

**UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION**

**ADMINISTRATIVE PROCEEDING
File No. 3-12591**

In the Matter of)

Banc of America Securities LLC,)

Respondent.)

PROPOSED PLAN OF DISTRIBUTION

August 8, 2007

I. OVERVIEW AND SUMMARY

1. This Plan of Distribution proposes a methodology for distributing \$26 million paid by Banc of America Securities LLC (“BAS”) as the result of an enforcement action brought by the Securities and Exchange Commission (“Commission”) against the firm for publishing false research and failing to safeguard its nonpublic research information.

A. Settlement Description

2. On March 14, 2007, the Commission issued a settled administrative and cease-and-desist order against BAS (the “Initial Order”), finding that the firm violated the broker-dealer antifraud and internal control provisions of the federal securities laws in connection with its issuance of research.¹ The Initial Order found that, from January 1999 through December 2001, BAS failed to address conflicts of interest that compromised the independence and integrity of its research analysts. These conflicts resulted in the publication of materially false and misleading research reports on Intel Corporation, TelCom Semiconductor, Inc., and E-Stamp Corp.² The Initial Order also found that BAS experienced a breakdown in its internal controls designed to detect and prevent the misuse of forthcoming research reports by the firm or its employees.³ BAS consented to the entry of the Initial Order without admitting or denying the findings.

3. The Initial Order required BAS to pay \$26 million in disgorgement and penalties.⁴ On March 19, 2007, pursuant to the Initial Order, BAS paid a total of \$26 million into an escrow

¹ *Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions Pursuant to Sections 15(b)(4) and 21C of the Securities Exchange Act of 1934*, Release No. 34-55466, March 14, 2007 at Section (“§”) III B.

² *Id.* at § III.D.

³ *Id.* at § III.C.

⁴ *Id.* at §VII.D.

account at the U. S. Treasury Bureau of Public Debt to be invested in short-term government obligations.⁵ This money was placed into a Fair Fund, pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 (the "Distribution Fund"), for the ultimate benefit of customers of BAS who were harmed by the conduct described in the Initial Order.⁶ Other than interest from these investments, it is not anticipated that the Distribution Fund will receive any additional funds.

4. This Distribution Plan is subject to approval by the Commission. The assets of the Distribution Fund are subject to the continuing jurisdiction and control of the Commission.

B. Appointment of Distribution Fund Administrator

5. The Initial Order stipulated that the Distribution Fund will be distributed pursuant to a plan developed by a Distribution Fund Administrator appointed by the Commission.⁷ On March 14, 2007, the Commission appointed Francis E. McGovern, Esq. as the Distribution Fund Administrator in this matter.⁸ Professor McGovern has retained Competition Policy Associates, Inc. ("Compass"), a firm which specializes in economic and financial analysis and is a wholly owned subsidiary of FTI, Inc., to assist him.

6. The Initial Order requires BAS to cooperate fully with the Distribution Fund Administrator and to provide all documents, records, and information as are necessary for the Distribution Fund Administrator to carry out his duties. BAS maintains data on its customers and their relevant transactions. BAS has provided this data to the Distribution Fund

⁵ Initial Order at §VII.F.

⁶ *Id.* at § VII.E.

⁷ Initial Order at § VII.F.

⁸ *Order Appointing Distribution Fund Administrator and Directing Submission of Proposed Distribution Plan*, Release No. 55467, March 14, 2007 ("DFA Order").

Administrator. This data will be used by the Distribution Fund Administrator to facilitate timely and economical distributions to investors. If any additional data is required from BAS, BAS is required by the Initial Order to compile and supply such data to the Distribution Fund Administrator within a reasonable time frame.

7. Under the terms of the Initial Order, BAS is responsible for all costs and expenses associated with the development, administration, and implementation of the Distribution Plan, including the costs and expenses of the Distribution Fund Administrator and the Tax Administrator for the Distribution Plan, as well as any other distribution and consulting services that may be reasonably required by the Distribution Fund Administrator, including the services of Compass.

II. DEFINED TERMS

8. This Distribution Plan uses a number of terms that have specific meanings and references for purposes of this Plan:

- a. "Approval Date" means the date on which this Distribution Plan is approved by the Commission;
- b. "BAS" means Banc of America Securities, LLC, the Respondent in this matter;
- c. "Certification Form" means the form mailed from the Distribution Fund Administrator (or his agents) to potential Eligible Recipients for whom it appears the Respondent has provided complete transaction information; i.e., all purchases and sales of the relevant equity securities have been provided by the Respondent and printed on the Certification Form. The Eligible Recipient is required to verify and return the signed Certification Form to be eligible for a payment from the Fund;

- d. "Claim Form" means the form which will be mailed from the Distribution Fund Administrator (or his agents) to certain potential Eligible Recipients for whom it appears the Respondent did not have complete transaction information, or who purchased more than \$100,000 of the equity securities in question.⁹ The Claim Form provides the relevant transaction data which must be verified and, if necessary, supplemented by the potential Eligible Recipient;
- e. "Claims Deadline" means the date by which all Certification Forms and Claim Forms must be returned to the Distribution Fund Administrator in order to be eligible to receive any payment from the Fund. The Claims Deadline will be approximately 90 days after the Certification Form and Claim Forms are mailed.
- f. "DFA Order" means the *Order Appointing Distribution Fund Administrator and Directing Submission of Proposed Distribution Plan*, issued by the Commission on March 14, 2007;
- g. "Distributable Amount" means: (i) the \$26 million paid by Respondent BAS, *plus* (ii) interest, if any, actually earned on the foregoing amounts through the Claims Deadline, *minus* (iii) any federal, state, or local taxes, and related expenses, if any, which the Distribution Fund is obligated to pay. Amounts sufficient to cover any taxes owed by the Distribution Fund shall be set aside before payments are sent to the Eligible Recipients;
- h. "Distribution Date" means the date that distribution checks are mailed to Eligible Recipients.
- i. "Distribution Fund" or "Fund" means the \$26 million Fair Fund established by the Commission pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002 to provide for the ultimate distribution of the disgorgement and penalty funds to Eligible Recipients, plus any interest earned and less any expenses incurred;

⁹ Incomplete transaction information refers to relevant purchases made by a potential Eligible Recipient for which complete corresponding sales transactions have not been provided by the Respondent.

- j. “Distribution Fund Administrator” means Francis E. McGovern, appointed by the Commission to develop a Distribution Plan in accordance with the Commission’s Rules on Fair Fund and Disgorgement Plans;
- k. “Distribution Plan” or “Plan” means this Plan of Distribution as developed by the Distribution Fund Administrator and approved by the Commission;
- l. “Eligible Recipient” means any person or entity as identified by the criteria set forth in this Distribution Plan at Section III;
- m. “Eligibility Form” means the form mailed from the Distribution Fund Administrator (or his agents) to potential Eligible Recipients who did not receive a Certification or Claim Form and believe they are eligible to receive a payment from the Distribution Fund. The potential Eligible Recipient is required to provide information required by the Form, and supportive documents, to determine their eligibility.
- n. “Equity securities in question” means the equity securities of the companies referenced in the Initial Order for which BAS published false research reports during the Relevant Period (Intel Corporation, TelCom Semiconductor, Inc., and E-Stamp Corp.);¹⁰
- o. “Initial Order” means the *Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions Pursuant to Sections 15(b)(4) and 21C of the Securities Exchange Act of 1934*, issued by the Commission on March 14, 2007;

¹⁰ Intel Corporation (Ticker Symbol: INTC, Cusip No. 458140AB6); TelCom Semiconductor, Inc. (Ticker Symbol: TLCM, Cusip No. 87921P107; E-Stamp Corp. (Ticker Symbol: ESTM, Cusip No. 269154100).

- p. “Plan of Residual Distribution” means the distribution, if any, to customers of BAS who purchased the equity securities of Amazon.com, Inc.¹¹ through BAS as set forth in Section III.F. below.
- q. “Relevant Period of Purchase” means the relevant period of purchase for each equity security in question, as determined by the findings in the Initial Order.
- r. “Services Company” means Rust Consulting, Inc., a fund administration and claims processing company, which will assist in the administration of the Fund.

III. PLAN OF DISTRIBUTION

A. Objective of the Plan

9. The Commission has directed the Distribution Fund Administrator to submit a proposed Distribution Fund Plan that is in accordance with the Commission’s Rules on Fair Fund and Disgorgement Plans and “provide[s] for the equitable, cost-effective distribution of funds to Eligible Distribution Fund Recipients.”¹² The Plan is designed to allocate the Distribution Fund among customers of BAS who purchased equity securities of one or more of the companies referenced in the Initial Order for which BAS allegedly published false research reports during the relevant period.¹³

10. The Plan’s methods to calculate each eligible investor’s share of the Fair Fund are intended to result in a fair and equitable allocation to each eligible investor in the affected equity

¹¹ Amazon.com, Inc. (Ticker Symbol: AMZN, Cusip No. 023135106).

¹² DFA Order at §II.B.

¹³ DFA Order at §II.B.2. The methodology utilized in this Distribution Plan is substantially similar to that utilized in the Global Research Analyst Settlement Distribution Plan. See Rel. No. 34-18438 (Oct. 31, 2003) and *Order Announcing the Proposed Settlement Distribution Plan* (January 31, 2005) at Exh. 1, Appendix B.

securities. In the view of the Distribution Fund Administrator, the methods used herein constitute a fair and reasonable allocation of the Fair Fund.

11. The Plan is subject to approval by the Commission and the Commission retains jurisdiction over the implementation of the Plan.

B. Identification and Categorization of Eligible Recipients

12. The first step in the Distribution Plan is to identify Eligible Recipients. The DFA Order specifies that Eligible Recipients are limited to those who purchased equity securities through BAS of one or more of the companies referenced in the Initial Order for which BAS published false research reports (“the equity securities in question”) during “the relevant period of purchase.”¹⁴ However, as a threshold, the purchase must have been made after the publication or receipt of such false research reports.¹⁵

13. Pursuant to the DFA Order, the Fund Administrator may consider additional factors in determining the distribution payment amounts for an Eligible Recipient.¹⁶ These factors are set forth in Section III.D, below.

14. In its Initial Order, the Commission found that BAS issued false research on three companies during the relevant period: Intel Corporation; TelCom Semiconductor, Inc.; and E-Stamp Corporation.¹⁷ For each of these companies, the Initial Order identified specific research reports and communications by the research analysts which were materially false and misleading. These events determine the “Relevant Period of Purchase.”

¹⁴ DFA Order at §II.B.2-3.

¹⁵ DFA Order at §II.B.4.

¹⁶ DFA Order at §II.B.5.

¹⁷ Initial Order at § III.D.

15. The relevant securities and relevant period of purchase for each equity security are as follows:

<i>Equity Security In Question</i>	<i>Start Date</i>	<i>End Date</i>
1. Intel Corporation	September 19, 2000	September 21, 2000
2. TelCom Semiconductor, Inc.	June 21, 2000	October 24, 2000
3. E-Stamp Corporation	January 12, 2000	August 31, 2000

16. The DFA Order specifies that the investors must have purchased “equity securities.”¹⁸ Thus, those investors who purchased derivatives, such as options and futures, or any transactions executed as a result of derivatives, are not Eligible Recipients. Those investors who sold the equity securities at issue before purchasing them (i.e., investors who engaged in short sales) are not Eligible Recipients. Those investors who purchased through any fund which follows automatic investment rules (e.g., an index fund) and who, therefore, could not, by definition, have been influenced by the investment research at issue in the Initial Order are not Eligible Recipients. Those investors who were employed by BAS at the time of the equity securities purchases in question are not Eligible Recipients.¹⁹

17. An Eligible Recipient “must have suffered a net loss on his equity securities purchases in question.”²⁰ A person who has realized a net gain on that security is therefore ineligible for compensation. Unrealized losses are reasonably viewed as a “net loss” for this purpose.

¹⁸ DFA Order at §II.B.2 and 3.

¹⁹ DFA Order at §II.B.3.

²⁰ DFA Order at §II.B.3.

C. Determining Eligible Losses

18. In determining compensation amounts, eligible losses will be calculated on a last-in, first-out (“LIFO”) accounting basis and will include commissions and other fees charged by BAS to the extent practicable. The LIFO convention makes the assumption that purchases and sales are processed in chronological order. Therefore, each sale will be matched to the purchase that immediately preceded it. One sale might be matched to multiple purchases, and many sales could be matched to one buy to adjust for quantity differences. LIFO is generally accepted as a reasonable method, and is therefore adopted for this Plan.

19. Losses will be computed in nominal terms, with no adjustment for opportunity costs, inflation, or risk. Losses will be determined by aggregating across transactions in each relevant equity security for the same entity.

20. There are two categories of losses which are eligible for compensation: (a) realized net losses; and (b) unrealized net losses. These two categories reflect the fact that investors who held on to a stock should not be disadvantaged simply because they did not sell. Therefore, investors will be allowed to recover both realized and unrealized net losses.

- a. Realized Net Loss. Any person who bought in the “relevant period of purchase” and subsequently realized a net loss before the deadline for submission of completed claims²¹ is eligible for compensation. If the person realized a net loss on or prior to 90 days after the end of the “relevant period of purchase,” the person is eligible for compensation up to the amount of the realized net loss. If, however, the person realized a net loss more than 90 days after the end of the

²¹ The Distribution Plan will be implemented through outreach efforts; i.e., Certification or Claim Forms will be mailed to potential Eligible Recipients and returned forms will be processed for determining payment amounts. The deadline for submission of these forms will be the last date used to compute realized losses.

“relevant period of purchase,” the person will be eligible for compensation up to the implied unrealized net loss (as determined below for unrealized net losses) or the actual realized net loss, whichever is smaller.

- b. Unrealized Net Loss. Any person who bought in the “relevant period of purchase” and had not sold as of March 14, 2007 (the date that the Commission issued the settled administrative and cease-and-desist order against BAS) is eligible for compensation if the closing stock price on that date implies an unrealized net loss. In this case, the person will be eligible for compensation up to the implied unrealized net loss as determined using the average daily closing price for the equity security during the 90 days following the end of the “relevant period of purchase,” or the implied unrealized net loss on the date representing the deadline for submission of completed claims, whichever is smaller.

21. Any person who bought in the “relevant period of purchase” and subsequently realized a net gain is ineligible for compensation.²² Any person who bought in the “relevant period of purchase” and had not sold as of March 14, 2007 is not eligible for compensation if the closing stock price on that date implies an unrealized net gain.

D. Determining Allocations

1. Determining allocations if the Distributable Amount is sufficient to pay all losses

22. After the total amount of eligible losses are ascertained, the next step in the Distribution Plan is to allocate the distributable amount of the Funds among Eligible Recipients.

²² “Selling short against the box” will not be treated as a realization for this purpose.

23. The “Distributable Amount,” or amount available in the Distribution Fund for distribution to investors, equals: (i) the \$26 million paid by BAS, *plus* (ii) interest actually earned on the foregoing amounts through the Claims Deadline of the plan, *minus* (iii) any federal, state, or local taxes, and related expenses, if any, which the Distribution Fund is obligated to pay. Amounts sufficient to cover any taxes owed by the Distribution Fund shall be set aside before payments are sent to the Eligible Recipients.

24. If there are enough monies available in the Distribution Fund to meet all claims for losses, Eligible Recipients will receive 100 cents on the dollar. If there are monies remaining in the Distribution Fund after all Eligible Recipients have been paid in full, those monies will be distributed in accordance with Section F of this Plan (the “Plan of Residual Distribution”).

2. Determining allocations if the Distributable Amount is not sufficient to pay all Eligible Recipients for all loss

25. If there is not enough money to meet all claims, then a key goal is to distribute settlement funds to investors who are more likely to have been affected by the events that are the subject of the settlement. Although that goal may not be perfectly achievable, the plan uses two principles to achieve a better approximation of that goal: the proximity principle and the information principle.

a) The Proximity Principle

26. The first principle is that purchases of equity securities that were made shortly after the events that are the subject of the settlement are more likely to have been affected by those events than purchases made more distant in time from the events: the proximity principle. This principle is consistent with provisions in the Initial Order and DFA Order. If funds are not

sufficient to compensate investors in full for their eligible losses, the compensation formula will involve a “proximity adjustment.”

27. Specifically, those investors who purchased the equity security closer to the beginning of the “relevant period of purchase” will receive a higher compensation rate (that is, compensation as a share of eligible losses) than those who purchased later.²³ A maximum proximity adjustment rate of three percent per trading day will help to ensure an equitable distribution of funds. The proximity adjustment rate will be set at zero for the first eleven trading days of the “relevant period of purchase.”

Example of Proximity Principle

Consider two persons who both realized a net loss of \$10,000. If the first investor purchased the equity security six trading days after the beginning of the “relevant period of purchase,” the investor would be eligible to receive up to 100 percent of net losses. If the second investor purchased the equity security 35 trading days after the beginning of the “relevant period of purchase”, the investor would be eligible to receive up to approximately 50 percent of net losses.*

* The adjustment factor is applied multiplicatively after the 11th trading day such that the proximity adjustment for an investor who purchased a relevant equity security 35 trading days after the beginning of the relevant period of purchase is equal to $(1-.03)^{(35-11)}$ or 0.48

b) The Information Principle

28. The second principle focuses on the consumption of information prior to making equity security purchases. Purchasers who make larger investments in equity securities are more likely to spend more on obtaining information regarding those securities. Conversely, purchasers of smaller amounts of equity securities are more likely to spend less on information. This principle suggests, therefore, that the events that are the subject of the settlement are more likely

²³ If the Distribution Fund has resources more than sufficient to compensate in full all proximity-adjusted and information/volume-adjusted losses (see below for discussion of information/volume adjustment), the proximity adjustment factor will be reduced accordingly to increase payments to recipients.

