

1 THE PEOPLE OF THE STATE OF CALIFORNIA
2 BY AND THROUGH THE COMMISSIONER OF CORPORATIONS

3 In the matter of:)
4)
4 BANC OF AMERICA SECURITIES LLC)
5 and BANC OF AMERICA INVESTMENT)
5 SERVICES, INC.,)
6)
7 Respondents.)
7)
8)
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10)
10 _____)

**FINDINGS OF FACT
CONCLUSIONS OF LAW
ADMINISTRATIVE CONSENT ORDER**

11 WHEREAS, Banc of America Securities LLC (“BAS”) and Banc of America Investment
12 Services, Inc. (“BAI” and, together with BAS, “Respondents”) are broker-dealers registered in the
13 state of California; and

14 WHEREAS, coordinated investigations into Respondents’ activities in connection with certain
15 of their sales practices regarding the underwriting, marketing, and sale of Auction Rate Securities
16 (“ARS”) during the period of approximately August 1, 2007, through February 11, 2008, have been
17 conducted by a multistate task force; and

18 WHEREAS, Respondents have cooperated with regulators conducting the investigations by
19 responding to inquiries, providing documentary evidence and other materials, and providing
20 regulators with access to facts relating to the investigations; and

21 WHEREAS, Respondents have advised regulators of their agreement to resolve the
22 investigations relating to their practices in connection with the underwriting, marketing, and sale of
23 ARS; and

24 WHEREAS, Respondents agree to make (or to have made on their behalf) certain payments as
25 part of the resolution of the investigations; and

26 WHEREAS, Respondents elect to permanently waive any right to a hearing and appeal under
27 California Corporations Code sections 25532(d) and 25609 with respect to this Consent Order (the
28 “Order”);

1 B. Respondents Failed to Supervise Their Agents.

2 4. As described in the Findings of Fact section above, Respondents failed to properly
3 supervise their agents with respect to the marketing and sale of ARS from October 1, 2007, to
4 February 11, 2008.

5 5. As a result, Respondents violated Title 10, Ch. 3, section 260.218.4(a) of the California
6 Code of Regulations for failure to supervise its employees with regard to the sale of securities.

7 6. The California Department of Corporations finds this Order and the following relief
8 appropriate, in the public interest, and consistent with the purposes intended by the California
9 Corporate Securities Law.

10 **III.**
11 **ORDER**

12 On the basis of the Findings of Fact, Conclusions of Law, and Respondents' consent to the entry of
13 this Order,

14 **IT IS HEREBY ORDERED:**

15 1. This Order concludes the investigation by the California Department of Corporations and
16 any other action that the California Department of Corporations could commence under applicable
17 California law on behalf of California as it relates to Respondents' underwriting, marketing, and sales of
18 ARS, provided however, that excluded from and not covered by this paragraph 1 are any claims by
19 the California Department of Corporations arising from or relating to the "Order" provisions
20 contained herein.

21 2. This Order is entered into solely for the purpose of resolving the referenced multistate
22 investigation, and is not intended to be used for any other purpose.

23 3. Respondents will DESIST AND REFRAIN from violating Title 10, Ch. 3, sections
24 260.218 and 260.218.4(a) of the California Code of Regulations.

25 4. Within ten days after the date of this Order, Respondents shall pay administrative
26 penalties pursuant to California Corporations Code section 25252, in the sum of Nine Million Seven
27 Hundred Forty Six Thousand Seven Hundred Seventy Seven dollars And Forty Cents \$9,746,777.40
28 to the California State Corporations Fund.

1 5. In the event another state securities regulator determines not to accept Respondents' state
2 settlement offer, the total amount of the California payment shall not be affected, and shall remain
3 at \$9,746,777.40.

4 6. Respondents shall comply with the following requirements:

5 **a. Eligible Investors**

6 i. No later than October 21, 2008, BAC shall have caused Blue Ridge to offer to buy
7 back, at par plus accrued and unpaid interest or dividends, Eligible ARS (as such term is defined
8 below) for which auctions are in failed mode from Eligible Investors (as such term is defined below)
9 who purchased such Eligible ARS from Respondents prior to February 13, 2008 (the "Offer"). For
10 purposes of the Offer, Eligible ARS means ARS purchased from Respondents on or before February
11 13, 2008, that were subject to an auction failure on or after February 11, 2008. The Offer shall
12 remain open for a period between October 10, 2008, and December 1, 2009, unless extended by Blue
13 Ridge.

14 ii. "Eligible Investors" shall mean:

15 (a) Natural persons (including their IRA accounts, testamentary trust and estate accounts,
16 custodian IGMA and UTMA accounts, and guardianship accounts) who purchased Eligible ARS
17 from Respondents;

18 (b) Charities, endowments, or foundations with Internal Revenue Code Section 501(c)(3) status
19 that purchased Eligible ARS from Respondents and that had \$25 million or less in assets in their
20 accounts with Respondents as determined by the customer's aggregate household position(s) at
21 Respondents as of September 9, 2008; or

22 (c) Small Business that purchased Eligible ARS from Respondents. For purposes of this
23 provision, "Small Business" shall mean Respondents' customers not otherwise covered in paragraph
24 III.6.a.ii (a) and ii (b) above that had \$15 million or less in assets in their accounts with Respondents
25 as of September 9, 2008.

26 iii. Respondents will have provided prompt notice to customers of the settlement terms
27 and Respondents will have established a dedicated telephone assistance line, with appropriate
28 staffing, to respond to questions from customers concerning the terms of the settlement.

1 **Relief for Eligible Investors Who Sold Below Par**

2 No later than December 31, 2008, Respondents shall have promptly provided notice to any
3 Eligible Investor that Respondents could reasonably identify who sold Eligible ARS below par
4 between February 11, 2008, and September 22, 2008. Such investors will be paid the difference by
5 Respondents between par and the price at which the Eligible Investor sold the Eligible ARS. Any
6 such Eligible Investors identified after December 31, 2008, shall be promptly paid the difference
7 between par and the price at which the Eligible Investors sold the Eligible ARS.

8 **Consequential Damages Claims**

9 No later than October 10, 2008, Respondents shall make reasonable efforts to promptly notify
10 those Eligible Investors who own Eligible ARS that, pursuant to the terms of the settlement, an
11 independent arbitrator, under the auspices of the Financial Industry Regulatory Authority (“FINRA”),
12 will be available for the exclusive purpose of arbitrating any Eligible Investor’s consequential-
13 damages claim.

14 Respondents shall consent to participate in the North American Securities Administrators
15 Association (“NASAA”) Special Arbitration Procedure (the “SAP”) established specifically for
16 arbitrating claims arising out of an Eligible Investor’s inability to sell Eligible ARS. Respondents
17 shall notify Eligible Investors of the terms of the SAP. Nothing in this Order shall serve to limit or
18 expand any party’s rights or obligations as provided under the SAP. Arbitration shall be conducted,
19 at the customer’s election, by a single non-industry arbitrator and Respondents will pay all forum and
20 filing fees.

21 Arbitrations asserting consequential damages of less than \$1 million will be decided through a
22 single chair-qualified public arbitrator who will be appointed through the FINRA list selection
23 process for single arbitrator cases. In arbitrations where the consequential damages claimed are
24 greater than or equal to \$1 million, the parties can, by mutual agreement, expand the panel to include
25 three public arbitrators who will be appointed through FINRA’s list procedure.

26 Any Eligible Investors who choose to pursue such claims through the SAP shall bear the
27 burden of proving that they suffered consequential damages and that such damages were caused by
28 their inability to access funds invested in Eligible ARS. In the SAP, Respondents shall be able to
defend themselves against such claims; provided, however, that Respondents shall not contest

1 liability for the illiquidity of the underlying ARS position or use as part of their defense any decision
2 by an Eligible Investor not to borrow money from Respondents.

3 All customers, including but not limited to Eligible Investors who avail themselves of the
4 relief provided pursuant to this Order, may pursue any remedies against Respondents available under
5 the law. However, Eligible Investors that elect to utilize the SAP are limited to the remedies
6 available in that process and may not bring or pursue a claim relating to Eligible ARS in another
7 forum.

8 **d. Institutional Investors**

9 Respondents shall endeavor to work with issuers and other interested parties, including
10 regulatory and governmental entities, to expeditiously and on a best efforts basis provide liquidity
11 solutions for institutional investors that purchased Eligible ARS from Respondents and are not
12 entitled to participate in the buyback under Section III (“Institutional Investors”).

13 Beginning on December 31, 2008, and then quarterly thereafter, Respondents shall submit a
14 written report to a representative specified by NASAA outlining the efforts in which Respondents
15 have engaged and the results of those efforts with respect to Institutional Investors’ holdings in
16 Eligible ARS. The written reports will be submitted 20 days following the end of the quarter.
17 Respondents shall confer with the representative no less frequently than quarterly to discuss
18 Respondents’ progress to date. Such written reports and quarterly meetings shall continue until no
19 later than December 31, 2009. Following every quarterly meeting, the representative shall advise
20 Respondents of any concerns and, in response, Respondents shall detail the steps that Respondents
21 plan to implement to address such concerns.

22 **e. Relief for Municipal Issuers**

23 Respondents shall refund refinancing fees to municipal auction rate issuers that issued such
24 securities through Respondents in the initial primary market between August 1, 2007, and February
25 11, 2008, and refinanced those securities through Respondents after February 11, 2008. Refinancing
26 fees are those fees paid to Respondents in connection with a refinancing and are exclusive of legal
27 fees and any other fees or costs not paid to Respondents in connection with the transaction.

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1 **f. Repayment of Interest on Loans Provided To Eligible Investors**

2 To the extent that Respondents loaned money to Eligible Investors secured by Eligible ARS,
3 after February 11, 2008, at an interest rate that was higher than that paid on such Eligible ARS,
4 Respondents shall refund the difference to such Eligible Investors.

5 **g. Penalties**

6 i. Respondents shall pay a total penalty of FIFTY MILLION (\$50,000,000) DOLLARS,
7 which shall be allocated among and paid to the Commonwealth of Massachusetts, the state of New
8 York, and such other states and territories that enter administrative or civil consent orders approving
9 the terms of the NASAA settlement (together with the Commonwealth of Massachusetts and the state
10 of New York, the "Approving States"). Any such allocation shall be made at the discretion of the
11 Approving States;

12 ii. The California Department of Corporations portion of the administrative penalty shall be
13 \$9,746,777.40 and shall be paid to the California Department of Corporations no later than ten
14 business days after the date of the Consent Order.

15 **h. In Consideration of the Settlement**

16 The California Department of Corporations will:

17 i. Terminate the investigation of Respondents' underwriting, marketing, and sale of
18 ARS to Eligible Investors as defined herein; and

19 ii. Refrain from taking legal action, if necessary, against Respondents with respect to
20 their institutional investors until December 31, 2009; the California Department of Corporations shall
21 issue continuances of that period as it deems appropriate; and

22 iii. The California Department of Corporations will not seek additional monetary
23 penalties from Respondents in connection with all underlying conduct relating to Respondents'
24 underwriting, marketing, and sale of ARS to investors.

25 i. If, after this Order is executed, Respondents fail to comply with any of the terms set forth
26 herein, the California Department of Corporations may take appropriate remedial action.

27 7. If payment is not made by Respondents, or if Respondents default in any of their obligations
28 set forth in this Order, the California Department of Corporations may vacate this Order, at its sole

1 discretion, upon 10 days notice to Respondents and without opportunity for administrative hearing.

2 8. This Order as entered into by the California Department of Corporations waives any
3 disqualification contained in the laws of California, or rules or regulations thereunder, including any
4 disqualifications from relying upon the registration exemptions or safe harbor provisions that BAI,
5 BAS, or any of their affiliates may be subject to as a result of the findings contained in this Order.
6 This Order also is not intended to subject BAI or BAS or any of their affiliates to any
7 disqualifications contained in the federal securities laws, the rules and regulations thereunder, the
8 rules and regulations of self regulatory organizations, or various states' or U.S. Territories' securities
9 laws, including, without limitation, any disqualifications from relying upon the registration
10 exemptions or safe harbor provisions. In addition, this Order is not intended to form the basis for any
11 such disqualifications.

12 9. For any person or entity not a party to this Order, this Order does not limit or create any private
13 rights or remedies against Respondents including, without limitation, the use of any e-mails or other
14 documents of Respondents or of others for auction rate securities sales practices, limit or create liability
15 of Respondents, or limit or create defenses of Respondents to any claims.

16 10. Nothing herein shall preclude California, its departments, agencies, boards, commissions,
17 authorities, political subdivisions and corporations, other than the California Department of
18 Corporations and only to the extent set forth in paragraph 1 above, (collectively, "State Entities") and
19 the officers, agents or employees of State Entities from asserting any claims, causes of action, or
20 applications for compensatory, nominal and/or punitive damages, administrative, civil, criminal, or
21 injunctive relief against Respondents in connection with certain auction rate securities sales practices of
22 Respondents.

23 11. This Order and any dispute related thereto shall be construed and enforced in accordance with,
24 and governed by, the laws of the State of California without regard to any choice of law principles.
25 Respondents, through their execution of this Order, voluntarily waive their right to a hearing on this
26 matter and to judicial review of this Order and elects to permanently waive any right to a hearing and
27 appeal under California Corporations Code sections 25532(d) and 25609 with respect to this Consent
28 Order (the "Order");

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12. Respondents enter into this Order voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the California Department of Corporations or any member, officer, employee, agent, or representative of the California Department of Corporations to induce Respondents to enter into this Order.

Dated this 27th day of May, 2009.

PRESTON DuFAUCHARD
California Corporations Commissioner

By //S//
ALAN S. WEINGER
Acting Deputy Commissioner
Enforcement Division

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**CONSENT TO ENTRY OF ADMINISTRATIVE ORDER BY BANC OF AMERICA
SECURITIES LLC AND BANC OF AMERICA INVESTMENT SERVICES, INC.**

Banc of America Securities LLC (“BAS”) and Banc of America Investment Services, Inc. (“BAI” and, together with BAS, “Respondents”), hereby acknowledge that they have been served with a copy of this Administrative Order, have read the foregoing Order, are aware of their right to a hearing and appeal in this matter, and have waived the same.

Respondents admit the jurisdiction of the California Department of Corporations, neither admit nor deny the Findings of Fact and Conclusions of Law contained in this Order, and consent to entry of this Order by the California Department of Corporations as settlement of the issues contained in this Order.

Respondents agree that they shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal, or local tax for any administrative monetary penalty that Respondents shall pay pursuant to this Order.

Respondents state that no promise of any kind or nature whatsoever was made to them to induce them to enter into this Order and that they have entered into this Order voluntarily.

Steve Chaiken represents that he/she is Managing Director of BAS, and that, as such, has been authorized by BAS to enter into this Order for and on behalf of BAS.

_____ represents that he/she is _____ of BAI, and that, as such, has been authorized by BAI to enter into this Order for and on behalf of BAI.

Dated this 22nd day of May, 2009.

BANC OF AMERICA SECURITIES LLC

By: Steve Chaiken

Title: Managing Director

State of New York)

County of New York)

