



UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

June 11, 2009

DIVISION OF
CORPORATION FINANCE

Mr. Christopher M. Salter
O'Melveny & Myers, LLP
1625 Eye Street, NW
Washington, D.C. 20006-4001

Re: SEC v. Banc of America Securities LLC and Banc of America Investment Services, Inc.
-- **Waiver Request of Ineligible Issuer Status under Rule 405 of the Securities Act
by Bank of America Corporation**

Dear Mr. Salter:

This is in response to your letter dated May 21, 2009, written on behalf of your client Bank of America Corporation ("Company") and its subsidiaries Banc of America Securities LLC ("BAS") and Banc of America Investment Services, Inc. ("BAI") and constituting an application for relief from the Company being considered an "ineligible issuer" under Rule 405(1)(vi) of the Securities Act of 1933 ("Securities Act"). The Company requests relief from being considered an ineligible issuer under Rule 405, arising from the settlement of a civil injunctive proceeding with the Commission. The Commission filed a civil injunctive complaint against BAS and BAI (together the "Defendants") Company in the United States District Court for the Southern District of New York alleging that the Defendants violated Section 15(c) of the Securities Exchange Act of 1934 ("Exchange Act"). The Defendants filed a consent in which it agreed, without admitting or denying the allegations of the Commission's Complaint, to the entry of a Final Judgment against it. Among other things, the Final Judgment as entered on June 9, 2009, permanently enjoins the Defendants from violating Section 15 (c) of the Exchange Act.

Based on the facts and representations in your letter, and assuming the Company and the Defendants comply with the Final Judgment, the Commission, pursuant to delegated authority has determined that the Company has made a showing of good cause under Rule 405(2) and that the Company will not be considered an ineligible issuer by reason of the entry of the Final Judgment. Accordingly, the relief described above from the Company being an ineligible issuer under Rule 405 of the Securities Act is hereby granted and the effectiveness of such relief is as of the date of the entry of the Final Judgment. Any different facts from those represented or non-compliance with the Final Judgment might require us to reach a different conclusion.

Sincerely,

A handwritten signature in cursive script that reads "Mary J. Kosterlitz".

Mary Kosterlitz
Chief, Office of Enforcement Liaison
Division of Corporation Finance



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May 21, 2009

VIA EMAIL

Mary J. Kosterlitz, Esq.
Chief, Office of Enforcement Liaison
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

**Re: *In the Matter of Certain Auction Practices (HO-09954)*
*In the Matter of Auction Rate Security Liquidity Issues (MHO-10868)***

Dear Ms. Kosterlitz:

We submit this letter on behalf of Bank of America Corporation ("**BAC**"), the ultimate parent of Banc of America Securities LLC ("**BAS**") and Banc of America Investment Services, Inc. ("**BAI**"), in connection with BAS and BAI's settlement of the above-referenced matters, which followed investigations by the Securities and Exchange Commission ("**Commission**") and various U.S. state and territorial regulatory authorities into the marketing and sale of auction rate securities ("**ARS**") by BAI and BAS.

BAC seeks a determination by the Commission that it will not be deemed an ineligible issuer under Rule 405 of the Securities Act of 1933, as amended ("**Securities Act**"), for any purpose under the securities laws and the rules thereunder, including but not limited to the definition of "well-known seasoned issuer," as a result of the Judgment (as defined below). BAC asks that the requested determination be made effective upon entry of the Judgment. We understand that the Division of Enforcement does not object to the requested determination by the Division of Corporation Finance.

Background

The Staff of the Commission's Division of Enforcement engaged in settlement discussions with BAI and BAS in connection with the above-described investigation. The

discussions resulted in an agreed upon settlement term sheet signed by authorized representatives of the Commission, BAI, BAS and their affiliate, Blue Ridge Investments, LLC ("**Blue Ridge**"). The Commission subsequently filed a complaint ("**Complaint**") against BAI and BAS in the United States District Court for the Southern District of New York in a civil action captioned *Securities and Exchange Commission v. Banc of America Securities LLC and Banc of America Investment Services, Inc.* The Complaint alleged that BAI and BAS violated Section 15(c) of the Securities Exchange Act of 1934, as amended ("**Exchange Act**"), in connection with ARS that the BAS and BAI underwrote, marketed, and sold.

BAI and BAS executed a Consent of Defendants Banc of America Securities LLC and Banc of America Investment Services, Inc. ("**Consent**"), in which BAI and BAS neither admitted nor denied the allegations in the Complaint, except as to personal and subject matter jurisdiction, which they admitted, and in which they consented to the entry of a judgment against them by the district court ("**Judgment**"). As negotiated by the parties, the Judgment, among other things, imposed upon BAI and BAS a permanent injunction against violating Section 15(c) of the Exchange Act. Additionally, the Judgment requires BAS and BAI to comply with a series of undertakings designed to, among other things, provide relief to "Individual Investors" (as defined in the Consent) and undertake to work with issuers and other interested parties to seek to provide liquidity solutions for investors that are not considered "Individual Investors" and receive no relief under the terms of the Judgment.

Discussion

In 2005, the Commission revised the registration, communications and offering processes under the Securities Act.¹ As part of this reform, the Commission added the well-known seasoned issuer as a new category of issuer. The revisions defined a well-known seasoned issuer as, among other things, an issuer that is not subject to ineligible issuer status. The Commission also permitted, under Rules 164 and 433, the use of free-writing prospectuses by issuers that are not deemed ineligible issuers. Securities Act Rule 405 deems an issuer ineligible when, among other things:

(vi) Within the past three years ... the issuer or any entity that at the time was a subsidiary of the issuer was made the subject of any judicial or administrative decree or order arising out of a governmental action that ...

(C) Determines that the person violated the anti-fraud provisions of the federal securities laws.

Under Rule 405, BAC would be deemed to be an ineligible issuer because BAC's subsidiaries, BAI and BAS, were the subjects of a judicial order arising out of a governmental action that, among other things, prohibits certain conduct or activities regarding, including future violations of, the anti-fraud provisions of the federal securities laws.

¹ Securities Offering Reform, Securities Act Release No. 8591, Exchange Act Release No. 52,056, Investment Company Act Release No. 26,993, 70 Fed. Reg. 44,772, 44,790 (Aug. 3, 2005).

Rule 405 authorizes the Commission to determine “upon a showing of good cause, that it is not necessary under the circumstances that the issuer be considered an ineligible issuer.” The Commission has delegated authority to the Division of Corporation Finance to make such determinations.² We respectfully request that, effective upon entry of the Judgment, the Commission determine that under the circumstances it is not necessary that BAC be considered an ineligible issuer for any purpose under the securities laws and the rules thereunder, including but not limited to the definition of “well-known seasoned issuer,” for the following reasons:

1. The Judgment does not relate to BAC in connection with any securities offering or disclosure filings made by BAC. Rather, the conduct alleged in the Complaint related to claims of misleading representations that BAI and BAS allegedly made in sales material and statements to their clients.
2. The Commission has, in similar instances, granted relief under Rule 405.³
3. Designating BAC as an ineligible issuer under Rule 405 of the Securities Act would be unduly and disproportionately severe given that: (i) the Judgment relates to the alleged conduct of subsidiaries of BAC and has no relation to the activities of BAC; (ii) the Judgment relates to alleged conduct that has already been addressed by the remedial efforts described above; and (iii) the Judgment was the result of rigorous discussion and negotiations with the staff of the Division of Enforcement, which did not contemplate the classification of BAC as an ineligible issuer for purposes of Rule 405 of the Securities Act. As stated above, as part of the settlement, the Division of Enforcement agreed that it would not oppose all standard exemptive relief, including the determination sought herein.
4. BAS and BAI have agreed to certain undertakings as set forth in the Judgment, and intend to fully comply with all applicable undertakings, and have already complied with respect to the most significant of the undertakings. Furthermore, the conduct alleged in the Complaint that resulted in the Judgment—which BAS and BAI neither admit nor deny—would, in any event, be unlikely to occur in the future as BAI and BAS have significantly curtailed their sales activities concerning ARS. In addition, BAI and BAS continue to cooperate with the Commission and other regulatory authorities in connection with any ongoing investigation into the ARS matter.

In light of the foregoing, we believe that designating BAC as an ineligible issuer under Rule 405 of the Securities Act would be contrary to the public interest and would not promote or

² See 17 C.F.R. § 200.30.1.

³ See, e.g., Knight Capital Group, Inc., SEC No-Action Letter (pub. avail. July 1, 2008); GAMCO Investors, Inc., SEC No-Action Letter (pub. avail. June 9, 2008); Analog Devices, Inc., SEC No-Action Letter (pub. avail. May 30, 2008); Morgan Stanley, SEC No-Action Letter (pub. avail. May 11, 2007); Renaissance Re Holdings Ltd., SEC No-Action Letter (pub. avail. Apr. 27, 2007); Hartford Financial Services Group, Inc., SEC No-Action Letter (pub. avail. November 8, 2006).

enhance investor protection, and that BAC has shown good cause that it should not be deemed an ineligible issuer upon issuance of the Judgment. Accordingly, we respectfully request that effective upon entry of the judgment, the Division of Corporation Finance, on behalf of the Commission, determine that under the circumstances it is not necessary that BAC be considered an ineligible issuer for any purpose under the securities laws and the rules thereunder.

Please do not hesitate to contact me at (202) 383-5371 regarding this request.

Sincerely,

A handwritten signature in cursive script that reads "Christopher M. Salter". The signature is written in dark ink and is positioned above the printed name.

Christopher M. Salter
of O'MELVENY & MYERS, LLP