

1 THE PEOPLE OF THE STATE OF CALIFORNIA  
2 BY AND THROUGH THE COMMISSIONER OF CORPORATIONS

3 In the matter of: )  
4 )  
4 BANC OF AMERICA SECURITIES LLC )  
5 and BANC OF AMERICA INVESTMENT )  
5 SERVICES, INC., )  
6 )  
7 Respondents. )  
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**FINDINGS OF FACT  
CONCLUSIONS OF LAW  
ADMINISTRATIVE CONSENT ORDER**

11 WHEREAS, Banc of America Securities LLC (“BAS”) and Banc of America Investment  
12 Services, Inc. (“BAI” and, together with BAS, “Respondents”) are broker-dealers registered in the  
13 state of California; and

14 WHEREAS, coordinated investigations into Respondents’ activities in connection with certain  
15 of their sales practices regarding the underwriting, marketing, and sale of Auction Rate Securities  
16 (“ARS”) during the period of approximately August 1, 2007, through February 11, 2008, have been  
17 conducted by a multistate task force; and

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

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

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

26 WHEREAS, Respondents elect to permanently waive any right to a hearing and appeal under  
27 California Corporations Code sections 25532(d) and 25609 with respect to this Consent Order (the  
28 “Order”);

1 NOW, THEREFORE, the California Department of Corporations, as administrator of the  
2 California Corporate Securities Law hereby enters this Order.

3 **I.**

4 **FINDINGS OF FACT**

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

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. These  
11 failures were primarily based on credit quality concerns related to the ARS at issue, which often  
12 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 on  
14 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 and  
16 were at risk of ratings downgrades.

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

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

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

27 8. However, during that time, Respondents continued to market and sell ARS without  
28 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 Title 10, Ch. 3, section 260.218.4(a) of the California  
6 Code of Regulations for failure to supervise its employees with regard to the sale of securities.

7 6. The California Department of Corporations finds this Order and the following relief  
8 appropriate, in the public interest, and consistent with the purposes intended by the California  
9 Corporate Securities Law.

10 **III.**  
11 **ORDER**

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

14 **IT IS HEREBY ORDERED:**

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

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

23 3. Respondents will DESIST AND REFRAIN from violating Title 10, Ch. 3, sections  
24 260.218 and 260.218.4(a) of the California Code of Regulations.

25 4. Within ten days after the date of this Order, Respondents shall pay administrative  
26 penalties pursuant to California Corporations Code section 25252, in the sum of Nine Million Seven  
27 Hundred Forty Six Thousand Seven Hundred Seventy Seven dollars And Forty Cents \$9,746,777.40  
28 to the California State Corporations Fund.

1           5. In the event another state securities regulator determines not to accept Respondents' state  
2 settlement offer, the total amount of the California payment shall not be affected, and shall remain  
3 at \$9,746,777.40.

4           6. Respondents shall comply with the following requirements:

5 **a. Eligible Investors**

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

14           ii. "Eligible Investors" shall mean:

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

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

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

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

1 **Relief for Eligible Investors Who Sold Below Par**

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

8 **Consequential Damages Claims**

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

14 Respondents shall consent to participate in the North American Securities Administrators  
15 Association (“NASAA”) Special Arbitration Procedure (the “SAP”) established specifically for  
16 arbitrating claims arising out of an Eligible Investor’s inability to sell Eligible ARS. Respondents  
17 shall notify Eligible Investors of the terms of the SAP. Nothing in this Order shall serve to limit or  
18 expand any party’s rights or obligations as provided under the SAP. Arbitration shall be conducted,  
19 at the customer’s election, by a single non-industry arbitrator and Respondents will pay all forum and  
20 filing fees.

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

26 Any Eligible Investors who choose to pursue such claims through the SAP shall bear the  
27 burden of proving that they suffered consequential damages and that such damages were caused by  
28 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

1 liability for the illiquidity of the underlying ARS position or use as part of their defense any decision  
2 by an Eligible Investor not to borrow money from Respondents.

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

8 **d. Institutional Investors**

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

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

22 **e. Relief for Municipal Issuers**

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

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

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

5 **g. Penalties**

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

12 ii. The California Department of Corporations portion of the administrative penalty shall be  
13 \$9,746,777.40 and shall be paid to the California Department of Corporations no later than ten  
14 business days after the date of the Consent Order.

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

16 The California Department of Corporations will:

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

19 ii. Refrain from taking legal action, if necessary, against Respondents with respect to  
20 their institutional investors until December 31, 2009; the California Department of Corporations shall  
21 issue continuances of that period as it deems appropriate; and

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

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

27 7. If payment is not made by Respondents, or if Respondents default in any of their obligations  
28 set forth in this Order, the California Department of Corporations may vacate this Order, at its sole



1 discretion, upon 10 days notice to Respondents and without opportunity for administrative hearing.

2 8. This Order as entered into by the California Department of Corporations waives any  
3 disqualification contained in the laws of California, or rules or regulations thereunder, including any  
4 disqualifications from relying upon the registration exemptions or safe harbor provisions that BAI,  
5 BAS, or any of their affiliates may be subject to as a result of the findings contained in this Order.  
6 This Order also is not intended to subject BAI or BAS or any of their affiliates to any  
7 disqualifications contained in the federal securities laws, the rules and regulations thereunder, the  
8 rules and regulations of self regulatory organizations, or various states' or U.S. Territories' securities  
9 laws, including, without limitation, any disqualifications from relying upon the registration  
10 exemptions or safe harbor provisions. In addition, this Order is not intended to form the basis for any  
11 such disqualifications.

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

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

23 11. This Order and any dispute related thereto shall be construed and enforced in accordance with,  
24 and governed by, the laws of the State of California without regard to any choice of law principles.  
25 Respondents, through their execution of this Order, voluntarily waive their right to a hearing on this  
26 matter and to judicial review of this Order and elects to permanently waive any right to a hearing and  
27 appeal under California Corporations Code sections 25532(d) and 25609 with respect to this Consent  
28 Order (the "Order");

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

Dated this 27<sup>th</sup> day of May, 2009.

PRESTON DuFAUCHARD  
California Corporations Commissioner

By     //S//      
ALAN S. WEINGER  
Acting Deputy Commissioner  
Enforcement Division

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**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 Banc of America Investment Services, Inc. (“BAI” and, together 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 California Department of Corporations, 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 California Department of Corporations 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 BAI, and that, as such, has been authorized by BAI to enter into this Order for and on behalf of BAI.

Dated this 22nd day of May, 2009.

BANC OF AMERICA SECURITIES LLC

By: Steve Chaiken

Title: Managing Director

State of New York)

County of New York)

1 SUBSCRIBED AND SWORN TO before me this \_\_\_\_ day of \_\_\_\_\_, 2009.

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Notary Public

5 My commission expires:

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BANC OF AMERICA INVESTMENT SERVICES,  
INC.

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By: Ronald J. Newth

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Title: Chief Operating Officer & SVP

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State of Massachusetts)

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) ss.

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County of Suffolk)

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SUBSCRIBED AND SWORN TO before me this \_\_\_\_ day of \_\_\_\_\_, 2009.

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Notary Public

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