

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

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

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**In the Matter of** )  
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**Banc of America Securities LLC,** )  
 )  
**Respondent.** )

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**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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup> On March 19, 2007, pursuant to the Initial Order, BAS paid a total of \$26 million into an escrow

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<sup>1</sup> *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.

<sup>2</sup> *Id.* at § III.D.

<sup>3</sup> *Id.* at § III.C.

<sup>4</sup> *Id.* at §VII.D.

account at the U. S. Treasury Bureau of Public Debt to be invested in short-term government obligations.<sup>5</sup> 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.<sup>6</sup> 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.<sup>7</sup> On March 14, 2007, the Commission appointed Francis E. McGovern, Esq. as the Distribution Fund Administrator in this matter.<sup>8</sup> 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

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<sup>5</sup> Initial Order at §VII.F.

<sup>6</sup> *Id.* at § VII.E.

<sup>7</sup> Initial Order at § VII.F.

<sup>8</sup> *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.<sup>9</sup> 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;

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<sup>9</sup> 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.);<sup>10</sup>
- 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;

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<sup>10</sup> 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.<sup>11</sup> 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.”<sup>12</sup> 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.<sup>13</sup>

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

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<sup>11</sup> Amazon.com, Inc. (Ticker Symbol: AMZN, Cusip No. 023135106).

<sup>12</sup> DFA Order at §II.B.

<sup>13</sup> 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.”<sup>14</sup> However, as a threshold, the purchase must have been made after the publication or receipt of such false research reports.<sup>15</sup>

13. Pursuant to the DFA Order, the Fund Administrator may consider additional factors in determining the distribution payment amounts for an Eligible Recipient.<sup>16</sup> 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.<sup>17</sup> 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.”

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<sup>14</sup> DFA Order at §II.B.2-3.

<sup>15</sup> DFA Order at §II.B.4.

<sup>16</sup> DFA Order at §II.B.5.

<sup>17</sup> 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.”<sup>18</sup> 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.<sup>19</sup>

17. An Eligible Recipient “must have suffered a net loss on his equity securities purchases in question.”<sup>20</sup> 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.

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<sup>18</sup> DFA Order at §II.B.2 and 3.

<sup>19</sup> DFA Order at §II.B.3.

<sup>20</sup> 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 claims<sup>21</sup> 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

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<sup>21</sup> 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.<sup>22</sup> 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.

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<sup>22</sup> “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.<sup>23</sup> 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

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<sup>23</sup> 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.

to have affected those investors making smaller purchases than those investors making larger purchases. Like the proximity principle, the information principle is consistent with provisions in the Initial Order and DFA Order.

29. Specifically, if an investor's total purchases from BAS over the relevant period of purchase are larger than the median value for purchases of the relevant equity securities from BAS, the adjustment will equal a maximum of three percent for each multiple above the median.<sup>24</sup> The information adjustment will not apply to those investors with total purchases from BAS over the relevant period of purchase that are smaller than the median value for purchases of the relevant equity securities from BAS.

**Example of Information Principle**

If the median of all purchases of relevant equity securities from Respondent is \$25,000, an investor purchasing \$100,000 of relevant securities from Respondent will be assigned an adjustment of 8.7 percent.\* For all investors purchasing less than \$25,000 in relevant equity securities, this adjustment factor will be equal to zero.

The adjustment factor is applied multiplicatively for each increment above the median. The \$75,000 difference between the \$100,000 purchase and the \$25,000 median is three times the median. The adjustment factor is therefore  $(1-.03)^*(1-.03)^*(1-.03)$ , or 0.912. The adjustment is therefore 8.7% ( $1-.912=.087$ ).

*c) Adjusted Net Loss*

30. The DFA will calculate each Eligible Recipient's adjusted net loss, which reflects both the proximity and information adjustments. For each Eligible Recipient, the adjusted net loss will not be less than ten percent of the Eligible Recipient's net loss. For example, if an Eligible Recipient realized a net loss of \$20,000, that Eligible Recipient's adjusted net loss after

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<sup>24</sup> As with the proximity-dependent decay rate, if the Distribution Fund has more than sufficient resources to compensate in full all proximity-adjusted, information-adjusted losses, the adjustment will be reduced, which would then raise total proximity- and information-adjusted losses. The proximity-dependent decay rate and the information-dependent adjustment factor would be revised simultaneously.

applying the proximity and information adjustments would be no lower than \$2,000. If the application of the proximity and information adjustment were to result in an adjusted net loss of less than \$2,000, the Eligible Recipient's adjusted net loss would nonetheless be maintained at \$2,000 (ten percent of eligible losses).

31. If there is a sufficient amount of money in the Distribution Fund to compensate all Eligible Recipients for all of their adjusted net losses, then the allocation that each Eligible Recipient will receive from the Distribution Fund will equal 100% of the adjusted net losses.

32. If the Distribution Fund is insufficient to compensate persons in full for their adjusted net losses, each person will receive a proportion of such losses. That is, the Distribution Fund Administrator will use a simple proportional formula that allows all persons to receive the same compensation per dollar of adjusted net losses.

**E. De Minimis Amount**

33. In accordance with the cost effectiveness mandate,<sup>25</sup> a payment to an Eligible Recipient will be made only if the payment is equal to or greater than a *de minimus* threshold of \$100. All payments that would amount to less than the *de minimus* amount will be added back to the Distribution Fund and made available for allocation, as appropriate, to other Eligible Recipients.

**F. Plan of Residual Distribution**

34. If there are sufficient monies available in the Distribution Fund to meet all claims for losses in full from purchases of Intel, Telcom and E-Stamp, Eligible Recipients will receive

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<sup>25</sup> DFA Order at §II.B.1.

100 cents on the dollar. If any monies remain in the Distribution Fund after all Eligible Recipients have been paid in full, those monies will be distributed as follows:

35. *First*, Eligible Recipients who purchased the securities of Amazon.com, Inc. through BAS during the period November 9, 1999 to January 31, 2000 and/or May 17, 2000 to July 27, 2000,<sup>26</sup> will receive allocations from the Distribution Fund, pursuant to the methodology in Sections III.D and III.E, above.

36. *Second*, any remaining funds after this residual distribution will be transferred to the U.S. Treasury, pursuant to Section VI.G (Termination of the Fund), below.

37. Under no circumstances shall any part of the Distribution Fund be returned to BAS.<sup>27</sup>

#### IV. CLAIMS PROCESS

##### A. All Eligible Recipients

38. Within 15 days after the date that this Distribution Plan is approved by the Commission (the "Approval Date"), the Distribution Fund Administrator and his agents will commence the outreach efforts. Specifically, a Certification or Claim Form will be mailed to all potential Eligible Recipients concerning their transactions in Intel, TelCom, E-stamp and

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<sup>26</sup> In addition to identifying Intel, TelCom, and E-Stamp, the Initial Order referenced a fourth company upon which BAS maintained a Market Perform rating even after the analyst indicated that the firm's sales force was to verbally inform customers that "this stock should be sold." Initial Order at §II.C.2, footnote 9. Amazon.com was the company referenced in the Initial Order. Therefore, to the extent that any funds remain after the initial distribution, investors who purchased Amazon.com through BAS will receive compensation.

<sup>27</sup> DFA Order at § II.B.9.

Amazon, as explained in Section III, above.<sup>28</sup> Each certification or claim form will contain the transaction data of the potential Eligible Recipient as provided by BAS.

39. If the transaction data provided by BAS is complete, then the potential Eligible Recipients will receive a Certification Form that will ask them to verify that the information on the Certification Form is complete and accurate, and return the signed Certification Form to the Distribution Fund Administrator before the claims submission deadline (the "Claims Deadline"). If the information is accurate, but the potential Eligible Recipient does not return the signed Certification Form by the Claims Deadline, and offers no explanation for the inaction after outreach efforts, then this inaction will signify that the potential Eligible Recipient does not wish to receive a distribution, and that potential Eligible Recipient's share may be reallocated to the other potential Eligible Recipients.

40. If the transaction data provided by BAS is incomplete or incorrect, the potential Eligible Recipient will receive a Claim Form, which will ask them to provide complete and accurate information regarding their trades on the Claim Form, and to return the signed Claim Form, along with any supportive documents, by the Claims Deadline in order to be eligible to receive a payment from the Fund. For example, if the transactional data maintained by BAS indicates a relevant purchase but no relevant sale, the Claim Form will inform potential Eligible Recipients that they must provide information about the relevant sale (or unrealized net loss) to be eligible to receive a payment from the Fund.

41. If the transaction data provided by BAS demonstrates that some potential Eligible Recipients have realized gains, and are thus ineligible to receive Fund monies, they will be sent a

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<sup>28</sup> If the Distributable Amount is insufficient to provide any compensation concerning relevant transactions in Amazon, then such potential Eligible Recipients will receive a letter so stating within 4 months after the Claims Deadline.

letter, a copy of their transaction history, and a Claim Form. The letter will inform them that they are ineligible to receive Fund monies because their transaction history indicates that they have realized gains on the equity securities in question, and that if they disagree with the transaction history or can evidence that they have additional trades that are not reflected in the transaction history, then they must provide the necessary information on the Claim Form. The Claim Form must be signed and returned, along with any supportive documents, by the Claims Deadline in order to be eligible to receive a payment from the Fund.

42. All Eligible Recipients will be required to attest to their eligibility to receive payments from the Distribution Fund, as identified herein, as part of their endorsement of the Distribution Fund check for deposit.

43. Any potential Eligible Recipient who has not received a Certification or Claim Form 30 days after the Approval Date should notify the Distribution Fund Administrator within 45 days after the Approval Date, by writing to an address which will be posted on the BAS Settlement website, <http://www.secbassettlement.com>, or calling the toll-free telephone number which will also be posted on the website. Thereafter, the Distribution Fund Administrator will mail an Eligibility Form to the Requestor/potential Eligible Recipient within 7 days, and the potential Eligible Recipient will be required to provide information and return the Eligibility Form, along with any supportive documents, within 15 days from the date on the Eligibility Form to the Distribution Fund Administrator.

44. If the information provided by the potential Eligible Recipient on the Eligibility Form provides proof of eligibility, the potential Eligible Recipient will be mailed a pre-printed Claim Form with their relevant transaction history within 15 days after receipt of the Eligibility Form. Subsequently, if the Distribution Fund Administrator does not receive a completed Claim

Form by the Claims Deadline, then this will signify that the Requestor should no longer be considered to be a potential Eligible Recipient.

45. If, however, the information provided by the Requestor/potential Eligible Recipient on the Eligibility Form does not provide proof of eligibility, the Distribution Fund Administrator will notify the Requestor/potential Eligible Recipient that he does not qualify for a distribution under the eligibility terms defined in the Distribution Plan, no later than 15 days after the Claims Deadline. The Requestor will then have 15 days to request an Appeals Form.

**B. Additional Requirements for Certain Eligible Recipients**

46. To ensure an equitable distribution of funds, large payments to Eligible Recipients will be subject to additional scrutiny. Eligible Recipients who purchased more than \$100,000 of the equity securities in question will receive Claim Forms and will be required to verify certain information on their Claim Forms.

47. Purchasers with 500 or more underlying beneficiaries will be required to certify that the compensation will be allocated to the benefit of current investors and not management.

48. Purchasers with fewer than 500 underlying beneficiaries and eligible losses of less than \$100,000 will be required to certify that the compensation will be allocated to the benefit of current investors and not management.

49. Purchasers with fewer than 500 underlying beneficiaries and with eligible losses of more than \$100,000 will be required to confirm their total eligible losses. They will also be required to distribute Certification Forms to the underlying investors at the time the relevant equity security was purchased. In these cases, it is these underlying investors who will be

responsible for filing the certification forms and will receive payments directly from the Distribution Fund.<sup>29</sup>

**C. Appeals Process**

50. An appeals process will be implemented for potential Eligible Recipients regarding eligibility for payment, as well as the amount of the payment.

51. If a potential Eligible Recipient has been notified that he is ineligible to receive compensation from the Distribution Fund, and if the potential Eligible Recipient requests an Appeals Form within 15 days of such notification, then the potential Eligible Recipient will have 15 days from the date that the Appeals Form is mailed to return the completed Appeals Form to the Distribution Fund Administrator. Such appeals will be resolved, and notification of the outcome will be mailed within four months after the Claims Deadline.

52. If, upon receipt of the Distribution Fund check, an Eligible Recipient disagrees with the amount of compensation received, then the Eligible Recipient will have 15 days from the date that distribution checks are mailed (the "Distribution Date") to request an Appeals Form. The Eligible Recipient will have 15 days from the date that the Appeals Form was mailed to return the completed Appeals Form to the Distribution Fund Administrator. Such appeals will be resolved within 30 days of the receipt of the Appeals Form. If the appeal is found to have merit, then additional payments will be made from, and only to the extent of, the interest accrued by the Distribution Fund after the Claims Deadline.

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<sup>29</sup> The underlying investors will be provided with Certification Forms, and these forms will include information about each underlying investor's proportional eligible loss, based on the investor's proportional holdings of the fund at the date(s) of purchase of the relevant equity securities.

## V. IMPLEMENTATION OF THE PLAN

53. The DFA Order directs that within six months after approval of the Plan (unless such deadline is extended by the Commission staff for good cause shown), the Distribution Fund Administrator shall implement the Plan and provide a Distribution Fund Report to the Commission staff setting forth (1) the identities of the Eligible Recipients; (2) the amount each Eligible Recipient shall receive; and (3) the procedures for distributing the Distribution Fund to the Eligible Recipients.<sup>30</sup> The Distribution Fund Administrator will compile the information into an electronic file and submit this electronic file to the assigned Commission staff as part of the Distribution Fund Report.

### A. Procedures for Distributing Funds

54. After the claims process is complete, the Distribution Fund Administrator will determine the Eligible Recipients and the amounts of their payment, applying the principles set forth in Sections III and IV of this Plan.

55. In order to distribute funds, the Distribution Fund Administrator will submit a validated list of payees and payment amounts to the assigned Commission staff, who will obtain authorization from the Commission to disburse pursuant to Rule 1101(b)(6). The payees and amounts will be validated at the Distribution Fund Administrator's direction by a nationally recognized finance consulting firm. The validation will state that the list was compiled in accordance with the Plan and provides all information necessary to make disbursements to each distributee. Unless otherwise directed by the Commission, the Commission staff will obtain an Order Directing Disbursement that releases funds to the bank account established by the

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<sup>30</sup> DFA Order at § II.B.7.

Distribution Fund Administrator based upon the validated list and representation by the Distribution Fund Administrator that the checks will be issued within the next five business days.

56. All checks shall be cut by Citizens Bank. All checks will bear a stale date of 90 days from the date on the check. Checks that are not negotiated within the stale date shall be voided and Citizens Bank shall be instructed to stop payment on those checks.

57. All payments shall be preceded or accompanied by a communication that includes, as appropriate: (a) a statement characterizing the distribution; (b) a description of the tax information reporting required of the Qualified Settlement Fund and related tax consequences, if any; (c) a statement that checks will be void after 90 days; and (d) the name of a person to contact, to be used in the event of any questions regarding the distribution. Any such information letter or other communication to recipients characterizing their distributions shall be submitted to the assigned Commission staff for review and approval. Distribution checks on their face or the accompanying mailing will clearly indicate that the money is being distributed from a Fair Fund created by the Securities and Exchange Commission.

58. In the event that an Eligible Recipient receives, but is not able to endorse, a Distribution Fund check as written (e.g., if an individual has changed names, a couple has divorced, or an individual is now deceased), the Services Company retained by the Distribution Fund Administrator (see Section VI.B., below) will be responsible for collecting information on such issues and making recommendations to the Distribution Fund Administrator regarding how they should be resolved.

59. The Services Company retained by the Distribution Fund Administrator will provide customer support and communications programs which will become active prior to the time that the claims process and the first distribution begin. These services will include a toll free

number for investors of funds that received individual distributions, and a website to the public.

The Commission staff retains the right to review and approve any material posted on the website.

**B. Procedures for handling returned mail and checks**

60. The Services Company retained by the Distribution Fund Administrator is responsible for researching and reconciling all errors that result in non-delivery and shall submit a supplemental electronic file for payment of the returned items.

61. Returned mail and checks will be handled as follows.

- a. All mail returned by the United States Postal Service (“USPS”) for which a new forwarding address has been provided by the USPS will be immediately repackaged and sent to the new address. The database will be updated with the new address. All mail returned by the USPS for the first time, without a new forwarding address, will be coded as returned mail, the check will be voided, and current account information forwarded to nationally recognized address search service for address research. If a new address is found, that address will be updated to the master database and a new check will be issued. If no new address is found, the original check will remain voided. Additional efforts to identify the addresses of recipients will be conducted as is commercially reasonable in the view of the Distribution Fund Administrator, where the costs of further research and the amount to be distributed will be considered, subject to an initial rebuttable presumption that the additional costs of distribution will not exceed the amount to be distributed.
- b. All mail forwarded by the USPS from a second attempt mailing, for which a new forwarding address has been provided by the USPS, will be immediately repackaged and sent to that new address. The master database will be updated with the new address.
- c. All mail returned by the USPS from a second attempt mailing, without a new forwarding address, will be coded as returned mail and the check will be voided. Additional efforts to identify the addresses of recipients will be conducted as is commercially reasonable in the view of the Distribution Fund Administrator, where the costs of further research and the amount to be distributed will be considered, subject to an initial rebuttable presumption that the additional costs of distribution will not exceed the amount to be distributed. If the cost is prohibitive, or no new address is found after a reasonable amount of research is conducted, then the amount of the check will be credited to the Distribution Fund, and will be distributed among the other Eligible Recipients in accordance with Section III, above.

62. After 90 days from the Distribution Date, Citizens Bank shall notify the Distribution Fund Administrator of all uncashed checks and will credit the Distribution Fund for the amount of all uncashed checks.

## **VI. ADMINISTRATION OF THE PLAN**

### **A. Appointment of the Tax Administrator**

63. The Commission has appointed Damasco and Associates as the Tax Administrator of the Fund.<sup>31</sup> The Distribution Fund Administrator and BAS will cooperate with the Tax Administrator in providing information necessary to accomplish the income tax compliance, ruling, and advice work assigned to the Tax Administrator by the Commission. The Tax Administrator shall be compensated by BAS.

### **B. Assistance Provided by Services Company**

64. The Distribution Fund Administrator will retain Rust Consulting, Inc. ("Rust"). Rust, founded in 1976, is a third-party service provider with expertise in claims administration and the distribution of settlement funds. Rust will be compensated by BAS.

65. Under the supervision of the Distribution Fund Administrator, Rust will be responsible for, among other things: assisting the Distribution Fund Administrator in the administration of the Distribution Fund; obtaining accurate mailing information for shareholders; preparing accountings; cooperating with the Tax Administrator in providing the information necessary to accomplish the income tax compliance; distributing money from the Distribution Fund to Eligible Recipients in accordance with this Plan; and setting up and staffing a call center to address Eligible Recipients' questions or concerns regarding the distribution.

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<sup>31</sup> See *Order Appointing Tax Administrator*, Release No. 34-55506, March 22, 2007.

**C. Control of the Distribution Fund**

66. The Distribution Fund is currently deposited at the U.S. Treasury Bureau of Public Debt ("BPD"). The Distribution Fund constitutes a Qualified Settlement Fund ("QSF") under Section 468B(g) of the Internal Revenue Code, 26 U.S.C. §468B(g), and related regulations, 26 C.F.R. §§ 1.468B-1 through 1.468B-5.

67. Upon approval of the Plan, the Distribution Fund Administrator shall establish an account at Citizens Bank in the name of and bearing the Taxpayer Identification Number of the QSF/Distribution Fund (the "QSF Account"). Following approval of the Plan, and submission by the Distribution Fund Administrator of a list of payees and amounts to the Commission staff and all information necessary to make disbursement to each distributee, and unless otherwise directed by the Commission, the Commission staff shall cause the balance in the Distribution Fund to be transferred to the QSF Account. The Distribution Fund Administrator shall be the signer on the QSF Account, subject to the continuing jurisdiction and control of the Commission.

68. The Distribution Fund Administrator shall authorize Citizens Bank to provide account information to the Tax Administrator. The Distribution Fund Administrator shall use the assets and earnings of the Distribution Fund to provide payments to Eligible Recipients and to provide the Tax Administrator with assets to pay tax liabilities and tax compliance fees and costs. The QSF account shall be invested directly in short-term U.S. Treasury securities all backed by the full faith and credit of the U.S. Government of a type and term necessary to meet the cash requirements of the payments to Investors, tax obligations and fees; investments in the U.S. Treasury securities will not be made through repurchase agreements or other derivative products.

**D. Bond**

69. The Distribution Fund Administrator shall post a bond pursuant to Rule 1105(c) of the Commission's Rules on Fair Fund and Disgorgement Plans in the amount of \$26 million, which covers the Fair Fund amount paid by the BAS. BAS will pay the premium to obtain the Administrator's Bond.

70. Citizens Bank will hold the Distribution Fund assets during the check-cashing period. Citizens Bank, and its parent company, The Royal Bank of Scotland (the eighth largest bank in the world) maintain a Bankers Blanket Bond, which includes errors and omissions coverage with a single aggregate limit in the amount of \$700.8 million. The primary insurer is National Union, a member of the AIG Group, which as of its most recent renewal was rated A+/XV by A.M. Best. Citizens' Bank and The Royal Bank of Scotland annually assess the adequacy of their policy limits through extensive analysis of historical loss data, exposure to loss and internal company controls. The limits of Citizen's Bank and The Royal Bank of Scotland are reviewed annually by the companies' Boards of Directors.

**E. Payment of Fees and Expenses**

71. BAS will pay all fees, costs, and expenses related to the development and implementation of the Distribution Fund Plan, including the cost of the bond, and all fees, costs and expenses incurred by the Distribution Fund Administrator as well as all fees, costs, and expenses of any persons engaged to assist the Distribution Fund Administrator.

**F. Accounting**

72. After the Distribution Fund has been transferred to Citizens Bank, the Distribution Fund Administrator will submit an accounting to the Commission staff during the first ten days

of each calendar quarter, and will submit a final accounting for approval of the Commission prior to termination of the Distribution Fund and discharge of the Distribution Fund Administrator.

**G. Termination of the Fund**

73. Upon final distribution of the funds, the Distribution Fund Administrator shall make arrangement for the final payment of taxes and Tax Administrator fees and shall submit a final accounting to the Commission. The Distribution Fund shall be eligible for termination after all the following have occurred: (1) the Final Accounting by the Administrator has been submitted and approved by the Commission; (2) all taxes and fees have been paid; and (3) all remaining funds or any residual have been transferred to the U.S. Treasury.

74. Staff shall seek an order from the Commission to: (1) approve the Final Accounting; (2) approve sending the remaining residual amount to the United States Treasury after the final tax payment has been made; and (3) authorize the Secretary of the Commission, upon receipt of notice from the staff assigned to this matter that all funds have been expended, to terminate the fund and discharge the Distribution Fund Administrator.

**H. Amendment and Notices**

75. In the course of distributing the fund, additional issues may arise that require decisions to be made. These decisions will be made consistent with the overriding goal of an equitable distribution of the funds as stated in this Distribution Fund Plan, and the relevant parties will be notified as necessary.

76. The Distribution Fund Administrator will inform the Commission staff of any material changes in the Plan, and will obtain approval from the Commission prior to implementation of the changes.

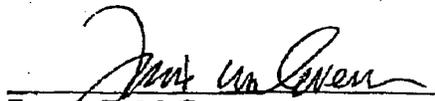
## VII. NOTICE AND COMMENT PERIOD

77. Notice of this Distribution Plan shall be published in the *SEC Docket*, on the Commission's website, <http://www.sec.gov>, on the BAS Settlement website, <http://www.secbassettlement.com>, and in such other publications as the Commission may require. Any person or entity wishing to comment on the Plan must do so in writing by submitting their comments within 30 days of the date of the notice (i) by sending a letter to the Office of the Secretary, United States Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549-1090; (ii) by using the Commission's Internet comment form, <http://www.sec.gov/litigation/admin.shtml>; or (iii) by sending an e-mail to: [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Comments submitted by e-mail or via the Commission's website should include the Administrative Proceeding File Number (Admin. Proc. File No. 3-12591) in the subject line. Comments received will be available to the public. Commentators should only submit information that they wish to make publicly available.

78. This Distribution Plan is subject to approval by the Commission, and the Commission retains jurisdiction over the implementation of the Plan.

Submitted on: August 8, 2007

By:

  
Francis E. McGovern  
Distribution Fund Administrator  
for Banc of America Securities LLC Fair Fund