

**NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT**

20050001870-01

**TO: Market Regulation Department
NASD**

**RE: Banc of America Investment Services, Inc., Respondent
Broker-Dealer
CRD No. 16361**

Pursuant to Rule 9216 of NASD Code of Procedure, Banc of America Investment Services, Inc. ("NBII" 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 NBII alleging violations based on the same factual findings.

NBII 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 NBII; and
3. If accepted:
 - a. this AWC will become part of NBII's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against NBII;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about NBII'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. NBII 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 finding in this AWC or create the impression that the AWC is without factual basis. Nothing in this provision affects NBII's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

NBII 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:

NBII has been a member of NASD since December 23, 1985. NBII does not have any relevant disciplinary history.

I.

WAIVER OF PROCEDURAL RIGHTS

NBII 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 NBII;
- 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, NBII 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.

NBII 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 a review, MRD200446288 / 20050001870¹, conducted by the staff of the Department of Market Regulation of NASD of NBII's compliance with Trade Reporting and Compliance Engine ("TRACE") trade reporting requirements for the period January 1, 2004 through March 31, 2004 ("review period"). The staff also reviewed NBII's written supervisory procedures applicable to TRACE that were in effect during the review period.

- A. NBII 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:
 - 1. NBII failed to report to TRACE 748 transactions in TRACE-eligible securities executed on a business day during TRACE system hours within 45 minutes of the time of execution. These late transactions constituted five percent of all transactions in TRACE-eligible securities that NBII was required to report to TRACE during the period January 1, 2004 through March 31, 2004.
 - 2. The conduct described in paragraph one constitutes separate and distinct violations of NASD Marketplace Rule 6230(a) and a pattern or practice of late reporting without exceptional circumstances in violation of NASD Conduct Rule 2110.
 - 3. NBII reported to TRACE 5,054 transactions in TRACE-eligible securities that it was not required to report.
 - 4. The conduct described in paragraph three constitutes separate and distinct violations of NASD Marketplace Rule 6230(e).

¹ On January 3, 2005 the NASD implemented a new matter tracking system. The new number assigned to this matter is referenced above following the original number assigned by the previous tracking system.

5. NBII'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 accurate reporting to TRACE. Specifically, NBII's supervisory system did not include written supervisory procedures providing for: (1) a statement of the supervisory step(s) to be taken by the person(s) responsible for supervision with respect to the applicable rules; (2) a statement as to how often such person(s) should take such step(s); and (3) a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented.
 6. The conduct described in paragraph five constitutes a violation of NASD Conduct Rules 2110 and 3010.
- B. NBII also consents to the imposition, at a maximum, of the following sanctions:
- A censure,
 - A fine of \$17,500 (composed of a \$5,000 fine for the supervision violation and a \$12,500 fine for the TRACE violations), and
 - An undertaking to revise NBII's written supervisory procedures with respect to the areas described in paragraph five. 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 paragraph five; and, (3) the date the revised procedures were implemented.

The sanctions imposed herein shall be effective on a date set by NASD staff. Pursuant to IM-8310-2(f), a bar or expulsion shall become effective upon approval or acceptance of this AWC by the NAC.

III.**OTHER MATTERS**

- A. NBII understands that NBII may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. NBII understands that NBII 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. NBII agrees to pay any monetary sanctions imposed on NBII 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 NBII proposes to pay any fine imposed.**
- C. NBII specifically and voluntarily waives any right to claim that NBII is unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.**

