

**NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. CAF 040116**

**TO: Department of Enforcement
NASD**

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

Pursuant to Rule 9216 of NASD Code of Procedure, Respondent Banc One Securities Corporation ("BOSC" or the "Respondent") 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 Respondent alleging violations based on the same factual findings.

Respondent 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 Enforcement and National Adjudicatory Council ("NAC") Review Subcommittee or Office of Disciplinary Affairs ("ODA"), 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 Respondent; and
3. If accepted:
 - a. this AWC will become part of Respondent's permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against it;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about Respondent'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. 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 allegation in this AWC or creating the impression that the AWC is without factual basis. Nothing in this provision affects Respondent's testimonial obligations or right to take legal or factual positions in litigation or other legal proceedings in which NASD is not a party.

Respondent 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:

Banc One Securities Corporation ("BOSC"), which has its principal place of business at 1111 Polaris Parkway, Columbus, Ohio, has been a registered broker-dealer and a member of NASD since 1986. BOSC is a wholly owned subsidiary of Banc One Capital Holding Corporation, which in turn is indirectly owned by J.P. Morgan Chase.

BOSC has no relevant disciplinary history.

I.

WAIVER OF PROCEDURAL RIGHTS

Respondent 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 it;
- 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.

II.

ACCEPTANCE AND CONSENT

Respondent hereby accepts and consents, without admitting or denying the allegations or 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:

Summary

From November 1, 2002 through November 11, 2003 (the "relevant period"), BOSC failed to establish and maintain a supervisory system and written procedures reasonably designed to prevent late trading in mutual fund transactions. Late trading is the execution and processing of a mutual fund order at a net asset value (NAV) calculated as of a time prior to the receipt by the broker-dealer of such order. Late trading is a violation of Rule 22c-1 under the Investment Company Act of 1940 ("Rule 22c-1") and NASD Conduct Rule 2110.

As described in detail below, BOSC's system and procedures were deficient in certain respects in that they provided opportunities for customers to place orders after the close of the market and still receive the current day's NAV. The firm's written supervisory procedures failed to inform its registered representatives that entering customer orders for same day NAV after 4:00 p.m. was prohibited unless the trade was received before 4:00 p.m. Further, the firm's supervisory system failed to prevent representatives from entering orders after 4:00 p.m. and failed to detect and prevent any trades that were entered after 4:00 p.m. that received the current day's NAV. As a result, the firm's supervisory procedures and system were not reasonably designed to prevent and detect late trades.

Additionally, from May 2, 2003 through November 11, 2003, BOSC failed to record order receipt times in accordance with Section 17(a) of the Securities Exchange Act of 1934 and Rule 17a-3 thereunder, as amended effective May 2, 2003, and NASD Conduct Rule 3110, and failed to establish and maintain a supervisory system and written procedures reasonably designed to ensure that the firm correctly recorded mutual fund order receipt times.

Accordingly, BOSC violated NASD Conduct Rules 3010, 3110 and 2110 and Section 17(a) of the Exchange Act and Rule 17a-3 thereunder.

Background

Most mutual funds are priced once per day at market close. Pursuant to Rule 22c-1, trades received at or after market close must be priced at the next day's net asset value ("NAV"). Late trading is the practice of processing a mutual fund order at an NAV calculated as of a time prior to the receipt by the broker-dealer of such order. Late trading therefore violates Rule 22c-1 and NASD Rule 2110.

Rule 22c-1 -- the "forward pricing" rule -- places all purchasers of mutual fund shares on equal footing as to price and information on any one day. Broker-dealers that execute and process late trades for their customers unfairly provide a possible information advantage to one investor over other investors based on after-close news that could affect the value of the mutual fund's holdings, but which is not reflected in the NAV pricing for that day. Member firms executing mutual fund orders must establish and maintain supervisory systems and procedures reasonably designed to detect and prevent the occurrence of late trading. See NASD Notice to Members 03-50.

BOSC's Mutual Fund Order Processing Systems

During the relevant period, BOSC customers could place mutual fund orders in a number of different ways. Customers could place orders through the firm's representatives via a face-to-face meeting at a BOSC office or a telephone call. Customers could also place mutual fund orders by calling the BOSC Trade Desk in Chicago directly.¹

BOSC processed most of its customers' mutual fund orders through its clearing firm, Pershing, LLC ("Pershing"), by entering those orders into one of two Pershing back-office systems: web-based NetExchangePro ("NetXPro") or the mainframe MFNL system.² Whether the trade was entered into MFNL or NetXPro depended upon when during the relevant period the order was received and the preference of the individual entering the order. In either case, the representative manually typed the order into the Pershing system.

BOSC Failed to Implement Systems and Procedures Reasonably Designed to Prevent and Detect Late Trading

BOSC's supervisory system and procedures were inadequate to ensure that mutual fund orders received after the close of the market were processed at the

¹ Customers could use two other methods to place orders that are not relevant here. First, customers could place orders using an Internet application called NetExchange Client, known to BOSC customers as One Net. NetExchange Client or One Net did not accept customer orders after 4:00 p.m. Second, customers could send in a check and application directly to the mutual fund company. In those instances, the transaction was not executed through Pershing.

² NetXPro and MFNL differed in that NetXPro was more "user friendly" and in the cut-off times for orders entered into the two systems, as explained below.

next day's NAV. BOSC's systems provided the opportunity for customers to communicate orders to the firm's representatives after the close of the market, and for the firm's representatives to process such orders, up to 30 minutes after the market close and still receive the current day NAV.

Therefore, the firm's systems and procedures were deficient in the following respects. First, during the relevant period, the firm placed no restrictions on the ability of its representatives to enter orders, regardless of when such orders were received, into NetXPro between 4:00 and 4:15 p.m. Second, representatives could process mutual fund orders during and after this fifteen-minute window at the current day NAV by entering the orders into MFNL or other mainframe order entry systems. Third, the firm allowed trade corrections to be made after market close and still receive the current day NAV without having systems and procedures in place to determine whether the order was received before 4:00 p.m. The firm's supervisory system and procedures did not require managers to confirm that orders processed in this manner after the close of the market had been received prior to 4:00 p.m. and the firm had no independent means to confirm that the orders had in fact been received prior to 4:00 p.m.

Despite these opportunities for late trading, the firm did not establish, maintain or enforce written procedures reasonably designed to prevent late trades from being processed. The firm's written procedures did not instruct representatives that this activity was prohibited. During the relevant period, the firm did not have surveillance or auditing systems in place to verify that all mutual fund orders received after 4:00 p.m. and submitted to Pershing by registered representatives or trade desk personnel had not been executed and processed at the current day's NAV. Further, the firm's written procedures did not require representatives to enter mutual fund orders promptly after receipt, nor did they prohibit individuals from canceling or modifying otherwise error-free orders after the close of the market and receive the current day NAV.

As a result of the foregoing deficiencies in BOSC's supervisory system and written procedures, BOSC, during the relevant period of November 1, 2002 to November 11, 2003 processed approximately 5400 mutual fund orders after market close at the current day's NAV, when either the available evidence was inconclusive as to whether the order was received before 4:00 p.m., or when the evidence provided indicated that the order was received after the close of the market. These orders represented 1.75% of the approximately 306,000 non-systematic mutual fund orders handled by the firm during the review period.³ Accordingly, BOSC violated NASD Rules 3010 and 2110.

³ BOSC also processed approximately 300,000 additional systematic orders during the relevant period. Systematic trades are computer generated trades that occur automatically on specific days and times such as periodic 401(k) allocations.

**BOSC Failed to Implement Systems and Procedures
Reasonably Designed to Record Mutual Fund Order Receipt Times, and In
Fact Did Not Record Such Times, In Accordance With SEC and NASD Rules**

On November 2, 2001, the SEC amended its books and records rules, Rules 17a-3 and 4, promulgated under Section 17(a) of the Securities Exchange Act of 1934 and announced that the amendments would become effective on May 2, 2003. Pursuant to these amendments, a broker dealer is required to record the time the firm received a customer order on the order ticket, even if the order is subsequently transmitted for execution.⁴ The SEC intended for these amendments to provide critical trade information to securities regulators to aid their examinations and investigations.⁵

BOSC did not comply with Rule 17a-3 as amended. Rather than record the order entry time for a mutual fund order as the time it was received from the customer, BOSC, during the period May 2, 2003 through November 11, 2003, recorded the order entry time as the time the representative entered the order into one of the available trading systems. In the case of traders on the Chicago trading desk, the order entry time was recorded as the time the trader received the telephone call from the representative. As a result of these deficiencies in BOSC's systems and procedures, it is unclear if the receipt times for thousands of mutual fund orders received by BOSC during the period May 2, 2003 through November 11, 2003 are accurate.

Further, prior to September, 2003 the firm made no effort to determine when an order was in fact received from the customer, and failed to adopt any written procedures requiring representatives to record or otherwise memorialize this information. During this time, it appears that BOSC also had no exception reporting structure in place to monitor whether or not order receipt time information was being entered, or entered in accordance with Rule 17a-3 and NASD Conduct Rule 3110.

Accordingly, BOSC failed to have systems and procedures in place reasonably designed to comply with the requirements of Rule 17a-3, as amended, and NASD Conduct Rule 3110 and in fact did not record order receipt times in accordance with NASD Conduct Rules 3110 and Section 17(a) of the Exchange Act and Rule 17a-3 thereunder. Therefore, BOSC violated NASD Conduct Rules 3010, 3110, and 2110, and Section 17(a) of the Exchange Act and Rule 17a-3, as amended, thereunder.

⁴ NASD Conduct Rule 3110(a) requires member firms to make and preserve books and records in conformity with NASD Rules and as proscribed by Rule 17a-3 and 17a-4 of the Exchange Act.

⁵ *Books and Records Requirements for Brokers and Dealers Under the Securities Exchange Act of 1934*, Release No. 34-44992 (November 2, 2001).

SANCTIONS

Respondent consents to the imposition, at a maximum, of the following sanctions:

- A censure; and
- A fine in the amount of \$400,000.

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

III.

OTHER MATTERS

- A. Respondent 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. 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 NASD, nor does it reflect the views of NASD or its staff.**
- B. Respondent agrees to pay any monetary sanctions imposed on it 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 it proposes to pay any fine imposed.**
- C. Respondent 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.**

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, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce Respondent to submit it.

Banc One Securities Corporation

Date: November 29, 2004

By: Michael J. Reed
Name: Michael J. Reed
Title: Executive Vice President

Reviewed by:

John Baughman, Esq.
Paul, Weiss, Rikkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019

Counsel for Respondent

Accepted by NASD:

Date

Director, Department of
Enforcement

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

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, and that no offer, threat, inducement, or promise of any kind, other than the terms set forth herein, has been made to induce Respondent to submit it.

Banc One Securities Corporation

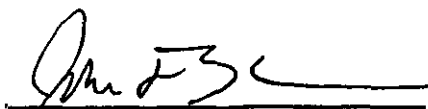
Date: 12/7/04

By: _____

Name: _____

Title: _____

Reviewed by:



John Baughman, Esq.
Paul, Weiss, Riffkind, Wharton & Garrison LLP
1285 Avenue of the Americas
New York, NY 10019

Counsel for Respondent

Accepted by NASD:

12/22/04
Date


Director, Department of
Enforcement

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