

ADMINISTRATIVE PROCEEDING
BEFORE THE
SECURITIES COMMISSIONER OF SOUTH CAROLINA

In the matter of:

BANC OF AMERICA SECURITIES LLC
and BANC OF AMERICA INVESTMENT
SERVICES, INC.,

Respondents.

ADMINISTRATIVE CONSENT ORDER

File Number 09046

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 South Carolina; 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 S.C. Code Ann. §§35-1-604 and 35-1-609 (Supp. 2008) with respect to this Administrative Consent Order (the "Order");

NOW, THEREFORE, the Securities Commissioner of the State of South Carolina (the

1 "Securities Commissioner"), as administrator of the South Carolina Uniform Securities Act of
2 2005 ("Act"), S.C. Code Ann. §§35-1-101 to 35-1-703 (Supp. 2008), hereby enters this Order:

3 I.

4 **FINDINGS OF FACT**

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

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

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

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

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

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

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

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

9. Instead, Respondents engaged in a concerted effort to market ARS underwritten by BAS towards its large retail customer accounts without advising the retail customers of any of the potential risks associated with a failed auction or market illiquidity.

10. On or about February 11, 2008, without notifying any of its customers, BAS stopped broadly supporting the auctions for which BAS was lead broker-dealer.

11. The decision left thousands of Respondents' customers stuck holding illiquid ARS.

12. On or about September 10, 2008, Respondents, Bank of America Corporation ("BAC"), and Blue Ridge Investments, L.L.C. ("Blue Ridge") agreed, in principle, that BAC would cause Blue Ridge to buy back, at par plus accrued but unpaid interest or dividends, ARS for which auctions were in failed mode from "Eligible Investors," which included all individual investors, all charitable organizations with account values up to \$25 million, and small and medium sized businesses with account values up to \$10 million who purchased ARS from Respondents.

14.

CONCLUSIONS OF LAW

1. The Securities Commissioner has jurisdiction over this matter pursuant to S.C. Code Ann. §35-1-601 and §35-1-604 (Supp. 2008). The Act authorizes the Securities Commissioner to regulate: 1) the offers, sales, and purchases of securities; 2) those individuals and entities offering and/or selling securities; and 3) those individuals and entities transacting business as investment advisers within the State of South Carolina.

A. Respondents Engaged in Dishonest and Unethical Practices.

2. As described in the Findings of Fact section above, Respondents inappropriately marketed and sold ARS without adequately informing their customers of the increased risks of illiquidity associated with the product for the time period August 1, 2007, through February 11, 2008.

1 3. As a result, Respondents violated S.C. Code Ann. §35-1-412(d)(13) (Supp. 2008).

2 B. Respondents Failed to Supervise Their Agents.

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

6 5. As a result, Respondents violated S. C. Code Ann. §35-1-412(d)(9) (Supp. 2008).

7 6. The Securities Commissioner finds the following relief appropriate and in the
8 public interest.

9 III.

10 ORDER

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

13 IT IS HEREBY ORDERED:

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

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

21 3. Respondents will CEASE AND DESIST from violating the Act and will comply with
22 the Act.

23 4. Within ten days after the date of this Order, Respondents shall pay the sum of
24 \$696,936.14 to the Securities Commissioner.

25 5. In the event another state securities regulator determines not to accept Respondents'
26 settlement offer, the total amount of the State of South Carolina payment shall not be affected, and
shall remain at \$696,936.14.

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 **b. 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 Securities Commissioner's portion of the civil penalty shall be
24 \$696,936.14 and shall be paid to the Securities Commissioner no later than ten
25 business days after the date of the Order.

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

The Securities Commissioner will:

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

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

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

9 7. If after this Order is executed, Respondents fail to comply with any of the terms set
10 forth herein, the Securities Commissioner may take appropriate remedial action. If payment is not
11 made by Respondents, or if Respondents default in any of their obligations set forth in this Order,
12 the Securities Commissioner may vacate this Order, at his sole discretion, upon 10 days notice to
13 Respondents and without opportunity for administrative hearing.

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

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

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

12. Respondents, through their execution of this Order, voluntarily waive their right to a hearing on this matter and to judicial review of this Order under S.C. Code Ann. §35-1-609 (Supp. 2008).

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

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

Dated this 28th day of JULY, 2009.

BY ORDER OF THE SECURITIES COMMISSIONER

HENRY D. McMASTER
SECURITIES COMMISSIONER
STATE OF SOUTH CAROLINA

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BANC OF AMERICA INVESTMENT SERVICES, INC.

By: [Signature]

Title: Chief Operating Officer and SUP

State of Massachusetts
) ss.
County of Suffolk

SUBSCRIBED AND SWORN TO before me this 16th day of July 2009

[Signature]
Notary Public

My commission expires:

July 4, 2014



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