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REGISTRATION & DISCLOSURE

**NASD**  
**LETTER OF ACCEPTANCE, WAIVER AND CONSENT**  
**NO. ##**

20050000186-01

**TO:** Market Regulation Department  
NASD

**RE:** Banc of America Securities LLC, Respondent  
CRD No. 26091

Pursuant to Rule 9216 of NASD Code of Procedure, Banc of America Securities LLC (the "firm") submits this Letter of Acceptance, Waiver and Consent ("AWC") for the purpose of proposing a settlement of the alleged rule violations described in Part II below. This AWC is submitted on the condition that, if accepted, NASD will not bring any future actions against the firm alleging violations based on the same factual findings.

The firm understands that:

1. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by NASD's Department of Market Regulation and National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs, pursuant to NASD Rule 9216;
2. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against the firm; and
3. If accepted:
  - a. this AWC will become part of the firm's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against the firm;
  - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about the firm's disciplinary record;
  - c. NASD may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-2; and
  - d. the firm may not take any action or make or permit to be made any public statement, including in regulatory filings or otherwise, denying, directly or indirectly, any allegation in this AWC or create the impression that the AWC is without factual basis. Nothing in this provision affects the firm's testimonial

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obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

The firm also understands that its experience in the securities industry and disciplinary history may be factors that will be considered in deciding whether to accept this AWC. That experience and history are as follows:

The firm entered the securities industry in April 1990 as a member of NASD and its registration remains in effect. On March 8, 2007, NASD accepted an AWC by which the firm was censured and fined \$56,500 for, among other things, trade reporting violations and OATS violations. On May 2, 2005, NASD accepted an AWC by which the firm was censured and fined \$15,000 for trade reporting violations. On March 22, 2005, NASD accepted an AWC by which the firm was censured and fined \$25,000 for, among other things, OATS violations. On March 28, 2003, NASD accepted an AWC by which the firm was fined \$5,000 for OATS violations.

#### I.

#### WAIVER OF PROCEDURAL RIGHTS

The firm specifically and voluntarily waives the following rights granted under NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against the firm;
- B. To be notified of the Formal Complaint and have the opportunity to answer the allegations in writing;
- C. To defend against the allegations in a disciplinary hearing before a hearing panel, to have a written record of the hearing made and to have a written decision issued; and
- D. To appeal any such decision to the NAC and then to the U.S. Securities and Exchange Commission and a U.S. Court of Appeals.

Further, the firm specifically and voluntarily waives any right to claim bias or prejudgment of the General Counsel, the NAC, or any member of the NAC, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including acceptance or rejection of this AWC.

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The firm further specifically and voluntarily waives any right to claim that a person violated the ex parte prohibitions of Rule 9143 or the separation of functions prohibitions of Rule 9144, in connection with such person's or body's participation in discussions regarding the terms and conditions of this AWC, or other consideration of this AWC, including its acceptance or rejection.

## II.

### ACCEPTANCE AND CONSENT

This matter arose out of three OATS reviews conducted by the staff of the Market Regulation Department (the "staff") for the periods April 1, 2004 to June 30, 2004, October 1, 2004 to December 31, 2004, and April 1, 2005 to June 30, 2005, respectively, 20050000186, 20050006525 and 20050023929; three trade reporting reviews conducted by the staff for the periods January 1, 2005 to April 30, 2005, May 1, 2005 to August 31, 2005, and April to September 2004, respectively, 20050017993 and 20050026991, and 20050004164; a TRACE review conducted by the staff for the period October 1, 2004 to December 31, 2004, 20050007222; and the 2005 Trading and Market Making Surveillance Examination of the firm, 20050017790, in which the staff reviewed the matters described in Attachment 1.

- A. The firm hereby accepts and consents, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding brought by or on behalf of NASD, or to which NASD is a party, prior to a hearing and without an adjudication of any issue of law or fact, to the entry of the following findings by NASD:

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1. During the review period, the firm transmitted to OATS 13,855 execution reports that contained inaccurate, incomplete, or improperly formatted data. Because of the inaccurate, missing, or improperly formatted data, the OATS system was unable to link the execution reports to the related trade reports in an NASD trade reporting system. The firm also erroneously reported to OATS 763,020 execution codes with the exception code of "R" for riskless principal trades it reported under the Alternative Approach. During the review period, the firm failed to repair 2,141 Reportable Order Events ("ROEs") that were rejected by OATS for context and syntax errors and were repairable. This constituted 32 percent of the firm's repairable rejected ROEs. The conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace Rule 6955(a).

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**20050006525**

2. During the review period, the firm submitted to OATS 218 Route or Combined Order/Route Reports that the OATS system was unable to link to the related order routed to the Nasdaq Exchange due to inaccurate, incomplete or improperly formatted data. During the review period, the firm submitted to OATS 1,239 Route or Combined Order/Route Reports that the OATS system was unable to link to the corresponding new order submitted by the destination member firm due to inaccurate, incomplete or improperly formatted data. The conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace Rule 6955(a).

**20050023929**

3. During the review period, the firm submitted to OATS 5,182 Route or Combined Order/Route Reports that the OATS system was unable to link to the related order routed to the Nasdaq Exchange due to inaccurate, incomplete or improperly formatted data. The firm also failed to timely report to OATS 187,331 ROEs, representing three percent of all ROEs submitted by the firm to OATS during the review period. During the review period, the firm also reported to OATS 24,107 execution reports that contained inaccurate, incomplete, or improperly formatted data. Because of the inaccurate, missing, or improperly formatted data, the OATS system was unable to link the execution reports to the related trade reports in an NASD trade reporting system. The conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace Rule 6955(a).

**20050017993**

4. The firm failed, within 90 seconds after execution, to transmit to the Trade Reporting Facility 1,086 last sale reports of transactions in designated securities. The conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace 4632(a).

**20050026991**

5. The firm failed, within 90 seconds after execution, to transmit to the OTC Reporting Facility 113 last sale reports of transactions in OTC Equity securities. The conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace Rule 6620(a).

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**20050004164**

6. The firm reported to the Trade Reporting Facility 75 last sale reports of transactions in designated securities it was not required to report. The conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace 4632(e).

**20050007222**

7. The firm failed to report to TRACE the correct contra-party's identifier for 126 transactions in TRACE-eligible securities. The conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace Rule 6230(c)(6).
8. The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and the Rules of NASD, concerning TRACE reporting. Specifically, the firm's supervisory system did not include written supervisory procedures providing for reviews for compliance that included: (1) the identification of the person(s) responsible for supervision with respect to the applicable rules; (2) a statement of the supervisory step(s) to be taken by the identified person(s); (3) a statement as to how often such person(s) should take such step(s); and (4) a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented. The conduct described in this paragraph constitutes a violation of NASD Conduct Rules 2110 and 3010.

**20050017790**

9. During the review period, the firm transmitted to OATS 11 reports that contained inaccurate, incomplete, or improperly formatted data. The conduct described in this paragraph constitutes separate and distinct violations of NASD Marketplace Rule 6955(a).
10. The firm's supervisory system did not provide for supervision reasonably designed to achieve compliance with respect to the applicable securities laws and regulations, and the Rules of NASD, concerning order handling and soft dollar accounts and trading. Specifically, the firm's supervisory system did not include written supervisory procedures providing for reviews for compliance that included: (1) the identification of the person(s) responsible for supervision with respect to the applicable rules; (2) a statement of the supervisory step(s) to be taken by the identified

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person(s); (3) a statement as to how often such person(s) should take such step(s); and (4) a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented. The conduct described in this paragraph constitutes a violation of NASD Conduct Rules 2110 and 3010.

B. The firm also consents to the imposition, at a maximum, of the following sanctions:

A censure;

A fine of \$60,000 (consisting of \$25,000 for OATS violations; \$20,000 for trade reporting violations; \$10,000 for TRACE reporting violations; and \$5,000 for supervisory violations); and

an undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraphs IIA 8 and IIA 10. Within 30 business days of acceptance of this AWC by the NAC, a registered principal of the Respondent shall submit to the **COMPLIANCE ASSISTANT, LEGAL SECTION, MARKET REGULATION DEPARTMENT, 9509 KEY WEST AVENUE, ROCKVILLE, MD 20850**, a signed, dated letter, providing the following information: (1) a reference to this matter; (2) a representation that the firm has revised its written supervisory procedures to address the deficiencies described in paragraphs IIA 8 and IIA 10; and, (3) the date the revised procedures were implemented.

The sanctions imposed herein shall be effective on a date set by NASD staff.

**OTHER MATTERS**

- A. The firm understands that it may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. The firm understands that it may not deny the charges or make any statement that is inconsistent with the AWC in this Statement. This Statement does not constitute factual or legal findings by NASD, nor does it reflect the views of NASD or its staff.
- B. The firm agrees to pay any monetary sanctions imposed on the firm upon notice that this AWC has been accepted and that such payments are due and payable and

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has attached an Election of Payment form showing the method by which the firm proposes to pay any fine imposed.

- C. The firm specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

The firm certifies that it has read and understands all of the provisions of this AWC and has been given a full opportunity to ask questions about it, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce the firm to submit it.

Banc of America Securities LLC

4/24/2007  
Date

By:

Name: Kenneth J. Blau

Title: Chief Operating Officer  
Global Equities

Reviewed by: Justin M. Welter, Esq.

Justin M. Welter, Asst Gen Counsel, Equity Sales & Trading  
Counsel for Respondent

Accepted by NASD:

5/25/07  
Date

Thomas R. Gira  
Thomas R. Gira  
Executive Vice President  
Department of Market Regulation

Signed on behalf of the Director of  
ODA, by delegated authority

Attachments:  
Standard Election of Payment Form

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| <u>Sample Size</u>                     | <u>Review Area</u>                                                                                                                                               | <u>Sample Source</u>                  |
|----------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------|
| 272                                    | sale transactions, for compliance with SEC Rules 200(g) and/or 203(b),                                                                                           | from trade dates May 24 and 25, 2005, |
| 417                                    | customer and proprietary sales, for compliance with NASD Rule 6130,                                                                                              | from trade dates May 24 and 25, 2005, |
| 15                                     | limit orders executed as principal, for compliance with NASD Rules 2110 (and IM-2110-2), 6440, 6541 and 2320, and SEC Rules 11Ac1-1 and 11Ac1-4,                 | from trade dates May 24 and 25, 2005, |
| 50                                     | limit and market orders executed in a principal or riskless principal capacity, for compliance with capacity reporting under NASD Trade Reporting and ACT rules, | from trade dates May 24 and 25, 2005, |
| 43                                     | Cancelled transactions for compliance with the requirement to cancel trade reports within ninety seconds of cancellation from books and records,                 | from trade dates May 24 and 25, 2005, |
| 50                                     | transactions for NASDAQ securities in soft dollar accounts for compliance with trade reporting rules and the safe harbor limitations of SEC section 28(e),       | from trade dates May 24 and 25, 2005, |
| 25                                     | orders in securities for which the firm was a market center, for compliance with the order size/type classification requirements of SEC Rule 605,                | from trade dates May 24 and 25, 2005, |
| 34 orders<br>(4 order type categories) | security/size/order data statistics published on the firm's monthly order execution report, for compliance with SEC Rule 605,                                    | from the report for April 2005,       |
| 20                                     | customer orders in OTCBB and OTC equity securities, for compliance with NASD Rules 3110(b) and 2320,                                                             | from trade dates May 24 and 25, 2005, |
| 10                                     | persons engaged in the firm's trading and market making activities, for compliance with NASD Registration rules,                                                 | from trading staff in May 2005,       |
| 468                                    | order/trade records prepared and maintained in connection with the above samples, for general compliance with NASD Rule 3110 and SEC Rules 17a-3 and 17a-4,      | from trade dates May 24 and 25, 2005, |
| 558                                    | trades reported to ACT or TRACS in connection with the above samples, for general compliance with NASD Trade Reporting and ACT rules,                            | from trade dates May 24 and 25, 2005, |
| 246                                    | customer trade confirmations reviewed in connection with the above samples, for compliance with SEC Rule 10b-10,                                                 | from trade dates May 24 and 25, 2005, |

| <u>Sample Size</u> | <u>Review Area</u>                                                                                                                                                                                          | <u>Sample Source</u>                     |
|--------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|
| 50                 | orders in NNM or SC securities submitted to OATS, for compliance with NASD Rule 6955,                                                                                                                       | from trade dates May 24 and 25, 2005,    |
| N/A                | the firm's establishment and implementation of "regular & rigorous" reviews of the execution quality of orders sent to other market centers and internalized, for compliance with NASD Rules 2320 and 3010, | based on WSPs in effect during May 2005, |
| N/A                | the firm's establishment and implementation of a supervisory system and written supervisory procedures, for compliance with NASD Rule 3010,                                                                 | based on WSPs in effect during May 2005. |