



DIVISION OF  
CORPORATION FINANCE

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

June 9, 2009

Christopher M. Salter, Esq.  
O'Melveny & Myers LLP  
1625 Eye Street, NW  
Washington, DC 20006-4001

**Re: SEC v. Banc of America Securities LLC and Banc of America Investment Services, Inc.,  
Civil Action No. 09-cv-5170 (S.D.N.Y.)  
Waiver Request under Regulation A and Rule 505 of Regulation D**

Dear Mr. Salter:

This responds to your letter dated June 9, 2009, written on behalf of Banc of America Securities LLC and Banc of America Investment Services, Inc. (collectively, the "Firms"), and constituting an application for relief under Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D under the Securities Act of 1933. You requested relief from disqualifications from exemptions available under Regulation A and Rule 505 that may have arisen by reason of the Judgment as to the Firms signed June 4, 2009 and entered on June 9, 2009 by the United States District Court for the Southern District of New York in SEC v. Banc of America Securities LLC, Civil Action No. 09-cv-5170 (the "Judgment") and of any related disqualifying order, judgment, or decree of a state or territorial authority addressing the same conduct and facts addressed in the complaint in that action ("State Order"). The Judgment permanently restrains and enjoins the Firms from violating, directly or indirectly, Section 15(c) of the Securities Exchange Act of 1934, and orders the Firms to comply with the undertakings and agreements set forth in the Consent incorporated into the Judgment.

For purposes of this letter, we have assumed as facts the representations set forth in your letter and the findings supporting entry of the Judgment. We also have assumed that the Firms will comply with the Judgment.

On the basis of your letter, I have determined that you have made showings of good cause under Rule 262 and Rule 505 that it is not necessary under the circumstances to deny the exemptions available under Regulation A and Rule 505 by reason of entry of the Judgment and any State Order. Accordingly, pursuant to delegated authority, the Firms are granted relief from any disqualifications from exemptions otherwise available under Regulation A and Rule 505 that may have arisen by reason of entry of the Judgment or may arise by reason of a State Order.

Very truly yours,

A handwritten signature in black ink that reads "Gerald J. Laporte".

Gerald J. Laporte  
Chief, Office of Small Business Policy



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### VIA EMAIL AND HAND DELIVERY

Gerald J. Laporte, Esq.  
Chief, Office of Small Business Policy  
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 Mr. Laporte:

We submit this letter on behalf of our clients Banc of America Securities LLC ("**BAS**") and Banc of America Investment Services, Inc. ("**BAP**" and collectively with BAS, the "**Firms**") in connection with the settlement of the above-referenced matters on this date, 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**").

BAI and BAS request, pursuant to Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D of the Commission promulgated under the Securities Act of 1933, as amended ("**Securities Act**"), a waiver of any disqualification from exemptions under Regulation A and Rule 505 of Regulation D that may be applicable to BAS, BAI and any of their current or future affiliates as a result of the entry of the Judgment (as defined below) and any related disqualifying order, judgment, or decree of a state or territorial authority addressing the same conduct and based on the same facts as the conduct and facts addressed in the Complaint (as defined below) ("**State Action**"). BAI and BAS ask that any such waiver be granted upon entry of the Judgment or any State Action. We understand that the Division of Enforcement does not object to the grant of the requested waivers 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, L.L.C. ("**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 Firms 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, which was entered today ("**Judgment**"). As negotiated by the parties and entered by the Court, 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 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 all other investors.

### **Discussion**

BAI and BAS understand that because the Judgment was issued by a court of competent jurisdiction enjoining the Firms from, among other things, violating Section 15(c) of the Exchange Act, BAS and BAI and their current and future affiliates may be disqualified from participating in certain offerings that are otherwise exempt under Regulation A and Rule 505 of Regulation D under the Securities Act. The Commission has the authority to waive the exemption disqualifications of Regulation A and Rule 505 of Regulation D upon a showing of good cause that such disqualifications are not necessary under the circumstances.<sup>1</sup> BAI and BAS respectfully request that effective upon entry of the Judgment or any State Action, the Commission waive the disqualification provisions in Regulation A and Rule 505 of Regulation D to the extent they may be applicable to BAI, BAS and any of their current or future affiliates for the following reasons:

1. The alleged conduct that was the subject of the Judgment does not relate to offerings under Regulation A or Regulation D. Rather, the alleged conduct addressed by the Judgment related to claims of misleading representations the Firms allegedly made in sales material and statements to their clients.

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<sup>1</sup> See 17 C.F.R. §§ 230.262 and 230.505(b)(2)(iii)(C).

2. BAS and BAI have agreed to certain undertakings as set forth in the Consent and Judgment, intend to fully comply with all applicable undertakings, and have already complied with the most significant undertakings. In particular, the Firms have, through their affiliate, Blue Ridge, offered to purchase at par from all “Individual Investors” (as defined in the Consent) certain ARS, and have substantially completed the purchase of those ARS. The Firms also agreed to use reasonable efforts to identify Individual Investors who sold certain ARS below par between February 13, 2008, and October 7, 2008, and to pay such investors the difference between par and the price at which the investors sold the securities. In addition, the Firms are endeavoring to identify Individual Investors who took out certain loans from the Firms or their affiliates that were secured by certain ARS that were not successfully auctioning at the time of the loan, and reimburse them to the extent that the interest rate on the loans exceeded the interest paid on such ARS. The Firms have also agreed to participate in a special arbitration process for the purpose of arbitrating any Individual Investor’s consequential damages claim related to its investment in ARS. The Firms will also endeavor to work with issuers and other interested parties to seek to provide liquidity solutions for all other investors that are not considered Individual Investors. 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.
3. The disqualification of BAI, BAS and their current and future affiliates from the exemptions under Regulation A and Rule 505 of Regulation D would have an adverse impact on third parties that have retained or will retain BAI, BAS, and their affiliates in connection with transactions that rely on these exemptions.
4. The disqualification of BAI, BAS and their current and future affiliates from the exemptions available under Regulation A and Rule 505 of Regulation D would be unduly and disproportionately severe, given the nature of the alleged violation and the agreement by BAI and BAS to settle the matter and comply with the terms of the Judgment. The settlement terms reflected in the Judgment were deemed to be a satisfactory conclusion of the ARS matter by the Commission’s Division of Enforcement staff, which does not object to the grant of the waivers sought herein.

In light of the foregoing, we believe that disqualification from the exemptions under Regulation A and Rule 505 of Regulation D is not necessary to serve the public interest or to enhance investor protection, and that BAI and BAS have shown good cause that relief should be granted. Accordingly, we respectfully request that the Commission waive the disqualification

provisions in Regulation A and Rule 505 of Regulation D to the extent they may be applicable to BAI, BAS and any of their current or future affiliates.<sup>2</sup>

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

Sincerely,



Christopher M. Salter  
of O'MELVENY & MYERS LLP

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<sup>2</sup> We note in support of this request that the Commission has in other instances granted relief under Rule 262 of Regulation A and Rule 505(b)(2)(iii)(C) of Regulation D for similar reasons. *See, e.g.*, Hartford Investment Financial Services, LLC, SEC No-Action Letter (pub. avail. May 14, 2008); Gabelli Funds, LLC, SEC No-Action Letter (pub. avail. Apr. 24, 2008); Friedman, Billings, Ramsey & Co., Inc., SEC No-Action Letter (pub. avail. Jan. 16, 2007); Deutsche Asset Management, Inc. and Deutsche Investment Management, Americas, Inc., SEC No-Action Letter (pub. avail. Dec. 21, 2006); Bear, Stearns & Co., Inc., SEC No-Action Letter (pub. avail. Dec. 15, 2006); J.P. Morgan Securities, Inc., SEC No-Action Letter (pub. avail. Oct. 31, 2003), Credit Suisse First Boston Corporation, SEC No-Action Letter (pub. avail. Jan. 29, 2002).