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**STATE OF ILLINOIS
SECRETARY OF STATE
SECURITIES DEPARTMENT**

In the matter of)
BANC OF AMERICA SECURITIES, L.L.C.) File #: 08-00204
and BANC OF AMERICA INVESTMENT)
SERVICES, INC.,)
Respondent.)

CONSENT ORDER

WHEREAS, Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPF&S") as successor by merger to Banc of America Securities LLC (in such capacity, "BAS") and Banc of America Investment Services, Inc. (in such capacity, "BAI" and collectively with BAS and MLPF&S, hereinafter "Respondents") is a broker-dealer registered in the state of Illinois; and

WHEREAS, on October 23, 2009, BAI merged with MLPF&S; and

WHEREAS, on November 1, 2010, BAS merged with MLPF&S; and

WHEREAS, it is in the interest of the parties to this order to address only pre-merger conduct and customers of BAI and BAS; 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

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

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

6 WHEREAS, Respondents elect to permanently waive any right to a hearing and appeal
7 under Administrative Procedure Act [5 ILCS 100/10-5 et seq.]; with respect to this Administrative
8 Consent Order (the "Order");

9 NOW, THEREFORE, the Illinois Securities Department ("Department"), as administrator of
10 the Illinois Securities Act of 1953 (the "Act"), hereby enters this Order:

11 **I.**

12 **FINDINGS OF FACT**

13 1. Respondents admit the jurisdiction of Department; neither admit nor deny the
14 Findings of Fact and Conclusions of Law contained in this Order, and consent to the entry of this
15 Order by the Department.

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

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

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

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

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

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

8 8. However, during that time, Respondents continued to market and sell ARS without
9 informing customers of the heightened risks associated with holding these securities.

10 9. Instead, Respondents engaged in a concerted effort to market ARS underwritten by
11 BAS towards its large retail customer accounts without advising the retail customers of any of the
12 potential risks associated with a failed auction or market illiquidity.

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

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

16 12. On or about September 10, 2008, Respondents, Bank of America Corporation
17 ("BAC"), and Blue Ridge Investments, L.L.C. ("Blue Ridge") agreed, in principle, that BAC
18 would cause Blue Ridge to buy back, at par plus accrued but unpaid interest or dividends, ARS for
19 which auctions were in failed mode from "Eligible Investors," which included all individual
20 investors, all charitable organizations with account values up to \$25 million and small and medium
21 sized businesses with account values up to \$10 million who purchased ARS from Respondents.

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II.

CONCLUSIONS OF LAW

1. The Department has jurisdiction over this matter pursuant to the Act.

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 engaged in unethical practices in the offer and sale of securities in violation of 8.E.(1)(b) of the Act.

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 failed to supervise in violation of 8E.(1)(e)(iv) of the Act.

6. The Department 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 Department and any other action that the Department could commence under applicable Illinois law on behalf of Illinois 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 Department 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

1 investigation, and is not intended to be used for any other purpose.

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

4 4. Within ten days after the date of this Order, Respondents shall pay the sum of
5 \$1,578,320.87 to the Illinois Secretary of State, Investor Education Fund.

6 5. In the event another state securities regulator determines not to accept Respondents'
7 settlement offer, the total amount of the Illinois payment shall not be affected, and shall remain at
8 \$1,578,320.87.

9 6. Respondents shall comply with the following requirements:

10
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
Respondents and that had \$25 million or less in assets in their accounts with

1 Respondents as determined by the customer's aggregate household
2 position(s) at Respondents as of September 9, 2008; or

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

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

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

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

20 **c. Consequential Damages Claims**

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

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

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

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

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

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

24 **d. Institutional Investors**

25 Respondents shall endeavor to work with issuers and other interested parties,
26 including regulatory and governmental entities, to expeditiously and on a best efforts basis
provide liquidity solutions for institutional investors that purchased Eligible ARS from

1 Respondents and are not entitled to participate in the buyback under Section III
2 (“Institutional Investors”).

3 Beginning on December 31, 2008, and then quarterly thereafter, Respondents shall
4 have submitted a written report to a representative specified by NASAA outlining the
5 efforts in which Respondents have engaged and the results of those efforts with respect to
6 Institutional Investors' holdings in Eligible ARS. The written reports will have been
7 submitted 20 days following the end of the quarter. Respondents shall have conferred with
8 the representative no less frequently than quarterly to discuss Respondents' progress to
9 date. Such written reports and quarterly meetings shall have continued until no later than
10 December 31, 2009. Following every quarterly meeting, the representative shall have
11 advised Respondents of any concerns and, in response, Respondents shall have detailed the
12 steps that Respondents planned to implement to address such concerns.

13 c. **Relief for Municipal Issuers**

14 Respondents shall refund refinancing fees to municipal auction rate issuers that
15 issued such securities through Respondents in the initial primary market between August 1,
16 2007, and February 11, 2008, and refinanced those securities through Respondents after
17 February 11, 2008. Refinancing fees are those fees paid to Respondents in connection with
18 a refinancing and are exclusive of legal fees and any other fees or costs not paid to
19 Respondents in connection with the transaction.

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

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

24 g. **Penalties**

25 i. A civil penalty in the amount of **\$1,578,320.87** shall be paid to the
26 Secretary of the State of Illinois, Securities Department, Investor Education Fund no
later than ten business days after the date of the Consent Order.

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

2 The Department will:

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

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

8 iii. The Department will not seek additional monetary penalties from
9 Respondents in connection with all underlying conduct relating to Respondents'
10 underwriting, marketing, and sale of ARS to investors.

11 If, after this Order is executed, Respondents fail to comply with any of the terms set forth
12 herein, the Department may take appropriate remedial action.

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

16 8. This Order as entered into by the Department waives any disqualification contained
17 in the laws of the Illinois, or rules or regulations thereunder, including any disqualifications from
18 relying upon the registration exemptions or safe harbor provisions that BAI, BAS, or any of their
19 affiliates may be subject to as a result of the findings contained in this Order. This Order also is
20 not intended to subject BAI or BAS or any of their affiliates to any disqualifications contained in
21 the federal securities laws, the rules and regulations thereunder, the rules and regulations of self
22 regulatory organizations, or various states' or U.S. Territories' securities laws, including, without
23 limitation, any disqualifications from relying upon the registration exemptions or safe harbor
24 provisions. In addition, this Order is not intended to form the basis for any such disqualifications.

25 9. For any person or entity not a party to this Order, this Order does not limit or create
26 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

1 or create liability of Respondents, or limit or create defenses of Respondents to any claims.


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

8 11. This Order and any dispute related thereto shall be construed and enforced in
9 accordance with, and governed by, the laws of the Illinois without regard to any choice of law
10 principles.

11 12. Respondents, through their execution of this Order, voluntarily waive their right to a
12 hearing on this matter and to judicial review of this Order under the Act.

13 13. Respondents enter into this Order voluntarily and represent that no threats, offers,
14 promises, or inducements of any kind have been made by the Department or any member, officer,
15 employee, agent, or representative of the Department to induce Respondents to enter into this
16 Order.

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

20 
21 JESSE WHITE
22 Secretary of State
23 State of Illinois

24 Dated this 10th day of January, 2012.

25 Attorney for the Illinois Secretary of State:
26 Angela P. Angelakos
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Illinois Securities Department
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