

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

20050000639-01

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 ("BOFA" or 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 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:

BOFA entered the securities industry in April 1990 as a member of NASD and its registration remains in effect. 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, failing to provide written notification on confirmations disclosing that it was a market maker, and deficient supervisory procedures for trade reporting. On March 16, 2005, NASD accepted an AWC by which the firm was censured and fined \$7,500 for affirmative determination violations. On March 28, 2003, NASD accepted an AWC by which the firm was fined \$5,000 for OATS violations. On February 6, 2003, NASD accepted an AWC by which the firm was censured and fined \$80,000 for, among other things, failure to accept or decline transactions within twenty minutes after execution, and failing to report the correct symbol indicating whether transactions were a buy, sell, sell short exempt or cross. On December 28, 2000, NASD accepted an AWC by which the firm was censured and fined \$19,000 for, among other things, ACT reporting violations, failing to accept or decline transactions within twenty minutes after execution, and failing to provide written notification on confirmations disclosing the correct reported trade price.

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;

20050000639/MRD200446430 (including 2005000861/ MRD200445548, 20050002609/MRD200447175, and 20050000673/MRD200448397 (r1f))

- 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.

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 four reviews conducted by the staff of the Market Regulation Department (the "staff"). In 2005000861/MRD200445548, the staff reviewed the firm's compliance with NASD Rule 6130(b) for the period January 1, 2004 through March 31, 2004. In 20050000639/MRD200446430, the staff reviewed the firm's compliance with NASD trade reporting rules during the period January 1, 2004 through April 30, 2004. In 20050000673/MRD200448397, the staff reviewed the firm's compliance with NASD trade reporting rules during the period May 1, 2004 through August 30, 2004. In the 2004 Trading and Market Making Surveillance Examination of BOFA, 20050002609/MRD200447175, the staff reviewed the following¹:

- 33 customer sale orders, for compliance with NASD Rules 3110 and 3370.
- Nine proprietary sale transactions, for compliance with NASD Rule 3370 and SEC Rule 10a-1 (marking ticket long or short).
- 118 customer and proprietary sales in NNM securities, for compliance with NASD Rule 6130.

¹ Unless otherwise noted, the items reviewed were from June 15 and/or June 16, 2004.

- Six short sales in CQS securities, for compliance with SEC Rule 10a-1 (Tick Test).
- 15 limit orders executed as principal, for compliance with NASD Rules 2110 (and IM-2110-2), 6440, 6541 and 2320, and SEC Rule 11Ac1-1 and 11Ac1-4.
- Six institutional not held market orders executed as principal for compliance with NASD Rule 2320.
- 23 limit and market orders executed in a principal or riskless principal capacity, for compliance with capacity reporting under NASD trade reporting and ACT rules.
- Six orders for NASDAQ securities in soft dollar accounts and 115 related executions, for compliance with trade reporting rules and the safe harbor limitations of SEC section 28(e), from trade dates June 6, 15 and 16, 2004 and May 4, 2004.
- 25 orders in securities for which the firm was a market center, for compliance with the order size/type classification requirements of SEC Rule 11Ac1-5.
- Four groups (30 orders) security/size/order data statistics published on the firm's monthly order execution report, for compliance with SEC Rule 11Ac1-5 from monthly report including May 2004.
- Data published on the firm's quarterly order routing report, for compliance with SEC Rule 11Ac1-6, from quarterly report including June 2004.
- Nine customer transactions in OTCBB and OTC equity securities, for compliance with NASD Rules 3110(b) and 2320.
- 50 orders in NNM or SC Securities, for compliance with NASD Rule 6955.
- 169 order/trade/records prepared and maintained in connection with the above samples, for general compliance with SEC Rules 17a-3 and 17a-4.
- 616 trades reported to ACT or TRACS in connection with the above samples, for general compliance with NASD Trade Reporting and ACT rules.
- 124 customer trade confirmations, for compliance with SEC Rule 10b-10.
- 13 persons engaged in the firm's trading and market making activities, for compliance with NASD Registration rules, from trading staff in November 2003.
- 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 written supervisory procedures in effect during June 2004.
- The firm's Written Supervisory Procedures in effect during June 2004, for compliance with NASD Rules 2320 and 3010.

20050000639/MRD200446430 (including 20050000861/ MRD200445548, 20050002609/MRD200447175, and 20050000673/MRD200448397 (c)(f))

- 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:

2005000861/MRD200445548

1. BOFA failed to accept or decline in ACT 191 transactions in eligible securities within twenty minutes after execution.
2. The conduct described in paragraph one constitutes separate and distinct violations of NASD Marketplace Rule 6130(b).

20050000639/MRD200446430

3. BOFA failed, within 90 seconds after execution, to transmit through ACT 2,203 last sale reports of transactions in Nasdaq National Market ("NNM") and Nasdaq SmallCap ("SC") securities. These transactions constitute 2.23 percent of all transactions that BOFA was required to report to ACT during the review period.
4. The conduct described above in paragraph three constitutes a pattern or practice of late reporting without exceptional circumstances in violation of NASD Conduct Rule 2110.
5. During the review period the firm failed to enforce its written supervisory procedures for trade reporting.
6. The conduct described in paragraph five constitutes a violation of NASD Conduct Rules 2110 and 3010.

20050000673/MRD200448397

7. BOFA failed, within 90 seconds after execution, to transmit through ACT 63 last sale reports of transactions in OTC Equity securities. These transactions constitute 11% percent of all transactions in OTC Equity securities that BOFA was required to report to ACT during the review period.

20050000639/MRD200446430 (including 2005000861/MRD200445548, 20050002609/MRD200447175, and 20050000673/MRD200448397 (r1f))

8. The conduct described above in paragraph seven constitutes a pattern or practice of late reporting without exceptional circumstances in violation of NASD Conduct Rule 2110.
9. BOFA failed to designate as "T" through ACT 60 last sale reports of transactions in OTC Equity securities executed outside normal market hours.
10. The conduct described in paragraph nine constitutes separate and distinct violations of NASD Marketplace Rule 6620(a)(3).

20050002609/MRD200447175

11. During the review period BOFA transmitted to OATS 22 reports that contained inaccurate, incomplete, or improperly formatted data. Specifically, the reports did not provide the correct Routed Order ID, the correct share amount, the correct order receipt time, or incorrectly submitted a cancel report.
12. The conduct described in paragraph 11 above constitutes separate and distinct violations of NASD Marketplace Rule 6955(a) and a violation of Conduct Rule 2110.
13. During the review period, the firm effected six short sales in certain securities for the firm's proprietary account and failed to make/annotate an affirmative determination that the firm could borrow the securities or otherwise provide for delivery of the securities by settlement date.
14. The conduct described in paragraph 13 constitutes separate and distinct violations of NASD Conduct Rule 3370.
15. During the review period, BOFA executed six short sale orders and failed to properly mark the order tickets as short for those orders.
16. The conduct described in paragraph 15 constitutes separate and distinct violations of NASD Conduct Rule 3110.
17. BOFA failed on three occasions to provide written notification disclosing to its customer its correct capacity in the transaction; failed on 11 occasions to provide written notification disclosing to its customer that the transaction was executed at an average

20050000639/MRD200446430 (including 20050000861/ MRD200445548, 20050002609/MRD200447175, and 20050000673/MRD200448397 (r/f))

price; and failed on one occasion to provide written notification disclosing to its customer that it was a market maker.

18. The conduct described in paragraph 17 above constitutes separate and distinct violations of SEC Rule 10b-10.
19. BOFA failed to report to ACT the correct symbol indicating whether the transaction was a buy, sell, sell short, sell short exempt or cross for 55 transactions in eligible securities.
20. The conduct described in paragraph 19 constitutes separate and distinct violations of NASD Marketplace Rule 6130(d).
21. 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 registration, SEC Rule 11Ac1-6, short sales bid test, and books and records. Specifically, the firm's supervisory system did not include written supervisory procedures providing for: (1) 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/or (4) a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented (or did not provide documentary evidence of the review).
22. The conduct described in paragraph 21 constitutes a violation of NASD Conduct Rules 2110 and 3010.

- B. BOFA also consents to the imposition, at a maximum, of the following sanctions:

A censure and a fine of \$56,500 (consisting of \$10,000 for OATS violations; \$20,000 for trade reporting and ACT violations; \$10,000 for supervisory violations; \$12,500 for short sale violations; \$2,000 for books and record violations, and \$2,000 for customer confirmation violations; and

An undertaking to revise the firm's written supervisory procedures and supervisory enforcement with respect to the areas described in paragraph IIA 21. 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 and supervisory enforcement to address the deficiencies described in paragraph IIA 21; and (3) the date the revised procedures were implemented.

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

III.

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 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

1/31/07
Date

By: Kenneth J. Blaw
Name: Kenneth J. Blaw
Title: COO, Global Equities

Reviewed by:

John M. Rotstein, Esq.
Counsel for Respondent

Accepted by NASD:

3/9/07
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

20050000639/MRD200446430 (including 20050000861/MRD200445548, 20050002609/MRD200447175,
and 20050000673/MRD200448397 (rlf))