

**FINANCIAL INDUSTRY REGULATORY AUTHORITY
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. 2006006064101**

TO: Department of Enforcement
Financial Industry Regulatory Authority ("FINRA")

RE: Banc One Securities Corporation, Respondent
CRD No. 16999

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

I.

ACCEPTANCE AND CONSENT

- A. Respondent 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 FINRA, or to which FINRA 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 FINRA:

BACKGROUND

Banc One Securities Corporation was a registered broker-dealer and a member of FINRA (f/k/a National Association of Securities Dealers or NASD) from 1986 through 2006. The firm had its principal place of business in Chicago, Illinois. In July 2006, the firm filed its uniform request to withdraw its broker-dealer registration and merged with J.P. Morgan Securities, Inc. Prior to the merger, Banc One Securities Corporation had approximately 6,071 registered representatives conducting business in more than 1,700 branch offices across the country. The firm has no relevant disciplinary history.

OVERVIEW

Banc One Securities Corporation ("BOSC" or "firm") offered a fee-based brokerage program called the ONE Investor Advantage ("OIA") to its customers between January 2002 and June 2005 (the "review period"). Customers with OIA accounts paid BOSC a fee based upon the total value of eligible assets in the account.

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During the review period, BOSC failed to establish and maintain a supervisory system, including written procedures, reasonably designed to review and monitor its fee-based brokerage business, in violation of NASD Conduct Rules 3010(a) and (b) and 2110. While the firm informed its brokers that an OIA account was appropriate for active traders who may find the program costs more economical than a standard commission paying account, BOSC had no system or procedures reasonably designed to determine whether OIA accounts were appropriate for its customers.

As a result of the firm's supervisory deficiencies during the review period, BOSC allowed approximately nineteen customers to continue in OIA accounts without adequately determining whether the accounts remained appropriate for the customers. During the review period, approximately sixteen BOSC customers conducted no trades in their OIA accounts for at least two consecutive years and paid the firm approximately \$73,853 in fees during the time when their accounts were inactive. In addition, in spite of the firm's required \$50,000 minimum to open an OIA account, three customers held assets that averaged less than \$25,000 for at least one full year during the review period. These customers all paid at least the minimum annual fee of \$750.00, which represented more than 3% of the assets in their accounts during this time period, at least twice the maximum rate allowed under the OIA Program Agreement for any class of assets. During the time that these customers' eligible assets averaged below \$25,000 for at least one full year, they paid a total of approximately \$3,742 in OIA fees.

FACTS

BOSC'S ONE Investor Advantage Fee-Based Program

BOSC began offering its OIA based brokerage program to its customers in November 2001. OIA customers paid a quarterly fee based upon the value of the assets held in the account. To be eligible for participation in the OIA program, a BOSC customer was required to deposit a minimum account balance of \$50,000 in *eligible* assets with the firm at the time an OIA account was opened. During the review period, eligible assets consisted of (1) equity securities; (2) fixed income securities; (3) no-load mutual funds and mutual funds which are typically offered with an initial sales charge provided that such load is waived or offered without a sales charge; (4) money market mutual funds; and (5) cash. The maximum rate allowed for the first \$1 million in eligible assets pursuant to the OIA Program Agreement was 1.5% on equities, 1% on mutual funds, and .50% on fixed income securities and cash. All OIA accounts, regardless of size, were required to pay a minimum quarterly fee of \$187.50, or \$750.00 per year.

BOSC advised its registered representatives in its ONE Investor Advantage Quick Reference Guide that OIA was appropriate for:

- customers who preferred a sliding fee schedule based on the success of their account;

- customers who preferred not to pay commissions but wanted the advice of the investment specialist; and
- active traders who found the program costs more economical than standard commissions and sales loads.

OIA customers generally received the same level of services as the firm's customers who were in commission-based accounts, except that OIA customers had the option to receive monthly statements with tax lot accounting¹ and quarterly performance reports.

Until February 2005, BOSC did not conduct a review at the time an OIA account was opened or on a periodic basis thereafter to determine whether the account was appropriate for the customer. Instead, the firm relied upon its existing supervisory system to supervise its fee-based brokerage business. Under the existing supervisory system, all new OIA accounts were approved by BOSC's New Accounts Department ("New Accounts"), which reviewed the firm's standard Enrollment Request Form and Brokerage Investment Account Application for completeness. As long as all portions of the OIA account opening forms were completed, the firm opened the OIA account on behalf of the customer. After the account was opened, a firm principal only reviewed the account in the ordinary course of business in connection with approving any transactions in the account. If a customer did not conduct any trades in the account, the account was not reviewed by a principal.

In February of 2005, BOSC implemented an account opening process specific to OIA accounts. The new OIA account opening procedure required additional information, such as information concerning a client's financial status, investment objectives, account diversification needs, trading history, nature of the securities held, and a client's intended level of trading, so that the firm could determine whether the OIA account was appropriate for the customer. At the same time, the firm also implemented a system and procedures for conducting periodic inactivity reviews of its OIA accounts.²

¹ Tax lot accounting is a record keeping technique that traces the dates of purchase and sale, cost basis, and transaction size for each security in a customer's portfolio, even where a customer makes more than one trade in the same security.

² The firm defined "inactivity" to include five or fewer trades annually. Accounts falling under this definition of inactivity were required to be reviewed no less than annually by the designated supervisory principals in the firm's Principal Review Department. Based upon the results of that review, the firm's procedures required that the client either complete a new Fee-Based Account Client Acknowledgment explaining any non-price reasons for why the client wishes to remain in the account or initiate a request for the account to be transferred to a traditional brokerage account.

**BOSC's Supervisory Failures
Relating To Inactive Accounts And Small Accounts**

NASD Conduct Rule 3010(a) requires firms to establish and maintain a supervisory system, including written procedures, to supervise the activities of its registered representatives and associated persons, that is reasonably designed to achieve compliance with applicable securities laws and regulations and NASD Rules. BOSC violated NASD Conduct Rules 3010(a) and (b) and 2110 by failing to establish and maintain a supervisory system, including written procedures, reasonably designed to review and monitor its fee-based brokerage business. Specifically, during the review period, BOSC did not have an adequate supervisory system, including written procedures, to review and monitor OIA accounts, at inception or throughout the OIA relationship, to determine whether they were and remained appropriate for its customers.

During the review period, sixteen customers conducted no trades in their OIA accounts for at least two consecutive years and paid approximately \$73,853 in fees during the years when they made no trades in their accounts. Although some of these customers had traded previously in their OIA accounts, after these customers elected not to trade in their accounts for at least one year, BOSC never reviewed the accounts to determine whether the fee-based accounts remained appropriate for those customers. Consequently, these customers remained in fee-based accounts for at least an additional year, during which they paid approximately \$42,490 in fees without conducting any trades.

For example, customer R.T. opened an OIA account in 2003. For the next two years, R.T. conducted no trades in his OIA account and paid BOSC \$17,611 in OIA fees. In a traditional commission-based account, R.T. would not have paid the firm any commissions during those years.

In addition, in spite of the firm's \$50,000 account minimum, there were three OIA customers whose total billable assets averaged below \$25,000 for one full year during the review period. Due to BOSC's lack of monitoring of OIA accounts, these accounts with low asset levels were never reviewed to determine whether it was appropriate for these customers to remain in the OIA program. These customers all paid no less than the minimum annual fee of \$750.00, which represented at least 3% of the assets in their OIA accounts. This fee was twice the rate of the 1.5% listed in the firm's OIA Program Agreement for equity securities. During the years that these customers' total eligible assets averaged below \$25,000 for one full year, they paid a total of \$3,742 in OIA fees.

By way of example, the eligible assets in customer E.L.'s OIA account dropped and remained below \$25,000 for one full year. During that period, the average annual billable asset level in E.L.'s account was \$23,239 in 2004 and \$8,463 in 2005. Customer E.L. paid \$1,871 during that period of time.

B. Respondent also consents to the imposition of the following sanctions:

1. A censure.

2. A fine of \$50,000. Respondent agrees to pay the monetary sanction upon notice that this Offer has been accepted and that such payment is due and payable. Respondent has submitted an Election of Payment form showing the method by which it proposes to pay the fine imposed. Respondent specifically and voluntarily waives any right to claim that it is unable to pay, now or at any time hereafter, the monetary sanction imposed in this matter.

3. An order to pay restitution to the customers listed on Attachment A hereto in the total amount of \$46,231.53, plus interest at the rate set forth in Section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), from June 30, 2005, the date of the violative conduct, until the date this Offer is accepted by the NAC. Satisfactory proof of payment of the restitution or of reasonable and documented efforts undertaken to effect restitution shall be provided to FINRA staff no later than 120 days after acceptance of this Offer. If for any reason Respondent cannot locate any customer identified in Attachment A after reasonable and documented efforts within such period, or such additional period agreed to by the staff, Respondent shall forward any undistributed restitution and interest to the appropriate escheat, unclaimed property, or abandoned property fund for the state in which the customer is last known to have resided.

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

WAIVER OF PROCEDURAL RIGHTS

Respondent specifically and voluntarily waives the following rights granted under FINRA's Code of Procedure:

A. To have a Formal Complaint issued specifying the allegations against Respondent;

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, Respondent 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.

Respondent 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.

III.

OTHER MATTERS

Respondent understands that:

A. Submission of this AWC is voluntary and will not resolve this matter unless and until it has been reviewed and accepted by the NAC, a Review Subcommittee of the NAC, or the Office of Disciplinary Affairs ("ODA"), pursuant to NASD Rule 9216;

B. If this AWC is not accepted, its submission will not be used as evidence to prove any of the allegations against Respondent; and

C. If accepted:

1. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by FINRA or any other regulator against Respondent;

2. this AWC will be made available through FINRA's public disclosure program in response to public inquiries about Respondent's disciplinary record;

3. FINRA may make a public announcement concerning this agreement and the subject matter thereof in accordance with NASD Rule 8310 and IM-8310-2; and

4. Respondent 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. Respondent may not take any position in any proceeding brought by or on behalf of FINRA, or to which FINRA is a party, that is inconsistent with any part of this AWC. Nothing in this provision affects my right to take legal or factual positions in litigation or other legal proceedings in which FINRA is not a party.

D. Respondent may attach a Corrective Action Statement ("Statement") to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. Respondent 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 FINRA, nor does it reflect the views of FINRA or its staff.

Respondent 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; that Respondent agreed to its provisions voluntarily; and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein and the prospect of avoiding the issuance of a Complaint, has been made to induce me to submit it.

9/27/07
Date

Respondent
Banc One Securities Corporation

By: D. Lannister President
[Name/Title]

Reviewed by:



Dennis E. Glazer, Esq.
Sheldon L. Pollock, Esq.
Davis Polk & Wardwell
Counsel for Respondent
450 Lexington Avenue
New York, N.Y. 10017

Accepted by FINRA:

November 1, 2007
Date

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



Samuel L. Israel
Director and Chief Counsel
FINRA Department of Enforcement
1801 K Street NW
Suite 800
Washington, DC 20006
202-974-2800

ATTACHMENT A

Zero Trade Accounts

OIA Customer Name	Customer Account No.	Restitution Owed
S. A.		\$166.36
G. C.		\$748.96
E. D.		\$1,930.95
B. G.		\$7,816.20
M. J.		\$188.52
M. K.		\$916.55
P. L.		\$1,545.70
C. M.		\$2,612.40
J. M.		\$2,913.18
J. P.		\$2,538.89
A. R.		\$670.82
C. S.		\$748.96
B. S.		\$2,352.69
R. T.		\$9,574.32
K. W.		\$7,384.99
K. W.		\$380.28
TOTAL		\$42,489.77

Accounts Below \$25,000

OIA Customer Name	Customer Account No.	Restitution Owed
L. L.		\$1,870.88
M. P.		\$935.44
K. S.		\$935.44
TOTAL		\$3,741.76