

File12180

STATE OF MINNESOTA  
COMMISSIONER OF COMMERCE

In the matter of

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

**CONSENT ORDER**

Respondent.

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 Minnesota; 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 Minn. Stat. § 14.59 and Minn. R. 1400.5900 with respect to this Administrative Consent Order (the “Order”);

NOW, THEREFORE, the Minnesota Department of Commerce, as administrator of Minn. Stat. ch. 45 and 80A, hereby enters this Order:

I.

**FINDINGS OF FACT**

1. Respondents admit the jurisdiction of the Minnesota Department of Commerce, 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 Minnesota Department of Commerce.

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 Minnesota Department of Commerce has jurisdiction over this matter pursuant to Minn. Stat. § 45.011 subd. 4. Minn. Stat. ch. 45 and 80A authorize the Minnesota Department of Commerce 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 Minnesota.

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.

3. As a result, Respondents violated Minn. Stat. § 80A.67(d)(13).

B. 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 11, 2008.

5. As a result, Respondents violated Minn. Stat. § 80A.67(d)(9).

6. The Minnesota Department of Commerce 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 Minnesota Department of Commerce and any other action that the Minnesota Department of Commerce could commence under applicable Minnesota law on behalf of Minnesota 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 Minnesota Department of Commerce 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 Minn. Stat. §§ 80A.67(d)(9), (13) and will comply with Minn. Stat. ch. 80A.

4. Within ten days after the date of this Order, Respondents shall pay the sum of

\$644,316.83 to the Minnesota Department of Commerce.

5. In the event another state securities regulator determines not to accept Respondents' settlement offer, the total amount of the Minnesota payment shall not be affected, and shall remain at \$644,316.83.

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