

STATE OF WISCONSIN  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
DIVISION OF SECURITIES

In the matter of )  
 )  
BANC OF AMERICA SECURITIES LLC ) **ADMINISTRATIVE CONSENT ORDER**  
and BANC OF AMERICA INVESTMENT )  
SERVICES, INC., )  
 ) **File No. S-09147(EX)**  
Respondents. )

WHEREAS, 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”) are broker-dealers registered in the state of Wisconsin; and

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, 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

1 sec. 551.61, Wis. Stats., the Hearings and Judicial Review statute which was applicable during the  
2 relevant time period with respect to this Administrative Consent Order (the "Order");

3 NOW, THEREFORE, the Division of Securities ("Division") of the Wisconsin Department of  
4 Financial Institutions, as administrator of the Wisconsin Uniform Securities Law applicable during the  
5 relevant time period, hereby enters this Order:

6 **I.**

7 **FINDINGS OF FACT**

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

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

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

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

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

23 6. The task force concluded that Respondents should have had knowledge that, during the  
24 fall of 2007 and winter of 2008, the auction markets were not functioning properly and were at  
25 increased risk for failure.  
26





1           4.       Within ten days after the date of this Order, Respondents shall pay as a monetary  
2 penalty, \$433,809.40 in the form of a check made payable to the Wisconsin Department of Financial  
3 Institutions to be deposited in the Gifts, Grants, Settlements and Publications appropriation in sec.  
4 20.144(1)(h), Wis. Stats.

5           5.       In the event another state securities regulator determines not to accept Respondents'  
6 settlement offer, the total amount of the Wisconsin payment shall not be affected, and shall remain at  
7 \$ 433,809.40.

8           6.       Respondents shall comply with the following requirements:

9           a.       Eligible Investors

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

19           ii.      "Eligible Investors" shall mean:

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

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

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

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

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

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

18 **c. Consequential Damages Claims**

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

24 Respondents shall consent to participate in the North American Securities  
25 Administrators Association ("NASAA") Special Arbitration Procedure (the "SAP") established  
26 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

1 Order shall serve to limit or expand any party's rights or obligations as provided under the  
2 SAP. Arbitration shall be conducted, at the customer's election, by a single non-industry  
3 arbitrator and Respondents will pay all forum and filing fees.

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

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

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

21 **d. Institutional Investors**

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

26 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

1 Respondents have engaged and the results of those efforts with respect to Institutional  
2 Investors' holdings in Eligible ARS. The written reports will be submitted 20 days following  
3 the end of the quarter. Respondents shall confer with the representative no less frequently than  
4 quarterly to discuss Respondents' progress to date. Such written reports and quarterly meetings  
5 shall continue until no later than December 31, 2009. Following every quarterly meeting, the  
6 representative shall advise Respondents of any concerns and, in response, Respondents shall  
7 detail the steps that Respondents plan to implement to address such concerns.

8 **e. Relief for Municipal Issuers**

9 Respondents shall refund refinancing fees to municipal auction rate issuers that issued  
10 such securities through Respondents in the initial primary market between August 1, 2007, and  
11 February 11, 2008, and refinanced those securities through Respondents after February 11,  
12 2008. Refinancing fees are those fees paid to Respondents in connection with a refinancing  
13 and are exclusive of legal fees and any other fees or costs not paid to Respondents in  
14 connection with the transaction.

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

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

19 **g. Penalties**

20 i. Respondents shall pay a total civil penalty of FIFTY MILLION  
21 (\$50,000,000) DOLLARS, which shall be allocated among and paid to the  
22 Commonwealth of Massachusetts, the state of New York, and such other states and  
23 territories that enter administrative or civil consent orders approving the terms of the  
24 NASAA settlement (together with the Commonwealth of Massachusetts and the state of  
25 New York, the "Approving States"). Any such allocation shall be made at the  
26 discretion of the Approving States;

1                   ii.       The Division's portion of the civil penalty shall be \$ 433,809.40 and  
2 shall be paid to the Division (with the check made payable to the Wisconsin Department  
3 of Financial Institutions) no later than ten business days after the date of the Consent  
4 Order.

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

6                   The Division will:

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

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

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

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

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

20                   8.        This Order as entered into by the Division waives any disqualification contained in the  
21 laws of the state of Wisconsin, or rules or regulations thereunder, including any disqualifications from  
22 relying upon the registration exemptions or safe harbor provisions that MLPF&S, BAS, or any of their  
23 affiliates may be subject to as a result of the findings contained in this Order. This Order also is not  
24 intended to subject MLPF&S or BAS or any of their affiliates to any disqualifications contained in the  
25 federal securities laws, the rules and regulations thereunder, the rules and regulations of self regulatory  
26 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,

1 this Order is not intended to form the basis for any such disqualifications.

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

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

12 11. This Order and any dispute related thereto shall be construed and enforced in  
13 accordance with, and governed by, the laws of the state of Wisconsin without regard to any choice of  
14 law principles.

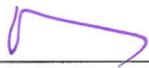
15 12. Respondents, through their execution of this Order, voluntarily waive their right to a  
16 hearing on this matter and to judicial review of this Order under sec. 551.61, Wis. Stats., the Hearings  
17 and Judicial Review statute which was applicable during the relevant time period with respect to this  
18 Order.

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

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

25 Dated this 10th day of February, 2010.

1 BY ORDER OF  
2 The Wisconsin Department of Financial Institutions,  
3 Division of Securities  
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7 Patricia D. Struck, Securities Division Administrator  
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1 Dated this 1<sup>st</sup> day of February, 2010.  
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3 MERRILL LYNCH, PIERCE, FENNER & SMITH  
4 INCORPORATED as successor by merger to BANC OF  
5 AMERICA INVESTMENT SERVICES, INC.

6 By: [Signature]  
Title: Associate General Counsel

7 State of New York )  
8 ) ss.  
9 County of New York )

10 SUBSCRIBED AND SWORN TO before me this 1<sup>st</sup> day of Feb. 2010.

11 [Signature]  
Notary Public

12 My commission expires:  
13 November 17, 2011

14 **ARLEEN R. TLUMAK**  
15 **NOTARY PUBLIC, State of New York**  
16 **No. 01TL6101521**  
17 **Qualified in New York County**  
18 **Commission Expires Nov. 17, 2011**  
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