Division of Securities
Utah Department of Commerce
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Salt Lake City, UT 84114-6760
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BEFORE THE DIVISION OF SECURITIES
OF THE DEPARTMENT OF COMMERCE
OF THE STATE OF UTAH

IN THE MATTER OF:	**STIPULATION AND CONSENT ORDER**
BANC OF AMERICA SECURITIES LLC, CRD#26091; and MERRILL LYNCH, PIERCE, FENNER & SMITH, INCORPORATED as successor by merger to BANC OF AMERICA INVESTMENT SERVICES, INC., CRD#16361	Docket No. SD-10-0007 Docket No. SD-10-0008
Respondents.	

The Utah Division of Securities ("Division"), by and through its Director of Compliance, Dave R. Hermansen, and Banc of America Securities LLC ("BAS") and Merrill Lynch, Pierce, Fenner & Smith, Incorporated ("MLPF&S") as successor by merger to Banc of America Investment Services, Inc. (in such capacity, "BAI") (collectively with BAS, "Respondents") hereby stipulate and agree as follows:

WHEREAS, on October 23, 2009, Banc of America Investment Services, Inc., merged with Merrill Lynch, Pierce, Fenner & Smith, Incorporated; and

WHEREAS, it is in the interest of the parties to this order to address only pre-merger conduct and customers of BAI; and

WHEREAS, Respondents are broker-dealers licensed in the state of Utah; 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 the Utah Administrative Procedures Act, Title 63G, Chapter 4 of the Utah Code, with respect to this Stipulation and Consent Order (the "Order");

NOW, THEREFORE, the Division, as administrator of the Utah Uniform Securities Act ("Act"), hereby enters this Order:

I.

FINDINGS OF FACT

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

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

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

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

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

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

7. During that time period, significant numbers of buyers had been exiting the market and the continued success of the auctions was reliant upon the lead broker-dealers, such as BAS, making increased support bids. These support bids had the effect of artificially propping up the 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.

II.

CONCLUSIONS OF LAW

1. The Division has jurisdiction over this matter pursuant to Section 61-1-6 of the Act. The Act authorizes the Division 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 Utah.

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.

3. As a result, Respondents engaged in dishonest or unethical practices, warranting sanctions under Section 61-1-6(2)(a)(ii)(G) of the Act.

Respondents Failed to Supervise Their Agents.

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

5. As a result, Respondents failed reasonably to supervise, warranting sanctions under Section 61-1-6(2)(a)(ii)(J) of the Act.

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

III.

ORDER

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

IT IS HEREBY ORDERED:

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

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

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

4. Within ten days after the date of this Order, Respondents shall pay the sum of $172,449.72 as an administrative fine pursuant to Utah Code Ann. § 61-1-18.7, to be deposited in the Securities Investor Education and Training Fund.

5. In the event another state securities regulator determines not to accept Respondents' settlement offer, the total amount of the Utah payment shall not be affected, and shall remain at $172,449.72.

6. Respondents shall comply with the following requirements:

a. **Eligible Investors**

i. No later than October 21, 2008, BAC shall have caused Blue Ridge to offer to buy back, at par plus accrued and unpaid interest or dividends, Eligible ARS (as such term is defined below) for which auctions are in failed mode from Eligible Investors (as such term is defined below) who purchased such Eligible ARS from Respondents prior to February 13, 2008 (the "Offer"). For purposes of the

Offer, Eligible ARS means ARS purchased from Respondents on or before February 13, 2008, that were subject to an auction failure on or after February 11, 2008. The Offer shall remain open for a period between October 10, 2008, and December 1, 2009, unless extended by Blue Ridge.

ii. "Eligible Investors" shall mean:

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

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

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

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

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

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

sold the Eligible ARS. Any such Eligible Investors identified after December 31, 2008, shall be promptly paid the difference between par and the price at which the Eligible Investors sold the Eligible ARS.

c. **Consequential Damages Claims**

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

Respondents shall consent to participate in the North American Securities Administrators Association ("NASAA") Special Arbitration Procedure (the "SAP") 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. Nothing in this Order shall serve to limit or expand any party's rights or obligations as provided under the SAP. Arbitration shall be conducted, at the customer's election, by a single non-industry arbitrator and Respondents will pay all forum and filing fees.

Arbitrations asserting consequential damages of less than $1 million will be decided through a single chair-qualified public arbitrator who will be appointed through the FINRA 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 agreement, expand the panel to include three public arbitrators who will be appointed through FINRA's list procedure.

Any Eligible Investors who choose to pursue such claims through the SAP shall bear the burden of proving that they suffered consequential damages and that such damages were caused by 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 liability for the illiquidity of the underlying ARS position

or use as part of their defense any decision by an Eligible Investor not to borrow money from Respondents.

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

d. Institutional Investors

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

Beginning on December 31, 2008, and then quarterly thereafter, Respondents shall submit a written report to a representative specified by NASAA outlining the efforts in which Respondents have engaged and the results of those efforts with respect to Institutional Investors' holdings in Eligible ARS. The written reports will be submitted 20 days following the end of the quarter. Respondents shall confer with the representative no 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. Following every quarterly meeting, the representative shall advise Respondents of any concerns and, in response, Respondents shall detail the steps that Respondents plan to implement to address such concerns.

e. Relief for Municipal Issuers

Respondents shall refund refinancing fees to municipal auction rate issuers that issued such securities through Respondents in the initial primary market between August 1, 2007, and February 11, 2008, and refinanced those securities through Respondents after

February 11, 2008. Refinancing fees are those fees paid to Respondents in connection with a refinancing and are exclusive of legal fees and any other fees or costs not paid to Respondents in connection with the transaction.

f. Repayment of Interest on Loans Provided To Eligible Investors

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

g. Penalties

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

ii. The Utah portion of the fine shall be $172,449.72 and shall be paid to the Division no later than ten business days after the date of the Consent Order.

h. In Consideration of the Settlement

The Division will:

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

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

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

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

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

8. This Order as entered into by the Division waives any disqualification contained in the laws of the state of Utah, or rules or regulations thereunder, including any disqualifications from relying upon the registration exemptions or safe harbor provisions that MLPF&S, BAS, or any of their affiliates may be subject to as a result of the findings contained in this Order. This Order also is not intended to subject MLPF&S or BAS or any of their affiliates to any disqualifications contained in 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 limitation, any disqualifications from relying upon the registration exemptions or safe harbor provisions. In addition, this Order is not intended to form the basis for any such disqualifications.

9. For any person or entity not a party to this Order, this Order does not limit or create any private rights or remedies against Respondents including, without limitation, the use of any e-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.

10. Nothing herein shall preclude Utah, its departments, agencies, boards, commissions, authorities, political subdivisions and corporations, other than the Division and only to the extent set forth in paragraph 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 Utah 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 the Utah Administrative Procedures Act, Title 63G, Chapter 4 of the Utah Code.

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

15. Respondents acknowledge that this Order, upon approval by the Utah Securities Commission ("Commission") shall be the final compromise and settlement of this matter. Respondents further acknowledge that if the Commission does not accept the terms of the Order, it shall be deemed null and void and without any force or effect whatsoever.

16. This Order constitutes the entire agreement between the parties herein and supersedes and cancels any and all prior negotiations, representations, understandings, or agreements between the parties. There are no verbal agreements which modify, interpret, construe, or otherwise affect this Order in any way.

Utah Division of Securities

Date: February 15, 2016

By: Dave R. Hermanser

Dave R. Hermanser
Director of Compliance

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 Merrill Lynch, Pierce, Fenner & Smith, Incorporated ("MLPF&S") as successor by merger to Banc of America Investment Services, Inc. (collectively 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 Division, 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 Division 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 MLPF&S and that, as such, has been authorized by MLPF&S to enter into this Order for and on behalf of MLPF&S.

Dated this 25th day of January, 2010.

BANC OF AMERICA SECURITIES LLC

State of New York

County of [illegible]

SUBSCRIBED AND SWORN TO before me this 25th day of January 2010.

Notary Public

My commission expires:

No. 30-5018872
Qualified in Nassau County
Certificate Filed in New York County
Commission Expires Oct. 25, 2013

MERRILL LYNCH, PIERCE, FENNER & SMITH, INCORPORATED as successor by merger to BANC OF AMERICA INVESTMENT SERVICES, INC.

B. _____

Title: Associate General Counsel

State of New York)
) ss.
County of New York)

SUBSCRIBED AND SWORN TO before me this 5th day of February 2010.

_____
Notary Public

My commission expires:

Nov. 17, 2011

NOTARY PUBLIC, State of New York
No. 01TL6101521
Qualified in New York County
Commission Expires Nov. 17, 2011

BY THE UTAH SECURITIES COMMISSION:

The foregoing Stipulation and Consent Order is hereby accepted, confirmed, and entered by the Utah Securities Commission.

DATED this 25th day of February, 2010.

Tim Bangerter

Jane Cameron

Erik Christiansen

Michael O'Brien

Laura Polacheck

Certificate of Service

I, Julie Price, certify that on the 4th day of March, 2010, I served the foregoing Stipulation and Consent Order by mailing a copy to:

Elizabeth Baird
O'Melveny & Myers LLP
1625 Eye Street NW
Washington, D.C. 20006

via e-mail: ebaird@omm.com

Julie Price
Executive Secretary