

STATE OF ALABAMA
ALABAMA SECURITIES COMMISSION

1
2 In the matter of)
3 BANC OF AMERICA SECURITIES LLC) ADMINISTRATIVE CONSENT ORDER
and BANC OF AMERICA INVESTMENT) NO. CO-2009-0017
4 SERVICES, INC.,)
5 Respondent)

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

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

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

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

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

21 WHEREAS, Respondents elect to permanently waive any right to a hearing and appeal
22 under Section 8-6-25 Code of Alabama 1975, with respect to this Administrative Consent Order
(the "Order");

23 NOW, THEREFORE, the Alabama Securities Commission ("Commission"), as
24 administrator of Title 8, Chapter 6, Code of Alabama 1975, the Alabama Securities Act ("Act"),
25 hereby enters this Order:
26

1 I.

2 FINDINGS OF FACT

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

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 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 Section 8-6-

6 6. The Commission finds the following relief appropriate and in the public interest.

7 III.

8 ORDER

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

11 IT IS HEREBY ORDERED:

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

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

19 3. Respondents will CEASE AND DESIST from violating the Code of Alabama 1975,
20 Alabama Securities Act, and will comply with the Act.

21 4. Within ten days after the date of this Order, Respondents shall pay the sum of
22 \$454,153.31 to the State of Alabama. Those funds shall be paid in four (3) separate checks as
23 follows: 1.) Respondents shall pay \$200,000.00 to the Alabama District Attorney Association, a
24 non-profit corporation; 2.) Respondents shall pay \$200,000.00 to the Alabama Securities
25 Commission as reimbursement of direct and indirect costs and expenses of the Commission's cost
26 for investigating this matter in accordance with Section 8-6-19 (k) (1), Code of Alabama 1975; 3.)
Respondents shall pay \$44,153.31 to the Investor Protection Trust, a non-profit corporation and

1 such funds are designated specifically for investor education and investor protection in the state of
2 Alabama as directed by the Alabama Securities Commission in its sole discretion; 4) Respondents
3 shall pay \$10,000.00 to the North American Securities Administrators Association. All checks
4 shall be delivered to the office of the Alabama Securities Commission.

5 5. In the event another state securities regulator determines not to accept Respondents'
6 settlement offer, the total amount of the State of Alabama's payment shall not be affected, and shall
7 remain at \$454,153.31.

8 6. Respondents shall comply with the following requirements:

9 a. **Eligible Investors**

10 i. No later than October 21, 2008, BAC shall have caused Blue Ridge
11 to offer to buy back, at par plus accrued and unpaid interest or dividends, Eligible
12 ARS (as such term is defined below) for which auctions are in failed mode from
13 Eligible Investors (as such term is defined below) who purchased such Eligible ARS
14 from Respondents prior to February 13, 2008 (the "Offer"). For purposes of the
15 Offer, Eligible ARS means ARS purchased from Respondents on or before February
16 13, 2008, that were subject to an auction failure on or after February 11, 2008. The
17 Offer shall remain open for a period between October 10, 2008, and December 1,
18 2009, unless extended by Blue Ridge.

19 ii. "Eligible Investors" shall mean:

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

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

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

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

10 **b. Relief for Eligible Investors Who Sold Below Par**

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

18 **c. Consequential Damages Claims**

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

24 Respondents shall consent to participate in the North American Securities
25 Administrators Association ("NASAA") Special Arbitration Procedure (the "SAP")
26 established specifically for arbitrating claims arising out of an Eligible Investor's inability
to sell Eligible ARS. Respondents shall notify Eligible Investors of the terms of the SAP.

1 Nothing in this Order shall serve to limit or expand any party's rights or obligations as
2 provided under the SAP. Arbitration shall be conducted, at the customer's election, by a
3 single non-industry arbitrator and Respondents will pay all forum and filing fees.

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

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

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

22 **d. Institutional Investors**

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

1 Beginning on December 31, 2008, and then quarterly thereafter, Respondents shall
2 submit a written report to a representative specified by NASAA outlining the efforts in
3 which Respondents have engaged and the results of those efforts with respect to
4 Institutional Investors' holdings in Eligible ARS. The written reports will be submitted 20
5 days following the end of the quarter. Respondents shall confer with the representative no
6 less frequently than quarterly to discuss Respondents' progress to date. Such written
7 reports and quarterly meetings shall continue until no later than December 31, 2009.
8 Following every quarterly meeting, the representative shall advise Respondents of any
9 concerns and, in response, Respondents shall detail the steps that Respondents plan to
10 implement to address such concerns.

11 e. **Relief for Municipal Issuers**

12 Respondents shall refund refinancing fees to municipal auction rate issuers that
13 issued such securities through Respondents in the initial primary market between August 1,
14 2007, and February 11, 2008, and refinanced those securities through Respondents after
15 February 11, 2008. Refinancing fees are those fees paid to Respondents in connection with
16 a refinancing and are exclusive of legal fees and any other fees or costs not paid to
17 Respondents in connection with the transaction.

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

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

22 g. **Penalties**

23 i. Respondents shall pay a total civil penalty of FIFTY MILLION
24 (\$50,000,000) DOLLARS, which shall be allocated among and paid to the
25 Commonwealth of Massachusetts, the state of New York, and such other states and
26 territories that enter administrative or civil consent orders approving the terms of the
NASAA settlement (together with the Commonwealth of Massachusetts and the

1 state of New York, the "Approving States"). Any such allocation shall be made at
2 the discretion of the Approving States;

3 ii. The Commission portion of the civil penalty shall be \$ 454,153.31
4 and shall be paid to the Commission no later than ten business days after the date of
5 the Consent Order.

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

7 The Commission will:

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

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

13 iii. The Commission will not seek additional monetary penalties from
14 Respondents in connection with all underlying conduct relating to Respondents'
15 underwriting, marketing, and sale of ARS to investors.

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

18 7. If payment is not made by Respondents, or if Respondents default in any of their
19 obligations set forth in this Order, the Commission may vacate this Order, at its sole discretion,
20 upon 10 days notice to Respondents and without opportunity for administrative hearing.

21 8. This Order as entered into by the Commission waives any disqualification contained
22 in the laws of the Alabama, or rules or regulations thereunder, including any disqualifications from
23 relying upon the registration exemptions or safe harbor provisions that BAI, BAS, or any of their
24 affiliates may be subject to as a result of the findings contained in this Order. This Order also is
25 not intended to subject BAI or BAS or any of their affiliates to any disqualifications contained in
26 the federal securities laws, the rules and regulations thereunder, the rules and regulations of self
regulatory organizations, or various states' or U.S. Territories' securities laws, including, without

1 limitation, any disqualifications from relying upon the registration exemptions or safe harbor
2 provisions. In addition, this Order is not intended to form the basis for any such disqualifications.

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

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

13 11. This Order and any dispute related thereto shall be construed and enforced in
14 accordance with, and governed by, the laws of the Alabama without regard to any choice of law
15 principles.

16 12. Respondents, through their execution of this Order, voluntarily waive their right to a
17 hearing on this matter and to judicial review of this Order under Section 8-6-25 Code of Alabama
18 1975.

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

23 14. This Order shall be binding upon Respondents and each of their successors and
24 assigns with respect to all conduct subject to the provisions above and all future obligations,
25 responsibilities, undertakings, commitments, limitations, restrictions, events, and conditions.
26

Dated this 29th day of June, 2009.

BY ORDER OF the Commission
ALABAMA SECURITIES COMMISSION



JOSEPH P. BORG
DIRECTOR



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BANC OF AMERICA INVESTMENT SERVICES, INC.

By: Ronald J. Newth
Title: RONALD J. NEWTH, CHIEF OPERATING OFFICER & SVP

State of Massachusetts
County of Suffolk) ss.

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

Mary Ann Carroll
Notary Public

My commission expires:

July 4, 2014



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

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