

NEVADA SECRETARY OF STATE  
SECURITIES DIVISION  
DATE FILED:  
6-25-09  
*[Signature]*

**STATE OF NEVADA**  
**OFFICE OF THE SECRETARY OF STATE**  
**SECURITIES DIVISION**  
**555 EAST WASHINGTON AVE., SUITE 5200**  
**LAS VEGAS, NEVADA 89101**

In the matter of )  
BANC OF AMERICA SECURITIES LLC ) **File No. i09-113**  
and BANC OF AMERICA INVESTMENT )  
SERVICES, INC., ) **ADMINISTRATIVE 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 Nevada and

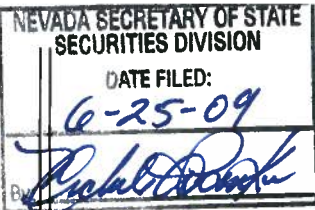
WHEREAS, coordinated investigations into Respondents’ activities in connection with certain of their sales practices regarding the underwriting, marketing, and sale of Auction Rate Securities (“ARS”) during the period of approximately August 1, 2007, through February 11, 2008, have been conducted by a multi-state 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 NRS 90.630, NRS 90.800 and/or the Nevada Administrative Procedure Act (NRS chapter 233B) with respect to this Administrative Consent Order (the “Order”);



1 NOW, THEREFORE, the Administrator of the Securities Division, Office of the Secretary  
2 of State, State of Nevada, as administrator of the Nevada Uniform Securities Act (NRS 90.211 et  
3 seq., hereinafter "The Act") hereby enters this Order:

4 I.

5 FINDINGS OF FACT

6 1. Respondents admit the jurisdiction of The Securities Division, Office of the  
7 Secretary of State, State of Nevada (hereinafter "The Division"); neither admit nor deny the  
8 Findings of Fact and Conclusions of Law contained in this Order, and consent to the entry of this  
9 Order by the Administrator of The Division.

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

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

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

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

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

25 7. During that time period, significant numbers of buyers had been exiting the market  
26 and the continued success of the auctions was reliant upon the lead broker-dealers, such as BAS,

NEVADA SECRETARY OF STATE  
SECURITIES DIVISION  
DATE FILED:  
6-25-09  
By: *[Signature]*

1 making increased support bids. These support bids had the effect of artificially propping up the  
2 market and creating the illusion that the auction rate market was functioning as normal.

3 8. However, during that time, Respondents continued, through their Sales  
4 Representatives, to market and sell ARS without informing customers of the heightened risks  
5 associated with holding these securities. Respondents failed to supervise their Sales  
6 Representatives to ensure that they were properly informing customers of said heightened risks.

7 9. Instead, Respondents, through their Sales Representatives and employees, engaged  
8 in a concerted effort to market ARS underwritten by BAS towards its large retail customer  
9 accounts without advising the retail customers of any of the potential risks associated with a failed  
10 auction or market illiquidity. Respondents failed to supervise their Sales Representatives and  
11 employees to ensure that they would not engage in this conduct.

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

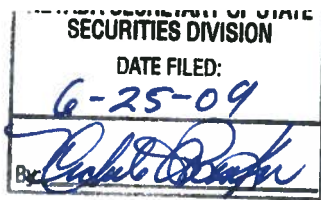
14 11. The decision left thousands of Respondents' customers holding illiquid ARS.

15 12. On or about September 10, 2008, Respondents, Bank of America Corporation  
16 ("BAC"), and Blue Ridge Investments, L.L.C. ("Blue Ridge") agreed, in principle, that BAC  
17 would cause Blue Ridge to buy back, at par plus accrued but unpaid interest or dividends, ARS for  
18 which auctions were in failed mode, from "Eligible Investors," which included all individual  
19 investors, all charitable organizations with account values up to \$25 million, and small and medium  
20 sized businesses with account values up to \$10 million who purchased ARS from Respondents.  
21 Blue Ridge is a wholly owned, non-bank subsidiary of BAC; engaged in the business of  
22 investments in high-yield debt and equity securities of varying types issued by U.S. corporate or  
23 foreign issuers, including securities of distressed or bankrupt issuers.

24 **II.**

25 **CONCLUSIONS OF LAW**

26 1. The Division has jurisdiction over this matter pursuant to The Act which authorizes



1 the Division to regulate: 1) the offers, sales, and purchases of securities; 2) those individuals and  
2 entities offering and/or selling securities; and 3) those individuals and entities transacting business  
3 as investment advisers within or from Nevada. Specifically, NRS 90.420(1), Subsections (h) and  
4 (l) allow The Division, through its Administrator, to take action against Respondents if they have  
5 engaged in unethical or dishonest practices in the securities business, and/or if they have failed to  
6 reasonably supervise a sales representative and/or employee.

7 **A. Respondents Engaged in Dishonest and Unethical Practices.**

8 2. As described in the Findings of Fact section above, Respondents inappropriately  
9 marketed and sold ARS without adequately informing their customers of the increased risks of  
10 illiquidity associated with the product for the time period August 1, 2007, through February 11,  
11 2008. Said conduct amounted to unethical or dishonest practices within the meaning of NRS  
12 90.420.

13 **B. Respondents Failed to Supervise Their Sales Representatives.**

14 3. As described in the Findings of Fact section above, Respondents failed to properly  
15 supervise their Sales Representative with respect to the marketing and sale of ARS from October 1,  
16 2007, to February 11, 2008, which is grounds for an administrative enforcement action under NRS  
17 90.420.

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

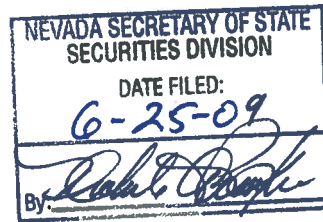
19 **III.**

20 **ORDER**

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

23 **IT IS HEREBY ORDERED:**

24 1. This Order concludes the investigation by The Division and any other action that The  
25 Division could commence under applicable Nevada law on behalf of Nevada as it relates to  
26 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



1 “Order” provisions contained herein.

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

4 3. Respondents will CEASE AND DESIST from violating The Act and will comply with  
5 The Act.

6 4. Within ten days after the date of this Order, Respondents shall pay the sum of One  
7 Million One-Hundred Ninety-Eight Thousand Four-Hundred Fifty Dollars and Seventy Cents  
8 (\$1,198,450.70) to the Securities Division of the Office of the Secretary of State, State of Nevada,  
9 for deposit to the Division’s Revolving Account established pursuant to NRS 90.851.

10 5. In the event another state securities regulator determines not to accept Respondents’  
11 settlement offer, the total amount of the Nevada payment shall not be affected, and shall remain at  
12 \$1,198,450.70.

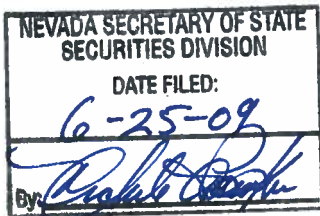
13 6. Respondents shall comply with the following requirements:

14 a. **Eligible Investors**

15 i. Respondents warrant that on or before October 21, 2008, BAC  
16 caused Blue Ridge to offer to buy back, at par plus accrued and unpaid interest or  
17 dividends, Eligible ARS (as such term is defined below) for which auctions are in  
18 failed mode from Eligible Investors (as such term is defined below) who purchased  
19 such Eligible ARS from Respondents prior to February 13, 2008 (the “Offer”). For  
20 purposes of the Offer, Eligible ARS means ARS purchased from Respondents on or  
21 before February 13, 2008, that were subject to an auction failure on or after  
22 February 11, 2008. The Offer shall remain open for a period between October 10,  
23 2008, and December 1, 2009, unless extended by Blue Ridge.

24 ii. “Eligible Investors” shall mean:

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



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

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

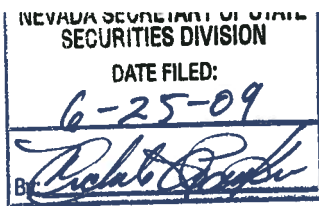
11 iii. Respondents will provide or cause to be provided, prompt notice of  
12 the settlement terms to customers, and Respondents will establish a dedicated  
13 telephone assistance line, with appropriate staffing, to respond to questions from  
14 customers concerning the terms of the settlement.

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

16 Respondents warrant that on or before December 31, 2008, they provided notice to  
17 any Eligible Investor that Respondents could reasonably identify who sold Eligible ARS  
18 below par between February 11, 2008, and September 22, 2008, that such investors would  
19 be paid the difference by Respondents between par and the price at which the Eligible  
20 Investor sold the Eligible ARS. Any such Eligible Investors identified after December 31,  
21 2008, shall be promptly paid the difference between par and the price at which the Eligible  
22 Investors sold the Eligible ARS.

23 **c. Consequential Damages Claims**

24 i. Respondents warrant that on or before October 10, 2008,  
25 Respondents made reasonable efforts to promptly notify those Eligible Investors  
26 who own Eligible ARS that, pursuant to the terms of the settlement, an independent  
arbitrator, under the auspices of the Financial Industry Regulatory Authority



1 ("FINRA"), will be available for the exclusive purpose of arbitrating any Eligible  
2 Investor's consequential-damages claim.

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

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

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

24 v. All customers, including but not limited to Eligible Investors who  
25 avail themselves of the relief provided pursuant to this Order, may pursue any  
26 remedies against Respondents available under the law. However, Eligible Investors

1 that elect to utilize the SAP are limited to the remedies available in that process and  
2 may not bring or pursue a claim relating to Eligible ARS in another forum.

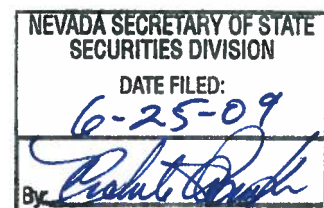
3 **d. Institutional Investors**

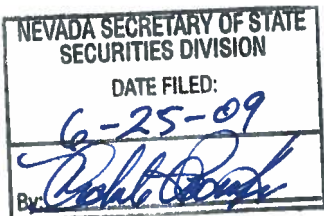
4 i. Respondents shall endeavor to work with issuers and other interested parties,  
5 including regulatory and governmental entities, to expeditiously and on a best efforts basis  
6 provide liquidity solutions for institutional investors that purchased Eligible ARS from  
7 Respondents and are not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

9 ii. Beginning on December 31, 2008, and then quarterly thereafter,  
10 Respondents shall submit a written report to a representative specified by NASAA outlining  
11 the efforts in which Respondents have engaged and the results of those efforts with respect  
12 to Institutional Investors’ holdings in Eligible ARS. The written reports will be submitted  
13 20 days following the end of the quarter. Respondents shall confer with the representative  
14 no less frequently than quarterly to discuss Respondents’ progress to date. Such written  
15 reports and quarterly meetings shall continue until no later than December 31, 2009.  
16 Following every quarterly meeting, the representative shall advise Respondents of any  
17 concerns and, in response, Respondents shall detail the steps that Respondents plan to  
18 implement to address such concerns.

19 **e. Relief for Municipal Issuers**

20 Respondents shall refund refinancing fees to municipal auction rate issuers that  
21 issued such securities through Respondents in the initial primary market between August 1,  
22 2007, and February 11, 2008, and refinanced those securities through Respondents after  
23 February 11, 2008. Refinancing fees are those fees paid to Respondents in connection with  
24 a refinancing and are exclusive of legal fees and any other fees or costs not paid to  
25 Respondents in connection with the transaction.





1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

**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 Division's portion of the civil penalty shall be One Million One-Hundred Ninety-Eight Thousand Four-Hundred Fifty Dollars and Seventy Cents (\$1,198,450.70) and shall be paid to The Division no later than ten business days after the date of the Consent Order. Payment shall be made via wire transfer according to instructions which shall be provided to legal counsel for the Respondents. Respondents through their legal counsel shall notify the undersigned Administrator of the Securities Division via e-mail to [cellsworth@sos.nv.gov](mailto:cellsworth@sos.nv.gov), twenty-four hours before the wire transfer is made.

**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

NEVADA SECRETARY OF STATE  
SECURITIES DIVISION  
DATE FILED:  
6-25-09  
By: *[Signature]*

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

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.

iv. 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, as set forth in this Order, The Division may vacate this Order without notice to Respondents and without opportunity for administrative hearing.

8. 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.

9. This Order as entered into by the The Division waives any disqualification contained in the laws of the Nevada or rules or regulations thereunder, including any disqualifications from relying upon the registration exemptions or safe harbor provisions that BAI, 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 BAI 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.

10. 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.

11. Nothing herein shall preclude Nevada, its departments, agencies, boards, commissions, authorities, political subdivisions and corporations, other than The Division and only to

1 the extent set forth in paragraph 1 above, (collectively, "State Entities") and the officers, agents or  
2 employees of State Entities from asserting any claims, causes of action, or applications for  
3 compensatory, nominal and/or punitive damages, administrative, civil, criminal, or injunctive relief  
4 against Respondents in connection with certain auction rate securities sales practices at Respondents.

5 12. This Order and any dispute related thereto shall be construed and enforced in  
6 accordance with, and governed by, the laws of the State of Nevada without regard to any choice of  
7 law principles.

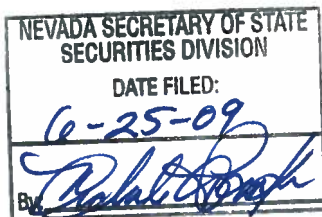
8 13. Respondents, through their execution of this Order, voluntarily waive their right to a  
9 hearing on this matter and to judicial review of this Order under NRS 233B.130.

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

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

16 Dated this 25<sup>th</sup> day of June, 2009.

17 BY ORDER OF THE ADMINISTRATOR  
18 Securities Division, Office of the Secretary of State



  
2 Carolyn Ellsworth  
3 Securities Administrator



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

Notary Public

My commission expires:

BANC OF AMERICA INVESTMENT SERVICES, INC.

By: *Ronald J. Newth*  
Title: *RONALD J. NEWTH*  
*COO & SVP*

State of *Massachusetts*  
) ss.  
County of *Suffolk*

SUBSCRIBED AND SWORN TO before me this *19<sup>th</sup>* day of *June* 2009.

*Mary Ann Carroll*  
Notary Public

My commission expires:

*July 4, 2014*

