

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION, :

Plaintiff, :

v. :

Civil Action No. :

BANC OF AMERICA SECURITIES LLC AND :
BANC OF AMERICA INVESTMENT SERVICES, :
INC. :

Defendants. :

**CONSENT OF DEFENDANTS
BANC OF AMERICA SECURITIES LLC AND
BANC OF AMERICA INVESTMENT SERVICES, INC.**

1. Defendants Banc of America Securities LLC ("BAS") and Banc of America Investment Services, Inc. ("BAI") (collectively, "Defendants") waive service of a summons and the complaint in this action, enter a general appearance, and admit the Court's jurisdiction over them and over the subject matter of this action.

2. Without admitting or denying the allegations of the complaint (except as to personal and subject matter jurisdiction, to which Defendants admit), Defendants hereby consent to the entry of the Judgment in the form attached hereto (the "Judgment") and incorporated by reference herein, which, among other things:

- a. permanently restrains and enjoins Defendants from violations of Section 15(c) of the Securities Exchange Act of 1934 (the "Exchange Act") [15 U.S.C. § 78o(c)]; and

- b. upon motion by the Commission, based on an alleged failure by the Defendants to satisfy their obligations under this Consent, and order of the Court, orders Defendants to pay a civil penalty pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)].
3. Defendants agree that they shall comply with the following undertakings:
- I. Key Definitions.
 - A. Eligible Auction Rate Securities. As used in this Consent, “Eligible ARS” shall mean auction rate securities that were purchased from Defendants into accounts then maintained with or at Defendants before February 13, 2008, that are subject to auctions that are not successful and are not subject to current calls or redemptions.
 - B. Individual Investors. As used in this Consent, “Individual Investors” shall mean:
 - 1. Natural persons;
 - 2. Charitable organizations, endowments, or foundations either, (i) with Internal Revenue Code Section 501(c)(3) status or (ii) that are otherwise organized and operated for religious, charitable, scientific, testing for public safety, literacy, or educational purposes, or for the

prevention of cruelty to children or animals, that own accounts with aggregate values up to \$25 million as of September 9, 2008; and

3. Small businesses that own accounts with aggregate values up to \$15 million. For purposes of this provision, "Small Businesses" shall mean investors not otherwise covered by Paragraph 3(I)(B)(2) above that had \$15 million or less in assets in their accounts with Defendants net of margin loans (or if the investor custodied portions of its investments purchased from Defendants away from Defendants, then, had \$15 million or less in assets custodied at Defendants net of margin loans plus those assets purchased from Defendants but custodied elsewhere), as determined by the investor's aggregate household position(s) as of September 9, 2008 (if the investor was not an investor of Defendants as of September 9, 2008, as of the date that the investor terminated its investor relationship with Defendants, except that any investor excluded because it had more than \$15 million in assets purchased from Defendants as of the termination date shall be included if such investor can reasonably show that it held \$15 million or less in assets in its accounts

at broker-dealers or other financial institutions where it held investments as of September 9, 2008). Notwithstanding any other provision, "Small Businesses" does not include:

- a) (i) broker-dealers or (ii) banks acting as conduits for their investors; or
- b) investors that have represented that they had total assets of greater than \$50 million, or otherwise are determined to have had assets greater than \$50 million, as of September 30, 2008.

In no event shall Defendants be required by this Consent to purchase more than \$15 million of ARS from any Small Business.

II. Buyback of ARS from Individual Investors. Defendants shall cause Blue Ridge Investments L.L.C. ("Blue Ridge")—a wholly owned subsidiary of Bank of America Corporation—to offer to purchase at par Eligible ARS from Individual Investors. This offer period shall remain open until December 1, 2009 ("the Offer Period"), unless extended by Blue Ridge.

III. Relief Efforts for All Other Investors. Defendants shall work with issuers and other interested parties, including regulatory and other authorities and industry participants, to provide liquidity solutions for Defendants' investors other than Individual Investors, taking into account legislative and other governmental action affecting the market. Defendants will use their best efforts to facilitate issuer redemptions and/or to resolve such investors' liquidity concerns through resecuritizations and other means.

IV. Investor Priority. Defendants will not take advantage of liquidity solutions with regard to an issue of Eligible ARS in their own inventory unless they make such liquidity solutions available to all other investors holding Eligible ARS of the same issue in their accounts who have placed a limit order to sell such securities at the same price or better or, who otherwise have informed Defendants of their intention or willingness to sell such securities at the same price or better. This provision will be in effect until December 31, 2009.

V. Reports and Meetings.

A. Monthly Reports. Within 45 days of the end of each month, Defendants shall submit monthly written reports, beginning on January 5, 2009 and continuing through the month ending December 2009, to the staff of the Division

of Enforcement of the SEC ("the Staff") detailing Defendants' progress with respect to their obligations pursuant to this Consent. The reports shall be submitted to Gerald W. Hodgkins, Esq., Division of Enforcement, U.S. Securities and Exchange Commission, 100 F Street, N.E., Washington, D.C. 20549 or as directed in writing by the Staff.

B. Quarterly Meetings. Beginning in March 2009, Defendants shall confer with the staff no less than quarterly to discuss Defendants' progress to date with respect to their obligations pursuant to this Consent. Such quarterly meetings shall continue through December 2009. Following each quarterly meeting, the staff may advise Defendants of any concerns and, in response, Defendants shall detail the steps that they plan to implement to address such concerns.

C. Modification of Deadlines. The reporting or meeting deadlines set forth above may be amended or modified with written permission from the Staff.

VI. Relief for Investors Who Sold Below Par. For all Individual Investors that Defendants can reasonably identify who sold Eligible ARS below par between February 13, 2008 and October 7,

2008, Defendants shall pay such investors the difference between par and the price at which the investor sold the Eligible ARS.

VII. Consequential Damages Claims. Defendants shall notify Individual Investors who owned Eligible ARS prior to February 13, 2008 that an independent arbitrator, under the auspices of the Financial Industry Regulatory Authority (“FINRA”), will be available for the exclusive purpose of arbitrating any Individual Investor’s consequential damages claim.

A. Special Arbitration Procedures. Defendants shall consent to participate, at the Individual Investor’s election, in the special arbitration procedures announced by FINRA on December 16, 2008, and available on its website at www.finra.org/ArbitrationMediation/P116972, for the exclusive purpose of arbitrating any Individual Investor’s claim for consequential damages related to its investment in ARS. As described in FINRA’s procedures, Defendants will pay all applicable forum and filing fees associated with the arbitration for Individual Investors. Although they may defend themselves against consequential damage claims, Defendants shall not contest liability related to the sale of ARS, nor shall they argue against liability for the illiquidity of the underlying ARS position. Defendants are also prohibited from using as part of their defense any decision

by the Individual Investor not to sell the ARS position before the relevant settlement date or not to borrow money from Defendants. Customers seeking relief pursuant to the FINRA special arbitration procedures shall bear the burden of proving by a preponderance of the evidence the existence and amount of consequential damages suffered as a result of the illiquidity of the Eligible ARS.

B. Other Damages. Individual Investors who elect to use the special arbitration procedures provided for in this Consent shall not be eligible for punitive damages or any other type of damages other than consequential damages.

C. Other Proceedings/Relief. All investors, including but not limited to Individual Investors who avail themselves of the relief provided pursuant to this Consent, may pursue any remedies against Defendants available under the law. However, those Individual Investors that elect to utilize the special arbitration procedures set forth above are limited to the remedies available in that process and may not bring or pursue a claim relating to ARS in another forum.

VIII. Purchase Procedures.

A. Acceptance Deadline. Individual Investors may accept Blue Ridge's offer to purchase Eligible ARS by notifying

Defendants at any time before 5:00 p.m., Eastern Time, December 1, 2009, or such later date and time as Defendants or Blue Ridge may extend the Offer Period.

- B. Purchases Relating to Individual Investors Who Custody Their Eligible ARS at Defendants. In the case of Individual Investors who custodied Eligible ARS at Defendants as of October 7, 2008, if Defendants receive notification of acceptance of such offer to purchase within the Offer Period, Blue Ridge shall purchase the Eligible ARS as soon as reasonably practicable, but no later than 7 days after receipt of such notification of acceptance.
- C. Purchases Relating to Individual Investors Who Custody Their Eligible ARS Away From Defendants. In the case of Individual Investors who are not described in Section VIII.B, if Defendants receive: (a) notification of acceptance of their purchase offer at any time before 5:00 p.m., Eastern Time, December 1, 2009, or such later date and time as Defendants or Blue Ridge may extend the Offer Period; (b) assurance reasonably satisfactory to Defendants from the investor's current financial institution that the bidding rights associated with the Eligible ARS will be transferred to the Defendants; and (c) transfer of the Eligible ARS, then Blue Ridge shall purchase the Eligible ARS as soon as

reasonably practicable, but no later than 7 days after receipt of such notification of acceptance.

D. Defendants shall use their best efforts to identify, contact and assist any Individual Investor who has transferred the ARS out of Defendants' custody in returning such ARS to Defendants' custody, and shall not charge such Individual Investor any fees relating to or in connection with the return to Defendants or custodianship by Defendants of such ARS.

E. Investor Loans for Individual Investors. Defendants shall promptly and clearly notify all Individual Investors who purchased Eligible ARS from them before February 13, 2008 that, should they need liquidity with respect to Eligible ARS and Blue Ridge (1) is not able to purchase such Eligible ARS (other than auction rate preferred stock ("ARPs")) within 10 business days of the tender for sale thereof by the Individual Investor to Blue Ridge, or (2) is not able to purchase on the next interest reset date any Eligible ARPs that have been tendered for sale by the Individual Investor to Defendants no later than 3 business days before such next interest reset date, then the Individual Investor can borrow the full par amount of the Individual Investor's Eligible ARS or Eligible ARPs. The interest rate

on these loans shall be set so that the Individual Investors have no negative carry. Such loans will become due and payable when and to the extent any proceeds of par buybacks are credited to the investor's account.

F. Withdrawal Rights. Any Individual Investor holding Eligible Auction Rate Securities that has properly accepted Blue Ridge's offer may elect to withdraw tendered Eligible Auction Rate Securities before purchase upon notice to Blue Ridge.

IX. Negative Carry. For Individual Investors who took out loans from Defendants on or after February 13, 2008 because of liquidity concerns after the auction failure with respect to Eligible ARS, Defendants will reimburse the investor for any negative carrying costs associated with any such loan. Defendants shall make best efforts to identify Individual Investors who took out such loans. If Individual Investors paid interest associated with the Eligible ARS based portion of those loans in excess of the total interest and dividends received on the Eligible ARS during the duration of the loan, Defendants shall reimburse such investors for the excess expense, plus reasonable interest thereon. Such reimbursement shall occur no later than sixty days from the date on which the Judgment is entered.

X. Notice of Judgment. Defendants will provide notice of the settlement terms to Individual Investors who purchased Eligible ARS from Defendants, as set forth below.

A. Initial Notice. As soon as practicable, but no later than twenty-one (21) days from entry of the Judgment, Defendants shall make best efforts to identify and provide written notice to Individual Investors, informing them of the relevant terms of this Consent and/or directing them to the public Internet page described below in subparagraph C which shall provide notice of the relevant terms of this Consent. Defendants shall also provide written notice of the relevant terms of this Consent to any Individual Investors identified after the Initial Notice.

B. Second Notice. To the extent that any Individual Investors have not responded to Defendants' offer to purchase their Eligible ARS, Defendants shall provide any such Individual Investor a second written notice on or before 45 days before the end of the Offer Period informing them of the relevant terms of this Consent, notifying them of the impending expiration of the Offer Period, describing the state of the ARS market at that time, and explaining the consequences of failing to sell their ARS to Defendants prior to the expiration of the Offer Period.

C. Customer Assistance Line and Internet Page. No later than fourteen (14) business days after entry of the Judgment, Defendants shall establish: 1) a dedicated toll-free telephone assistance line, with appropriate staffing, to provide information and to respond to questions concerning the terms of this Consent; and 2) a public Internet page on their corporate Web site(s), with a prominent link to that page appearing on Defendants' relevant homepage(s), to provide information concerning the terms of this Consent and, via an e-mail address or other reasonable means, to respond to questions concerning the terms of this Consent. Defendants shall maintain the telephone assistance line and Internet page through December 1, 2009.

4. Defendants agree and understand that the obligations and duties imposed by this Consent and Judgment are joint and several.

5. Defendants agree that they shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any civil penalty amounts that Defendants pay pursuant to the Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors. Defendants further agree that they shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any penalty amounts that Defendants pay pursuant to the Judgment, regardless of whether such

penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors.

6. Defendants agree that, upon motion of the Commission, based on an alleged failure by the Defendants to satisfy their obligations under this Consent, made no later than 90 days after December 31, 2009, the Court shall determine whether it is appropriate to order civil penalties pursuant to Section 21(d)(3) of the Exchange Act [15 U.S.C. § 78u(d)(3)] and, if so, the amount(s) of the civil penalties. Defendants further agree that in connection with the Commission's motion for civil penalties, and at any hearing held on such a motion: (a) Defendants will be precluded from arguing that they did not violate the federal securities laws as alleged in the Complaint; (b) Defendants may not challenge the validity of the Judgment, this Consent, or its related Undertakings; (c) solely for the purposes of such motion, the allegations of the Complaint shall be accepted as and deemed true by the Court; and (d) the Court may determine the issues raised in the motion on the basis of affidavits, declarations, excerpts of sworn deposition or investigative testimony, and documentary evidence, without regard to the standards for summary judgment contained in Rule 56(c) of the Federal Rules of Civil Procedure. In connection with the Commission's motion for civil penalties, the parties may take discovery, including discovery from appropriate non-parties.

7. Defendants waive the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

8. Defendants waive the right, if any, to a jury trial and to appeal from the entry of the Judgment.

9. Defendants enter into this Consent voluntarily and represent that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Defendants to enter into this Consent.

10. Defendants agree that this Consent shall be incorporated into the Judgment with the same force and effect as if fully set forth therein.

11. Defendants will not oppose the enforcement of the Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waive any objection based thereon.

12. Defendants waive service of the Judgment and agree that entry of the Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendants of its terms and conditions. Defendants further agree to provide to counsel for the Commission, within thirty days after the Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendants have received and read a copy of the Judgment.

13. Consistent with 17 C.F.R. 202.5(f), this Consent resolves only the claims asserted against Defendants in this civil proceeding. Defendants acknowledge that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendants waive any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendants further acknowledge that the Court's entry of

a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendants understand that they shall not be permitted to contest the factual allegations of the Complaint in this action.

14. Defendants understand and agree to comply with the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegation in the complaint or order for proceedings." 17 C.F.R. § 202.5. In compliance with this policy, Defendants agree: (i) not to take any action or to make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; and (ii) that upon the filing of this Consent, Defendants hereby withdraw any papers filed in this action to the extent that they deny any allegation in the complaint. If Defendants breach this agreement, the Commission may petition the Court to vacate the Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendants': (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

15. Defendants hereby waive any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendants to defend against this action. For these purposes, Defendants agree that they are not the prevailing parties in this action since the parties have reached a good faith settlement.

16. In connection with this action and any related judicial or administrative proceeding or investigation commenced by the Commission or to which the Commission is a party, Defendants: (i) agree to appear and be interviewed by Commission staff at such times and places as the staff requests upon reasonable notice; (ii) will accept service by mail or facsimile transmission of notices or subpoenas issued by the Commission for documents or testimony at depositions, hearings, or trials, or in connection with any related investigation by Commission staff; (iii) appoint Defendants' undersigned attorney as agent to receive service of such notices and subpoenas; (iv) with respect to such notices and subpoenas, waive the territorial limits on service contained in Rule 45 of the Federal Rules of Civil Procedure and any applicable local rules, provided that the party requesting the testimony reimburses Defendants' travel, lodging, and subsistence expenses at the then-prevailing U.S. Government per diem rates; and (v) consent to personal jurisdiction over Defendants in any United States District Court for purposes of enforcing any such subpoena.

17. Defendants agree that the Commission may present the Judgment to the Court for signature and entry without further notice.

18. Defendants agree that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Judgment.

BANC OF AMERICA SECURITIES LLC

By: Steve Chaiken
Name: Steve Chaiken
Title: Managing Director

On May 19, 2009, Steve Chaiken, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent with full authority to do so on behalf of BAS LLC as its Managing Director.

XAVIER MIRANDA
Notary Public - State of New York
No. 01M8139426
Qualified In New York County
My Commission Expires Jan. 09, 2010

Xavier Miranda
Notary Public
Commission expires: January 9, 2010

BANC OF AMERICA INVESTMENT SERVICES, INC.

By: _____
Name: _____
Title: _____

On _____, 200_, _____, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent with full authority to do so on behalf of _____ as its _____.

Notary Public
Commission expires:

Approved as to form:

Howard E. Heiss
Howard E. Heiss, Esq.
O'MELVENY & MYERS LLP
Times Square Tower
7 Times Square
New York, New York 10036
Attorney for Banc of America Securities LLC and
Banc of America Investment Services, Inc.

18. Defendants agree that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Judgment.

BANC OF AMERICA SECURITIES LLC

By: _____
Name: _____
Title: _____

On _____, 200____, _____, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent with full authority to do so on behalf of _____ as its _____.

Notary Public
Commission expires:

BANC OF AMERICA INVESTMENT SERVICES, INC.

By: *Ronald J. Newth*
Name: Ronald J. Newth
Title: COO/SVP

On May 22, 2008, Ronald J. Newth, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent with full authority to do so on behalf of Banc of America Investment Services, Inc. as its Chief Operating Officer & SVP

Mary Ann Carroll
Notary Public
Commission expires:

Approved as to form:

Howard E. Heiss
Howard E. Heiss, Esq.
O'MELVENY & MYERS LLP
Times Square Tower
7 Times Square
New York, New York 10036
Attorney for Banc of America Securities LLC and
Banc of America Investment Services, Inc.

 **MARY ANN CARROLL**
Notary Public
Commonwealth of Massachusetts
My Commission Expires
July 4, 2014