



1 during the fall of 2007 and winter of 2008, the auction markets were not functioning properly
2 and were at increased risk for failure.

3 7. During that time period, significant numbers of buyers had been exiting the
4 market and the continued success of the auctions was reliant upon the lead broker-dealers, such
5 as BAS, making increased support bids. These support bids had the effect of artificially
6 propping up the market and creating the illusion that the auction rate market was functioning as
7 normal.

8 8. However, during that time, Respondents continued to market and sell ARS
9 without informing customers of the heightened risks associated with holding these securities.

10 9. Instead, Respondents engaged in a concerted effort to market ARS underwritten
11 by BAS towards its large retail customer accounts without advising the retail customers of any of
12 the potential risks associated with a failed auction or market illiquidity.

13 10. On or about February 11, 2008, without notifying any of its customers, BAS
14 stopped broadly supporting the auctions for which BAS was lead broker-dealer.

15 11. The decision left thousands of Respondents' customers stuck holding illiquid
16 ARS.

17 12. On or about September 10, 2008, Respondents, Bank of America Corporation
18 ("BAC"), and Blue Ridge Investments, L.L.C. ("Blue Ridge") agreed, in principle, that BAC
19 would cause Blue Ridge to buy back, at par plus accrued but unpaid interest or dividends, ARS
20 for which auctions were in failed mode from "Eligible Investors," which included all individual
21 investors, all charitable organizations with account values up to \$25 million and small and
22 medium sized businesses with account values up to \$10 million who purchased ARS from
23 Respondents.

24 II.

25 CONCLUSIONS OF LAW

26 1. The Director has jurisdiction over this matter pursuant to ORS 59.235 and ORS

Division of Finance and Corporate Securities
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387



1 59.245. ORS 59.235 authorizes the Director to regulate: 1) the offers, sales, and purchases of
2 securities; 2) those individuals and entities offering and/or selling securities; and 3) those
3 individuals and entities transacting business as investment advisers within the State of Oregon.

4 A. Respondents Engaged in Dishonest and Unethical Practices.

5 2. As described in the Findings of Fact section above, Respondents inappropriately
6 marketed and sold ARS without adequately informing their customers of the increased risks of
7 illiquidity associated with the product for the time period August 1, 2007, through February 11,
8 2008.

9 3. As a result, Respondents engaged in dishonest and unethical practices in
10 violation of ORS 59.205(2).

11 B. Respondents Failed to Supervise Their Agents.

12 4. As described in the Findings of Fact section above, Respondents failed to
13 properly supervise their agents with respect to the marketing and sale of ARS from October 1,
14 2007, to February 11, 2008.

15 5. As a result, Respondents failed to supervise their agents in violation of ORS
16 59.205(13).

17 6. The Director finds the following relief appropriate and in the public interest.

18 **III.**

19 **ORDER**

20 On the basis of the Findings of Fact, Conclusions of Law, and Respondents' consent to the
21 entry of this Order,

22 **IT IS HEREBY ORDERED:**

23 1. This Order concludes the investigation by the Oregon Department of Consumer
24 and Business Services, Division of Finance and Corporate Securities ("DFCS") and any other
25 action that the Director could commence under the Oregon Securities Law on behalf of Oregon as it
26 relates to Respondents' underwriting, marketing, and sales of ARS, provided however, that



1 excluded from and not covered by this paragraph 1 are any claims by the Director arising from or
2 relating to the "Order" provisions contained herein.

3 2. This Order is entered into solely for the purpose of resolving the referenced
4 multistate investigation, and is not intended to be used for any other purpose.

5 3. Respondents will CEASE AND DESIST from violating the Oregon Securities Law
6 and will comply with the Oregon Securities Law.

7 4. Within ten days after the date of this Order, Respondents shall pay the sum of
8 \$432,193.36 (four hundred thirty two thousand, one hundred ninety-three dollars and thirty-six
9 cents) to the Oregon Department of Consumer and Business Services. That sum includes a civil
10 penalty of \$410,583.69 (four hundred ten thousand, five hundred eighty-three dollars and sixty-
11 nine cents) for the General Fund of the Oregon State Treasury, pursuant to ORS 59.995(1), and
12 \$21,609.67 (twenty-one thousand, six hundred nine dollars and sixty-seven cents) for the Oregon
13 Department of Consumer and Business Services Investor Education Program Fund.

14 5. In the event another state securities regulator determines not to accept
15 Respondents' settlement offer, the total amount of the Oregon payment shall not be affected, and
16 shall remain at \$432,193.36 (four hundred thirty two thousand, one hundred ninety-three dollars
17 and thirty-six cents).

18 6. Respondents shall comply with the following requirements:

19 a. **Eligible Investors**

20 i. No later than October 21, 2008, BAC shall have caused Blue
21 Ridge to offer to buy back, at par plus accrued and unpaid interest or dividends,
22 Eligible ARS (as such term is defined below) for which auctions are in failed
23 mode from Eligible Investors (as such term is defined below) who purchased such
24 Eligible ARS from Respondents prior to February 13, 2008 (the "Offer"). For
25 purposes of the Offer, Eligible ARS means ARS purchased from Respondents on
26 or before February 13, 2008, that were subject to an auction failure on or after



1 February 11, 2008. The Offer shall remain open for a period between October 10,
2 2008, and December 1, 2009, unless extended by Blue Ridge.

3 ii. "Eligible Investors" shall mean:

4 (a) Natural persons (including their IRA accounts,
5 testamentary trust and estate accounts, custodian IGMA and UTMA
6 accounts, and guardianship accounts) who purchased Eligible ARS from
7 Respondents;

8 (b) Charities, endowments, or foundations with Internal
9 Revenue Code Section 501(c)(3) status that purchased Eligible ARS from
10 Respondents and that had \$25 million or less in assets in their accounts
11 with Respondents as determined by the customer's aggregate household
12 position(s) at Respondents as of September 9, 2008; or

13 (c) Small Business that purchased Eligible ARS from
14 Respondents. For purposes of this provision, "Small Business" shall mean
15 Respondents' customers not otherwise covered in paragraph III.6.a.ii(a)
16 and ii(b) above that had \$15 million or less in assets in their accounts with
17 Respondents as of September 9, 2008.

18 iii. Respondents will have provided prompt notice to customers of the
19 settlement terms and Respondents will have established a dedicated telephone
20 assistance line, with appropriate staffing, to respond to questions from customers
21 concerning the terms of the settlement.

22 **b. Relief for Eligible Investors Who Sold Below Par**

23 No later than December 31, 2008, Respondents shall have promptly provided
24 notice to any Eligible Investor that Respondents could reasonably identify who sold
25 Eligible ARS below par between February 11, 2008, and September 22, 2008. Such
26 investors will be paid the difference by Respondents between par and the price at which

1 the Eligible Investor sold the Eligible ARS. Any such Eligible Investors identified after
2 December 31, 2008, shall be promptly paid the difference between par and the price at
3 which the Eligible Investors sold the Eligible ARS.

4 c. **Consequential Damages Claims**

5 No later than October 10, 2008, Respondents shall make reasonable efforts
6 promptly to notify those Eligible Investors who own Eligible ARS that, pursuant to the
7 terms of the settlement, an independent arbitrator, under the auspices of the Financial
8 Industry Regulatory Authority ("FINRA"), will be available for the exclusive purpose of
9 arbitrating any Eligible Investor's consequential-damages claim.

10 Respondents shall consent to participate in the North American Securities
11 Administrators Association ("NASAA") Special Arbitration Procedure (the "SAP")
12 established specifically for arbitrating claims arising out of an Eligible Investor's
13 inability to sell Eligible ARS. Respondents shall notify Eligible Investors of the terms of
14 the SAP. Nothing in this Order shall serve to limit or expand any party's rights or
15 obligations as provided under the SAP. Arbitration shall be conducted, at the customer's
16 election, by a single non-industry arbitrator and Respondents will pay all forum and filing
17 fees.

18 Arbitrations asserting consequential damages of less than \$1 million will be
19 decided through a single chair-qualified public arbitrator who will be appointed through
20 the FINRA list selection process for single arbitrator cases. In arbitrations where the
21 consequential damages claimed are greater than or equal to \$1 million, the parties can, by
22 mutual agreement, expand the panel to include three public arbitrators who will be
23 appointed through FINRA's list procedure.

24 Any Eligible Investors who choose to pursue such claims through the SAP shall
25 bear the burden of proving that they suffered consequential damages and that such
26 damages were caused by their inability to access funds invested in Eligible ARS. In the





1 SAP, Respondents shall be able to defend themselves against such claims; provided,
2 however, that Respondents shall not contest liability for the illiquidity of the underlying
3 ARS position or use as part of their defense any decision by an Eligible Investor not to
4 borrow money from Respondents.

5 All customers, including but not limited to Eligible Investors who avail
6 themselves of the relief provided pursuant to this Order, may pursue any remedies against
7 Respondents available under the law. However, Eligible Investors that elect to use the
8 SAP are limited to the remedies available in that process and may not bring or pursue a
9 claim relating to Eligible ARS in another forum.

10 **d. Institutional Investors**

11 Respondents shall endeavor to work with issuers and other interested parties,
12 including regulatory and governmental entities, to expeditiously and on a best efforts
13 basis provide liquidity solutions for institutional investors that purchased Eligible ARS
14 from Respondents and are not entitled to participate in the buyback under Section III
15 ("Institutional Investors").

16 Beginning on December 31, 2008, and then quarterly thereafter, Respondents
17 shall submit a written report to a representative specified by NASAA outlining the efforts
18 in which Respondents have engaged and the results of those efforts with respect to
19 Institutional Investors' holdings in Eligible ARS. The written reports will be submitted
20 20 days following the end of the quarter. Respondents shall confer with the
21 representative no less frequently than quarterly to discuss Respondents' progress to date.
22 Such written reports and quarterly meetings shall continue until no later than December
23 31, 2009. Following every quarterly meeting, the representative shall advise Respondents
24 of any concerns and, in response, Respondents shall detail the steps that Respondents
25 plan to implement to address such concerns.

26 **e. Relief for Municipal Issuers**

1 Respondents shall refund refinancing fees to municipal auction rate issuers that
2 issued such securities through Respondents in the initial primary market between August
3 1, 2007, and February 11, 2008, and refinanced those securities through Respondents
4 after February 11, 2008. Refinancing fees are those fees paid to Respondents in
5 connection with a refinancing and are exclusive of legal fees and any other fees or costs
6 not paid to Respondents in connection with the transaction.

7 **f. Repayment of Interest on Loans Provided To Eligible Investors**

8 To the extent that Respondents loaned money to Eligible Investors secured by
9 Eligible ARS, after February 11, 2008, at an interest rate that was higher than that paid on
10 such Eligible ARS, Respondents shall refund the difference to such Eligible Investors.

11 **g. Penalties**

12 i. Respondents shall pay a total civil penalty of FIFTY MILLION
13 (\$50,000,000) DOLLARS, which shall be allocated among and paid to the
14 Commonwealth of Massachusetts, the state of New York, and such other states
15 and territories that enter administrative or civil consent orders approving the terms
16 of the NASAA settlement (together with the Commonwealth of Massachusetts
17 and the state of New York, the "Approving States"). Any such allocation shall be
18 made at the discretion of the Approving States;

19 ii. The State of Oregon's portion of the penalties shall be \$432,193.36
20 (four hundred thirty two thousand, one hundred ninety-three dollars and thirty-six
21 cents) and shall be paid to the Oregon Department of Consumer and Business
22 Services no later than ten business days after the date of the Consent Order.

23 **h. In Consideration of the Settlement**

24 The Director will:

25 i. Terminate the investigation of Respondents' underwriting,
26 marketing, and sale of ARS to Eligible Investors as defined herein; and





1 ii. Refrain from taking legal action, if necessary, against Respondents with
2 respect to their institutional investors until a date after December 31, 2008; the
3 Director shall issue continuances of that period as it deems appropriate

4 iii. The Director will not seek additional monetary penalties from
5 Respondents in connection with all underlying conduct relating to Respondents'
6 underwriting, marketing, and sale of ARS to investors.

7 i. If, after this Order is executed, Respondents fail to comply with any of the
8 terms set forth herein, the Director may take appropriate remedial action.

9 7. If payment is not made by Respondents, or if Respondents default in any of their
10 obligations set forth in this Order, the Director may vacate this Order, at her sole discretion, upon
11 10 days notice to Respondents and without opportunity for administrative hearing.

12 8. This Order as entered into by the Director waives any disqualification contained
13 in the laws of the State of Oregon, or rules or regulations thereunder, including any
14 disqualifications from relying upon the registration exemptions or safe harbor provisions that
15 BAI, BAS, or any of their affiliates may be subject to as a result of the findings contained in this
16 Order. This Order also is not intended to subject BAI or BAS or any of their affiliates to any
17 disqualifications contained in the federal securities laws, the rules and regulations thereunder, the
18 rules and regulations of self regulatory organizations, or various states' or U.S. Territories'
19 securities laws, including, without limitation, any disqualifications from relying upon the
20 registration exemptions or safe harbor provisions. In addition, this Order is not intended to form
21 the basis for any such disqualifications.

22 9. For any person or entity not a party to this Order, this Order does not limit or create
23 any private rights or remedies against Respondents including, without limitation, the use of any e-
24 mails or other documents of Respondents or of others for auction rate securities sales practices, limit
25 or create liability of Respondents, or limit or create defenses of Respondents to any claims.

26 10. Nothing herein shall preclude the State of Oregon, its departments, agencies, boards,

1 commissions, authorities, political subdivisions and corporations, other than the Director and only to
2 the extent set forth in paragraph 1 above, (collectively, "State Entities") and the officers, agents or
3 employees of State Entities from asserting any claims, causes of action, or applications for
4 compensatory, nominal and/or punitive damages, administrative, civil, criminal, or injunctive relief
5 against Respondents in connection with certain auction rate securities sales practices at
6 Respondents.

7 11. This Order and any dispute related thereto shall be construed and enforced in
8 accordance with, and governed by, the laws of the State of Oregon without regard to any choice
9 of law principles.

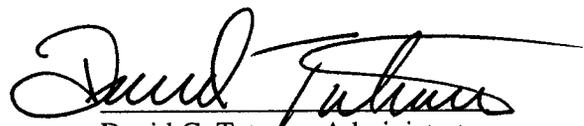
10 12. Respondents, through their execution of this Order, voluntarily waive their right to
11 a hearing on this matter and to judicial review of this Order under ORS 59.295, ORS 59.305 and
12 ORS Chapter 183.

13 13. Respondents enter into this Order voluntarily and represents that no threats,
14 offers, promises, or inducements of any kind have been made by DFCS or any member, officer,
15 employee, agent, or representative of the DFCS to induce Respondents to enter into this Order.

16 14. This Order shall be binding upon Respondents and each of their successors and
17 assigns with respect to all conduct subject to the provisions above and all future obligations,
18 responsibilities, undertakings, commitments, limitations, restrictions, events, and conditions.

19 Dated this 29 day of June, 2009.

20 CORY STREISINGER, Director
21 Department of Consumer and Business Services

22 

23 David C. Tatman, Administrator
24 Division of Finance and Corporate Securities

25 Division of Finance and Corporate Securities
26 Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387



1 SUBSCRIBED AND SWORN TO before me this 17th day of June 2009.

2

3

Elizabeth M. Coppola
Signature of Notary Public

4

ELIZABETH M. COPPOLA
(Printed Name of Notary Public)

5

6 My commission expires: 10/25/09

6

ELIZABETH M. COPPOLA
Notary Public, State of New York
No. 30-5018872
Qualified in Nassau County
Certificate Filed in New York County
Commission Expires Oct. 25, 2009

7

8

BANC OF AMERICA INVESTMENT SERVICES, INC.

9

10

By: _____

11

RONALD J. NEWTH
Title: COO/SUP

12

13

14

15 State of _____)

15

) ss.

16

17 County of _____)

17

18

19 SUBSCRIBED AND SWORN TO before me this _____ day of _____ 2009.

19

20

Signature of Notary Public

21

(Printed Name of Notary Public)

22

23

24 My commission expires:

24

25

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(17) 13(a)

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Telephone: (503) 378-4387



1 SUBSCRIBED AND SWORN TO before me this _____ day of _____ 2009.

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My commission expires:

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BANC OF AMERICA INVESTMENT SERVICES, INC.

10

11

By: *Ronald J. Newth*

RONALD J. NEWTH
Title: COO/SVP

12

13

14

State of Massachusetts

15

) ss.

16

County of Suffolk

17

18

SUBSCRIBED AND SWORN TO before me this 15th day of June 2009.

19

20

Mary Ann Carroll
Signature of Notary Public

21

MARY ANN CARROLL
(Printed Name of Notary Public)

22

23

24 My commission expires:

25

26

July 4, 2014



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

13(b)

Division of Finance and Corporate Securities
Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387

