



0000098309

BEFORE THE ARIZONA CORPORATION COM

Arizona Corporation Commission

DOCKETED

MAY 21 2009

COMMISSIONERS

KRISTIN K. MAYES, Chairman
GARY PIERCE
PAUL NEWMAN
SANDRA D. KENNEDY
BOB STUMP

DOCKETED BY
nr

In the matter of
BANC OF AMERICA SECURITIES LLC
One Bryant Park
New York, NY 10036
BANC OF AMERICA INVESTMENT
SERVICES, INC.
100 Federal Street
Headquarters
Boston, MA 02110
Respondents.

DOCKET NO. S-20668A-09-0181

DECISION NO. 71071

ORDER TO CEASE AND DESIST, ORDER FOR
ADMINISTRATIVE PENALTIES, AND
CONSENT TO SAME
BY: RESPONDENTS BANC OF AMERICA
SECURITIES LLC AND BANC OF AMERICA
INVESTMENT SERVICES, INC.

WHEREAS, Banc of America Securities LLC ("BAS") and Banc of America Investment Services, Inc. ("BAI" and, together with BAS, "Respondents") are dealers registered in the state of Arizona; 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

1 WHEREAS, Respondents elect to permanently waive any right to a hearing and appeal
2 under Articles 11 and 12 of the Securities Act of Arizona, A.R.S. § 44-1801 *et seq.* (“Securities
3 Act”) with respect to this Administrative Consent Order (the “Order”);

4 NOW, THEREFORE, the Arizona Corporation Commission (“Commission”), as
5 administrator of the Securities Act, hereby enters this Order:

6 **I.**

7 **FINDINGS OF FACT**

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

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
15 often 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
17 on subprime mortgages soared and the market in general began experiencing significant credit
18 tightening, monoline insurers that insured many issuances of ARS were also becoming distressed
19 and were at risk of ratings downgrades.

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

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

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

3 4. Pursuant to A.R.S. § 44-1961, Respondents shall pay an administrative penalty in
4 the amount of Five Hundred Fifty-four Thousand Five Hundred Forty-three and 82/100 Dollars
5 (\$554,543.82). Payment shall be made to the "State of Arizona." Payment is due and shall be
6 made in full within ten days after the date of this Order.

7 5. In the event another state securities regulator determines not to accept Respondents'
8 settlement offer, the total amount of the Arizona payment shall not be affected, and shall remain at
9 \$554,543.82.

10 6. Respondents shall comply with the following requirements:

11 a. Eligible Investors

12 i. No later than October 21, 2008, BAC shall have caused Blue Ridge
13 to offer to buy back, at par plus accrued and unpaid interest or dividends, Eligible
14 ARS (as such term is defined below) for which auctions are in failed mode from
15 Eligible Investors (as such term is defined below) who purchased such Eligible ARS
16 from Respondents prior to February 13, 2008 (the "Offer"). For purposes of the
17 Offer, Eligible ARS means ARS purchased from Respondents on or before February
18 13, 2008, that were subject to an auction failure on or after February 11, 2008. The
19 Offer shall remain open for a period between October 10, 2008, and December 1,
20 2009, unless extended by Blue Ridge.

21 ii. "Eligible Investors" shall mean:

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

25 (b) Charities, endowments, or foundations with Internal Revenue
26 Code Section 501(c)(3) status that purchased Eligible ARS from

1 Respondents and that had \$25 million or less in assets in their accounts with
2 Respondents as determined by the customer's aggregate household
3 position(s) at Respondents as of September 9, 2008; or

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

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

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

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

21 **c. Consequential Damages Claims**

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

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

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

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

21 All customers, including but not limited to Eligible Investors who avail themselves
22 of the relief provided pursuant to this Order, may pursue any remedies against Respondents
23 available under the law. However, Eligible Investors that elect to utilize the SAP are
24 limited to the remedies available in that process and may not bring or pursue a claim
25 relating to Eligible ARS in another forum.
26

1 **d. Institutional Investors**

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

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

17 **e. Relief for Municipal Issuers**

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

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

25 To the extent that Respondents loaned money to Eligible Investors secured by
26 Eligible ARS, after February 11, 2008, at an interest rate that was higher than that paid on

1 such Eligible ARS, Respondents shall refund the difference to such Eligible Investors.

2 **g. Penalties**

3 i. Respondents shall pay a total civil penalty of FIFTY MILLION
4 (\$50,000,000) DOLLARS, which shall be allocated among and paid to the
5 Commonwealth of Massachusetts, the state of New York, and such other states and
6 territories that enter administrative or civil consent orders approving the terms of the
7 NASAA settlement (together with the Commonwealth of Massachusetts and the
8 state of New York, the "Approving States"). Any such allocation shall be made at
9 the discretion of the Approving States;

10 ii. The Commission's portion of the civil penalty shall be \$554,543.82
11 and shall be paid to the Commission no later than ten business days after the date of
12 the Consent Order.

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

14 The Commission will:

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

17 ii. The Commission will not seek additional monetary penalties from
18 Respondents in connection with all underlying conduct relating to Respondents'
19 underwriting, marketing, and sale of ARS to investors.

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

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

25 8. This Order as entered into by the Commission waives any disqualification contained
26 in the laws of Arizona, or rules or regulations thereunder, including any disqualifications from

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

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

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

18 11. This Order and any dispute related thereto shall be construed and enforced in
19 accordance with, and governed by, the laws of Arizona without regard to any choice of law
20 principles.

21 12. Respondents, through their execution of this Order, voluntarily waive their right to a
22 hearing on this matter and to judicial review of this Order under Articles 11 and 12 of the
23 Securities Act and Title 14 of the Arizona Administrative Code.

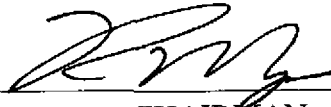
24 13. Respondents enter into this Order voluntarily and represents that no threats, offers,
25 promises, or inducements of any kind have been made by Commission or any member, officer,
26


1 employee, agent, or representative of the Commission to induce Respondents to enter into this
2 Order.

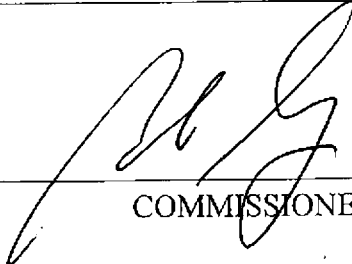
3 14. This Order shall be binding upon Respondents and each of their successors and
4 assigns with respect to all conduct subject to the provisions above and all future obligations,
5 responsibilities, undertakings, commitments, limitations, restrictions, events, and conditions.

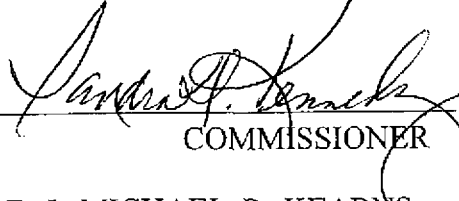
6 IT IS FURTHER ORDERED that this Order shall become effective immediately.

7 BY ORDER OF THE ARIZONA CORPORATION COMMISSION


8 
9 CHAIRMAN

10 
11 COMMISSIONER

12 
13 COMMISSIONER

14 
15 COMMISSIONER

16 IN WITNESS WHEREOF, I, MICHAEL P. KEARNS,
17 Interim Executive Director of the Arizona Corporation
18 Commission, have hereunto set my hand and caused the
19 official seal of the Commission to be affixed at the
20 Capitol, in the City of Phoenix, this 21ST day of
21 MAY, 2009.

22 
23 MICHAEL P. KEARNS
24 INTERIM EXECUTIVE DIRECTOR

25 DISSENT

26 DISSENT

This document is available in alternative formats by contacting Shaylin A. Barnal, ADA
Coordinator, voice phone number 602-542-3931, e-mail sabarnal@azcc.gov.

(mn)

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 Commission, 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 Commission 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 ____ day of _____, 2009.

BANC OF AMERICA SECURITIES LLC

By: Steve Chaiken
Title: Managing Director

State of New York,
County of New York ss.

SUBSCRIBED AND SWORN TO before me this 28 day of April 2009.

Xavier Miranda
Notary Public XAVIER MIRANDA

My commission expires:

January 9, 2010
XAVIER MIRANDA
Notary Public - State of New York
No. 01M0130428

12

Decision No. 71071

Qualified in New York County
My Commission Expires Jan. 09, 2010

**1 CONSENT TO ENTRY OF CONSENT AGREEMENT AND FINAL ORDER BY
2 BANC OF AMERICA SECURITIES LLC AND BANC OF AMERICA INVESTMENT
3 SERVICES, INC.**

4 Banc of America Securities LLC ("BAS") and Banc of America Investment Services, Inc.
5 ("BAI" and, together with BAS, "Respondents"), hereby acknowledge that they have been served
6 with a copy of this Administrative Order, have read the foregoing Order, are aware of their right
7 to a hearing and appeal in this matter, and have waived the same.

8 Respondents admit the jurisdiction of the Department, neither admit nor deny the
9 Findings of Fact and Conclusions of Law contained in this Order, and consent to entry of this
10 Order by the Department as settlement of the issues contained in this Order.
11

12 Respondents agree that they shall not claim, assert, or apply for a tax deduction or tax
13 credit with regard to any state, federal, or local tax for any administrative monetary penalty that
14 Respondents shall pay pursuant to this Order.

15 Respondents state that no promise of any kind or nature whatsoever was made to them to
16 induce them to enter into this Order and that they have entered into this Order voluntarily.

17 _____ represents that he/she is of BAS, and that, as such, has
18 been authorized by BAS to enter into this Order for and on behalf of BAS.

19 Ronald J. Newth represents that he/she is COO/SVP of BAI
20 and that, as such, has been authorized by BAI to enter into this Order for and on behalf of BAI.
21

22 Dated this ____ day of _____, 2009.

23
24 BANC OF AMERICA SECURITIES LLC

25 By: _____

26 Title: _____
27
28

1 SUBSCRIBED AND SWORN TO before me this _____ day of _____ 2009.

2
3 (SEAL)
4

5 _____
6 (Signature)

7 _____
8 (Printed name)

9 Notary Public for the State of _____

10 Residing at _____

11 My commission expires: _____

12 ///

13 BANC OF AMERICA INVESTMENT SERVICES,
14 INC.

15 *Robert J. Newth*

16 By: _____

17 Title: ROBERT J. NEWTH, COO/SUP

18 SUBSCRIBED AND SWORN TO before me this 28th day of April, 2009.

19 (SEAL)

20 *Mary Ann Carroll*

21 (Signature)

22 MARY ANN CARROLL

23 (Printed name)

24 Notary Public for the State of Massachusetts

25 Residing at Attington, Ma

26 My commission expires: July 4, 2014

27 MARY ANN CARROLL



28 Notary Public
Commonwealth of Massachusetts
My Commission Expires
July 4, 2014