

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
CLG050031

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 ("MONT/BOFA" or the "firm")¹ 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

¹ Bank of America Securities LLC changed its MPID from MONT to BOFA on June 13, 2003.

- 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:

MONT/BOFA entered the securities industry in April 1990 as a member of NASD and its registration remains in effect. On March 28, 2003, NASD accepted an AWC by which MONT/BOFA 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.

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 the 2002 Trading and Market Making Surveillance Examinations of MONT/BOFA, MRD200236924 and the 2003 Trading and Market Making Surveillance Examinations of MONT/BOFA, MRD200341903.

In MRD200236924, the staff reviewed:²

- 25 customer sale transactions, for compliance with NASD Rules 3110 and 3370 and SEC Rule 10a-1;
- 20 proprietary sale transactions, for compliance with NASD Rule 3370 and SEC Rule 10a-1;
- 45 sales in NNM securities, for compliance with NASD Rule 6130;
- 12 short sales in NNM securities, for compliance with NASD Rule 3350;
- 38 limit orders in market making securities, for compliance with NASD Rules 2110, IM-2110-2, 6440 and 2320; and SEC Rule 11Ac1-4;
- seven market orders executed as principal, for compliance with NASD Rule 2320;
- 38 limit and market orders executed in a principal or riskless principal capacity, for compliance with capacity reporting under NASD Trade Reporting and ACT rules;
- the firm's establishment and implementation of "regular & rigorous" reviews of the execution quality of orders sent to other market centers for execution, for compliance with NASD Rules 2320 and 3010, based on written supervisory procedures in effect during July 2002;
- 10 customer transactions in OTCBB and/or OTC equity securities, for compliance with NASD Rules 3110(b) and 2320;
- registration status of supervisory staff responsible for supervision of the Firm's trading and market making activities during July 2002, reviewed for NASD Rules 1020 to 1040; and
- the firm's establishment and implementation of a supervisory system and written supervisory procedures, for compliance with NASD Rule 3010, based on the written supervisory procedures in effect during July 2002.

² Unless otherwise noted, the items reviewed were for the period July 30-31, 2002.

In MRD200341903, the staff reviewed:³

- 31 customer sale transactions, for compliance with NASD Rules 3110 and 3370 and SEC Rule 10a-1;
- nine proprietary sale transactions, for compliance with NASD Rule 3370 and SEC Rule 10a-1;
- 30 sales in NNM securities, for compliance with NASD Rule 6130;
- one short sale in NNM securities, for compliance with NASD Rule 3350;
- one short sale in CQS securities, for compliance with SEC Rule 10a-1 (Tick Test);
- 14 limit orders in market making securities, for compliance with NASD Rules 2110, IM-2110-2, 6440 and 2320; and SEC Rule 11Ac1-4;
- four market orders executed as principal, for compliance with NASD Rule 2320;
- 30 limit and market orders executed in a principal or riskless principal capacity, for compliance with capacity reporting under NASD Trade Reporting and ACT rules;
- 10 principal trades reported as riskless principal, for compliance with the SEC section 28(e) safe harbor on soft dollar compensation;
- 25 trades reported in market making securities, for compliance with SEC Rule 11Ac1-5;
- 24 orders and 3 order types of security/size/order data statistics published on the firm's monthly order execution report for trade dates in May 2003, for compliance with SEC Rule 11Ac1-5;
- data published on the firm's quarterly order routing report, for compliance with SEC Rule 11Ac1-6 for the report including the second quarter of 2003;
- the firm's establishment and implementation of "regular & rigorous" reviews of the execution quality of orders sent to other market centers for execution, for compliance with NASD Rules 2320 and 3010, based on written supervisory procedures in effect during July 2003;
- 10 customer transactions in OTCBB and/or OTC equity securities, for compliance with NASD Rules 3110(b) and 2320;
- 11 persons engaged in the firm's trading and market making activities, for compliance with NASD Registration rules, from trading staff in July 2003;
- 154 order/trade records prepared and maintained for the above samples, for compliance with NASD Rule 3110 and SEC Rules 17a-3 and 17a-4 from trade dates July 22 and 23, 2003, and various trades dates in January, February, March, and May 2003;
- 330 trades reported to ACT, for compliance with NASD Trade Reporting and ACT rules from trade dates July 22 and 23, 2003, and various trades dates in January, February, March, and May 2003;

³ Unless otherwise noted, the items reviewed were for the period July 22-23, 2003.

- 87 customer trade confirmations, for compliance with SEC Rule 10b-10 from trade dates July 22 and 23, 2003, and various trades dates in January, February, March, and May 2003; and
 - the firm's establishment and implementation of a supervisory system and written supervisory procedures, for compliance with NASD Rule 3010, based on the written supervisory procedures in effect during July 2003.
- A. The firm 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:

MRD200236924

1. MONT/BOFA failed to notify customers at least annually of the availability upon request of the venues to which customers' orders were routed for execution in the six months prior to the request, whether the orders were directed or non-directed, and the time of the transactions, if any, that resulted from such orders.
2. The conduct described in paragraph one constitutes a violation of SEC Rule 11Ac1-6(c)(2).
3. 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 SEC Rules 11Ac1-5 and 11Ac1-6, trade reporting, and OATS data submission. Specifically, the firm's supervisory system did not include written supervisory procedures providing for at least one of the following: (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 (4) a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented.
4. The conduct described in paragraph three constitutes separate and distinct violations of NASD Conduct Rules 2110 and 3010.

5. MONT/BOFA, on 30 occasions when it acted as principal for its own account, failed to provide written notification disclosing to its customer that it was a market maker in each such security.
6. The conduct described in paragraph five above constitutes separate and distinct violations of SEC Rule 10b-10.
7. MONT/BOFA transmitted to OATS nine reports that contained inaccurate, incomplete, or improperly formatted data, and in one instance failed to submit required information to OATS. These inaccurate and/or incomplete reports and failure to submit required data represented 20 percent of all reports transmitted by the firm during the review period.
8. The conduct described in paragraph seven above constitutes separate and distinct violations of NASD Marketplace Rule 6955(a) and a violation of Conduct Rule 2110.
9. 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 SEC Rules 11Ac1-5 and 11Ac1-6, anti-intimidation and coordination, trade reporting, compliance with affirmative determination and bid test rule requirements, and OATS data submission. Specifically, the firm's supervisory system did not include written supervisory procedures providing for at least one of the following: (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 (4) a statement as to how the completion of the step(s) included in the written supervisory procedures should be documented.
10. The conduct described in paragraph nine constitutes separate and distinct violations of NASD Conduct Rules 2110 and 3010.

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

Censure and a fine of \$25,000 (consisting of, for MRD200236924, a \$5,000 fine for SEC Rule 11Ac1-6 violation and a \$5,000 fine for supervisory violations; and for MRD200341903, a \$5,000 fine for SEC Rule 10b-10 violations, a \$5,000 fine for OATS violations, and a \$5,000 fine for supervisory violations.

An undertaking to revise the firm's written supervisory procedures with respect to the areas described in paragraphs IIA 3 and 9. 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 3 with respect to MRD200236924 and IIA 9 with respect to MRD200341903; and, (3) the date the revised procedures were implemented.

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

III.

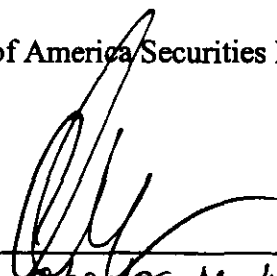
OTHER MATTERS

- 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.

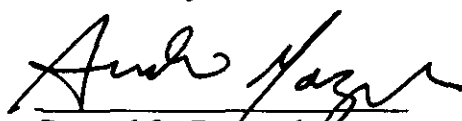
January 3, 2005
Date

Banc of America Securities LLC

By: 
Name: Charles M. Williams

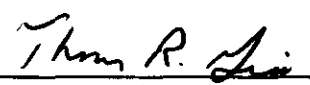
Title: Chief Administrative Officer

Reviewed by:


Counsel for Respondent

Accepted by NASD:

3/22/05
Date


Thomas R. Gira
Senior Vice President
Department of Market Regulation

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

Attachments:
Standard Election of Payment Form