

SECURITIES
DIVISION

**BEFORE THE SECURITIES COMMISSIONER
OF THE STATE OF DELAWARE**

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In the matter of)
BANC OF AMERICA SECURITIES I.L.C.)
and BANC OF AMERICA INVESTMENT)
SERVICES, INC.,)
Respondent.)

Case No. 09-4-3 DEL. FILE
ADMINISTRATIVE CONSENT ORDER

WHEREAS, Banc of America Securities LLC ("BAS") and Banc of America Investment Services, Inc. ("BAI" and, together with BAS, "Respondents") are broker-dealers registered in the state of Delaware; and

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

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

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

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

WHEREAS, Respondents elect to permanently waive any right to a hearing and appeal under 6 Del. C. Ch. 73 with respect to this Administrative Consent Order (the "Order");

NOW, THEREFORE, the Securities Commissioner for the State of Delaware ("Commissioner"), as administrator of the Delaware Securities Act (6 Del. C. Ch. 73), hereby enters this Order:

I.

FINDINGS OF FACT

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3 1. Respondents admit the jurisdiction of the Commissioner, neither admit nor deny the
4 Findings of Fact and Conclusions of Law contained in this Order, and consent to the entry of this
5 Order by the Commissioner.

6 2. Beginning in March 2008, the task force began its investigation of Respondents'
7 underwriting, marketing, and sale of ARS.

8 3. In or about August and September 2007, some ARS auctions experienced failures.
9 These failures were primarily based on credit quality concerns related to the ARS at issue, which
10 often involved underlying assets of collateralized debt obligations.

11 4. During the fall of 2007 and into the beginning months of 2008, as the default rates
12 on subprime mortgages soared and the market in general began experiencing significant credit
13 tightening, monoline insurers that insured many issuances of ARS were also becoming distressed
14 and were at risk of ratings downgrades.

15 5. The result of the overall market conditions in the fall of 2007 and into the beginning
16 of 2008 resulted in increasing concerns regarding market liquidity, as well as a declining demand
17 for ARS.

18 6. The task force concluded that Respondents should have had knowledge that, during
19 the fall of 2007 and winter of 2008, the auction markets were not functioning properly and were at
20 increased risk for failure.

21 7. During that time period, significant numbers of buyers had been exiting the market
22 and the continued success of the auctions was reliant upon the lead broker-dealers, such as BAS,
23 making increased support bids. These support bids had the effect of artificially propping up the
24 market and creating the illusion that the auction rate market was functioning as normal.

25 8. However, during that time, Respondents continued to market and sell ARS without
26 informing customers of the heightened risks associated with holding these securities.

1 6. Respondents shall comply with the following requirements:

2 **a. Eligible Investors**

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

12 ii. "Eligible Investors" shall mean:

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

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

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

26 iii. Respondents will have provided prompt notice to customers of the
settlement terms and Respondents will have established a dedicated telephone

1 assistance line, with appropriate staffing, to respond to questions from customers
2 concerning the terms of the settlement.

3 **h. Relief for Eligible Investors Who Sold Below Par**

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

11 **c. Consequential Damages Claims**

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

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

24 Arbitrations asserting consequential damages of less than \$1 million will be decided
25 through a single chair-qualified public arbitrator who will be appointed through the FINRA
26 list selection process for single arbitrator cases. In arbitrations where the consequential
damages claimed are greater than or equal to \$1 million, the parties can, by mutual

1 agreement, expand the panel to include three public arbitrators who will be appointed
2 through FINRA's list procedure.

3 Any Eligible Investors who choose to pursue such claims through the SAP shall
4 bear the burden of proving that they suffered consequential damages and that such damages
5 were caused by their inability to access funds invested in Eligible ARS. In the SAP,
6 Respondents shall be able to defend themselves against such claims; provided, however,
7 that Respondents shall not contest liability for the illiquidity of the underlying ARS position
8 or use as part of their defense any decision by an Eligible Investor not to borrow money
9 from Respondents.

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

15 **d. Institutional Investors**

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

21 Beginning on December 31, 2008, and then quarterly thereafter, Respondents shall
22 submit a written report to a representative specified by NASAA outlining the efforts in
23 which Respondents have engaged and the results of those efforts with respect to
24 Institutional Investors' holdings in Eligible ARS. The written reports will be submitted 20
25 days following the end of the quarter. Respondents shall confer with the representative no
26 less frequently than quarterly to discuss Respondents' progress to date. Such written
reports and quarterly meetings shall continue until no later than December 31, 2009.

1 Following every quarterly meeting, the representative shall advise Respondents of any
2 concerns and, in response, Respondents shall detail the steps that Respondents plan to
3 implement to address such concerns.

4 **e. Relief for Municipal Issuers**

5 Respondents shall refund refinancing fees to municipal auction rate issuers that
6 issued such securities through Respondents in the initial primary market between August 1,
7 2007, and February 11, 2008, and refinanced those securities through Respondents after
8 February 11, 2008. Refinancing fees are those fees paid to Respondents in connection with
9 a refinancing and are exclusive of legal fees and any other fees or costs not paid to
10 Respondents in connection with the transaction.

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

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

15 **g. Penalties**

16 i. Respondents shall pay a total civil penalty of FIFTY MILLION
17 (\$50,000,000) DOLLARS, which shall be allocated among and paid to the
18 Commonwealth of Massachusetts, the state of New York, and such other states and
19 territories that enter administrative or civil consent orders approving the terms of the
20 NASAA settlement (together with the Commonwealth of Massachusetts and the
21 state of New York, the "Approving States"). Any such allocation shall be made at
22 the discretion of the Approving States;

23 ii. The State of Delaware's portion of the civil penalty shall be
24 \$109,666.00 and shall be paid to the Division no later than ten business days after
25 the date of the Consent Order.

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

The Division will:

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

3 ii. Refrain from taking legal action, if necessary, against Respondents
4 with respect to their institutional investors until December 31, 2008; the Division
5 shall issue continuances of that period as it deems appropriate; and

6 iii. The Division will not seek additional monetary penalties from
7 Respondents in connection with all underlying conduct relating to Respondents'
8 underwriting, marketing, and sale of ARS to investors.

9 i. If, after this Order is executed, Respondents fail to comply with any of the
10 terms set forth herein, the Division may take appropriate remedial action.

11 7. If payment is not made by Respondents, or if Respondents default in any of their
12 obligations set forth in this Order, the Commissioner may vacate this Order, at his sole discretion,
13 upon 10 days notice to Respondents and without opportunity for administrative hearing.

14 8. This Order as entered into by the Division waives any disqualification contained in
15 the laws of the State of Delaware, or rules or regulations thereunder, including any
16 disqualifications from relying upon the registration exemptions or safe harbor provisions that BAI,
17 BAS, or any of their affiliates may be subject to as a result of the findings contained in this Order.
18 This Order also is not intended to subject BAI or BAS or any of their affiliates to any
19 disqualifications contained in the federal securities laws, the rules and regulations thereunder, the
20 rules and regulations of self regulatory organizations, or various states' or U.S. Territories'
21 securities laws, including, without limitation, any disqualifications from relying upon the
22 registration exemptions or safe harbor provisions. In addition, this Order is not intended to form
23 the basis for any such disqualifications.

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

1 10. Nothing herein shall preclude the State of Delaware, its departments, agencies, boards,
2 commissions, authorities, political subdivisions and corporations, other than the Division and only to
3 the extent set forth in paragraph 1 above, (collectively, "State Entities") and the officers, agents or
4 employees of State Entities from asserting any claims, causes of action, or applications for
5 compensatory, nominal and/or punitive damages, administrative, civil, criminal, or injunctive relief
6 against Respondents in connection with certain auction rate securities sales practices at Respondents.

7 11. This Order and any dispute related thereto shall be construed and enforced in
8 accordance with, and governed by, the laws of the State of Delaware without regard to any choice
9 of law principles.

10 12. Respondents, through their execution of this Order, voluntarily waive their right to a
11 hearing on this matter and to judicial review of this Order under 6 *Del. C.* Ch. 73.

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

15 14. This Order shall be binding upon Respondents and each of their successors and
16 assigns with respect to all conduct subject to the provisions above and all future obligations,
17 responsibilities, undertakings, commitments, limitations, restrictions, events, and conditions.

18 Dated this 27th day of May, 2009.

19 BY ORDER OF THE SECURITIES COMMISSIONER

20 James B. Ropp
21 James B. Ropp
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1 **CONSENT TO ENTRY OF ADMINISTRATIVE ORDER BY BANC OF AMERICA**
2 **SECURITIES LLC AND BANC OF AMERICA INVESTMENT SERVICES, INC.**

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

7 Respondents admit the jurisdiction of the Securities Commissioner for the State of Delaware
8 ("Commissioner"), neither admit nor deny the Findings of Fact and Conclusions of Law contained in this
9 Order, and consent to entry of this Order by the Commissioner as settlement of the issues contained in this
10 Order.

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

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

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

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

20 Dated this _____ day of _____, 2009.

21 BANC OF AMERICA SECURITIES LLC

22 By: Steve Chaiken
23 Title: Managing Director

24 State of New York)
25) ss.
26 County of New York)

27 SUBSCRIBED AND SWORN TO before me this 18th day of May 2009.

28 Xavier Miranda
29 Notary Public

30 My commission expires: January 9, 2010

31 **XAVIER MIRANDA**
32 Notary Public - State of New York
33 No. 01M0130426
34 Qualified in New York County
35 My Commission Expires Jan. 09, 2010

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BANC OF AMERICA INVESTMENT SERVICES, INC.

By: *Ronald I. Newth*
Title: RONALD I. Newth
COO/SUP

State of Massachusetts
County of Suffolk) ss.

SUBSCRIBED AND SWORN TO before me this 15th day of May 2009.

Mary Ann Carroll
Notary Public

My commission expires:
7/4/2014

 **MARY ANN CARROLL**
Notary Public
Commonwealth of Massachusetts
My Commission Expires
July 4, 2014