the collapse of the market for subprime mortgages and

related securities; (vi) making false statements with respect to Oppenheimer's intent and ability and the intent and ability of the Lead Underwriters to never allow Ashland to be left holding illiquid Oppenheimer-brokered ARS and SLARS; and (vii) making false statements with respect to the higher quality and increased liquidity of SLARS compared to other ARS based on the credit ratings and FFELP guarantees associated with SLARS.

89. Oppenheimer also engaged in a series of fraudulent and deceitful acts or practices, including knowingly: (i) failing to disclose Oppenheimer's significant financial interest in inducing Ashland to purchase and retain Oppenheimer-brokered ARS and SLARS; (ii) failing to disclose the true extent to which liquidity for Oppenheimer-brokered ARS and SLARS depended on the Lead Underwriters' purchases of those securities for their own inventories; (iii) failing to disclose that the market for Oppenheimer-brokered ARS and SLARS would collapse if the Lead Underwriters stopped buying these securities for their own inventories; (iv) failing to disclose that the Lead Underwriters would stop buying Oppenheimer-brokered ARS and SLARS for their own inventories in the event that the Lead Underwriters determined that doing so would be in their own commercial best interests; (v) failing to disclose the negative impact of the collapse of the market for subprime mortgages and related securities on the liquidity of Oppenheimer-brokered ARS and SLARS; (vi) failing to disclose that sales of Oppenheimer-brokered ARS and SLARS were outstripping genuine third-party demand for those securities; (vii) failing to disclose that the Lead Underwriters had increased purchases of Oppenheimer-brokered ARS and SLARS for their own inventories to prevent auction failures and conceal the loss of liquidity for those instruments; (viii) failing to disclose that liquidity for Oppenheimer-brokered ARS and SLARS existed only as a result of discretionary management decisions by the Lead Underwriters, to continue purchasing ARS for their own inventories; (ix)

failing to disclose that favorable credit ratings on Oppenheimer-brokered ARS and SLARS were obtained by capping the maximum “fail” or “penalty” rates on these securities; (x) failing to disclose that higher credit ratings and FFELP guarantees associated with SLARS did not mean that SLARS would be more liquid in the event of auction failure; and (xi) failing to disclose that the Lead Underwriters were contemplating when and how to end their practice of buying unwanted ARS and SLARS for their own accounts, which would cause the market for Oppenheimer-brokered ARS and SLARS to collapse, stranding investors, including Ashland, with illiquid securities.

90. As Oppenheimer intended, Ashland reasonably relied upon Oppenheimer’s representations in: (i) engaging Oppenheimer to provide investment and cash management services to the Company in or about May 2007; (ii) purchasing Oppenheimer-brokered ARS and SLARS in and after June 2007; (iii) reducing purchases of tax-exempt ARS and increasing purchases of Oppenheimer-brokered SLARS, in and after July 2007; and (iv) retaining Oppenheimer-brokered SLARS, and increasing purchases of Oppenheimer-brokered SLARS, in and after August 2007.

91. As a consequence of the foregoing, Ashland has suffered damages in an amount to be determined at trial.

**COUNT II**  
**(Fraud in Violation of Sections 292.320 and 292.480 of the Securities Act of Kentucky)**

92. Ashland repeats and realleges the allegations of paragraphs 1 through 91.

93. As set forth above, Oppenheimer intentionally and/or recklessly: (i) employed a device, scheme and artifice to defraud Ashland with respect to the sale of ARS and SLARS; (ii) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements made, in the light of the circumstances under which they are made, not

misleading; and/or (iii) engaged in acts, practices or courses of business which operated as a fraud and deceit upon Ashland in connection with the sale and purchase of ARS and SLARS, in violation of Sections 292.30 and 292.480 of the Securities Act of Kentucky, Ky. Rev. Stat. Ann. §§ 292.320, 292.480.

94. Oppenheimer also engaged in a series of fraudulent and deceitful acts or practices as alleged above in paragraphs 1 through 85, and incorporated herein.

95. As Oppenheimer intended, Ashland reasonably relied upon Oppenheimer's representations in: (i) engaging Oppenheimer to provide investment and cash management services to the Company in May 2007; (ii) purchasing Oppenheimer-brokered ARS and SLARS after May 2007; (iii) reducing purchases of ARS and other securities brokered by institutions other than Oppenheimer, and increasing purchases of Oppenheimer-brokered ARS and SLARS, after May 2007; and (iv) retaining Oppenheimer-brokered ARS and SLARS and increasing purchases of Oppenheimer-brokered SLARS, in and after August 2007.

96. As a consequence of the foregoing, Ashland has suffered damages in an amount to be determined at trial.

**COUNT III**  
**(Violation of Section 292.480 of the**  
**Securities Act of Kentucky)**

97. Ashland repeats and realleges the allegations of paragraphs 1 through 96.

98. Oppenheimer made untrue statements of material fact or omitted 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, in connection with the sale and purchase of ARS, in violation of Section 292.480 of the Securities Act of Kentucky, Ky. Rev. Stat. Ann. § 292.480.

99. Oppenheimer also engaged in a series of fraudulent and deceitful acts or practices as alleged above in paragraphs 1 through 85, and incorporated herein.

100. As a result of Oppenheimer's false and misleading statements and omissions, Ashland: (i) engaged Oppenheimer to provide investment and cash management services to the Company in or about May 2007; (ii) purchased Oppenheimer-brokered ARS and SLARS after May 2007; and (iii) retained Oppenheimer-brokered ARS and SLARS in and after August 2007.

101. As a consequence of the foregoing, Ashland has suffered damages in an amount to be determined at trial.

**COUNT IV**  
**(Common Law Fraud)**

102. Ashland repeats and realleges the allegations of paragraphs 1 through 101.

103. With the intent of inducing Ashland to purchase and retain ARS and SLARS, Oppenheimer knowingly and/or recklessly made the material misrepresentations and omissions of material facts as set forth above.

104. The fraudulent misrepresentations made by Oppenheimer to Ashland included Oppenheimer's: (i) false statements that Oppenheimer-brokered ARS and SLARS were safe, liquid, comparable to money market instruments, and suitable to the Company's conservative Investment Policy and specific liquidity needs; (ii) false statements with respect to the Lead Underwriters' willingness to place sufficient proprietary bids to prevent auction failure; (iii) false statements with respect to the nature, credit quality and risks associated with Oppenheimer-brokered ARS and SLARS; (iv) false statements with respect to the causes of auction failures for ARS and SLARS brokered by other institutions; (v) false statements that the safety and liquidity of Oppenheimer-brokered SLARS were not impacted negatively by the

collapse of the market for subprime mortgages and related securities; (vi) false statements with respect to Oppenheimer's intent and ability and the intent and ability of the Lead Underwriters to never allow Ashland to be left holding illiquid Oppenheimer-brokered ARS and SLARS; and (vii) false statements with respect to the higher quality and increased liquidity of SLARS compared to other ARS based on the credit ratings and FFELP guarantees associated with SLARS.

105. Oppenheimer's fraudulent omissions to Ashland included Oppenheimer's: (i) failure to disclose Oppenheimer's significant financial interest in inducing Ashland to purchase and retain Oppenheimer-brokered ARS and SLARS; (ii) failure to disclose the true extent to which liquidity for Oppenheimer-brokered ARS and SLARS depended on the Lead Underwriters' purchases of those securities for their own inventories; (iii) failure to disclose that the market for Oppenheimer-brokered ARS and SLARS would collapse if the Lead Underwriters stopped buying these securities for their own inventories; (iv) failure to disclose that the Lead Underwriters would stop buying Oppenheimer-brokered ARS and SLARS for their own inventories in the event that the Lead Underwriters determined that doing so would be in their own commercial best interests; (v) failure to disclose the negative impact of the collapse of the market for subprime mortgages and related securities on the liquidity of Oppenheimer-brokered ARS and SLARS; (vi) failure to disclose that sales of Oppenheimer-brokered ARS and SLARS were outstripping genuine third-party demand for those securities; (vii) failure to disclose that the Lead Underwriters had increased purchases of Oppenheimer-brokered ARS and SLARS for their own inventories to prevent auction failures and conceal the loss of liquidity for those instruments; (viii) failure to disclose that liquidity for Oppenheimer-brokered ARS and SLARS existed only as a result of discretionary management decisions by the Lead

Underwriters, to continue purchasing ARS for their own inventories; (ix) failure to disclose that favorable credit ratings on Oppenheimer-brokered ARS and SLARS were obtained by capping the maximum “fail” or “penalty” rates on these securities; (x) failure to disclose that higher credit ratings and FFELP guarantees associated with SLARS did not mean that SLARS would be more liquid in the event of auction failure; and (xi) failure to disclose that the Lead Underwriters were contemplating when and how to end their practice of buying unwanted ARS and SLARS for their own accounts, which would cause the market for Oppenheimer-brokered ARS and SLARS to collapse, stranding investors, including Ashland, with illiquid securities.

106. Ashland justifiably relied on Oppenheimer’s misrepresentations and omissions of material facts, causing Ashland to suffer injury in an amount to be determined at trial.

107. As a consequence of the foregoing, Ashland has suffered damages in an amount to be determined at trial.

**COUNT V**  
**(Promissory Estoppel)**

108. Ashland repeats and realleges the allegations of paragraphs 1 through 107.

109. Oppenheimer made promises to Ashland, which included, among others: (i) the Oppenheimer-brokered ARS and SLARS sold to Ashland were safe and liquid; (ii) Oppenheimer and the Lead Underwriters would ensure the liquidity of the Oppenheimer-brokered ARS and SLARS sold to Ashland; and (iii) Oppenheimer and the Lead Underwriters had the intent and ability to never allow Ashland to be left holding illiquid Oppenheimer-brokered ARS and SLARS.

110. As Oppenheimer foresaw or expected at the time, Ashland reasonably relied upon the promises Oppenheimer made in deciding to: (i) purchase Oppenheimer-brokered ARS and SLARS; (ii) retain those securities; and (iii) increase their purchases of Oppenheimer-

brokered SLARS. Ashland would never have purchased the Oppenheimer-brokered ARS and SLARS, or retained Oppenheimer-brokered SLARS and increased its purchases of Oppenheimer-brokered SLARS after August 2007 had it known that Oppenheimer would not honor its promises.

111. If the promises Oppenheimer made to Ashland are not enforced, Ashland will suffer an injustice.

112. As a consequence of the foregoing, Ashland has suffered damages in an amount to be determined at trial.

**COUNT VI**  
**(Negligent Misrepresentation)**

113. Ashland repeats and realleges the allegations of paragraphs 1 through 112.

114. In making the representations and omissions alleged above at paragraphs 1 through 85, and incorporated herein, Oppenheimer, in the regular course of its business, acted negligently and with gross negligence and without any reasonable grounds for believing the representations were justifiable, reliable or true when made.

115. The false information Oppenheimer provided to Ashland was intended to induce Ashland to enter into the ARS and SLARS transactions.

116. Ashland was without knowledge of the falsity of these statements, and believed them to be true. In actual and justifiable reliance upon said omissions and misrepresentations of material fact, Ashland purchased Oppenheimer-brokered ARS and SLARS in the course of its business transactions. Had Ashland known the truth, it would not have done so.

117. As a consequence of the foregoing, Ashland has suffered damages in an amount to be determined at trial.

**PRAYER FOR RELIEF**

WHEREFORE, Ashland and AshThree demand a Jury Trial on all issues and further respectfully request that the Court enter a judgment or order:

1. directing Oppenheimer to pay to Ashland and AshThree compensatory damages in an amount to be determined at trial;
2. directing Oppenheimer to pay to Ashland and AshThree consequential damages in an amount to be determined at trial;
3. directing Oppenheimer to pay Ashland and AshThree punitive damages in an amount to be determined at trial;
4. directing Oppenheimer to pay to Ashland and AshThree their costs, interest and attorneys' fees; and
5. granting Ashland and AshThree such other and further relief as the Court may deem just and proper.

Dated: Lexington, Kentucky  
April 16, 2009

Respectfully submitted,

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