

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. E062004038601

TO: Department of Enforcement
NASD

RE: Banc of America Investment Services, Inc., Respondent
[CRD No. 16361]

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

We understand 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 us; and
3. If accepted:
 - a. this AWC will become part of our permanent disciplinary record and may be considered in any future actions brought by NASD or any other regulator against us;
 - b. this AWC will be made available through NASD's public disclosure program in response to public inquiries about our 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. We 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 our testimonial obligations or right to take legal or factual positions in litigation or other

000007029 2007

proceedings in which NASD is not a party.

We also understand that our 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 of America Investment Services, Inc. has been a member of NASD since December 23, 1985. During all periods mentioned herein, Banc of America Investment Services, Inc. was a registered broker-dealer with the United States Securities and Exchange Commission and a member of NASD, which registration and membership remain currently in effect. Banc of America Investment Services, Inc. ("BAI" or "the Firm") has been the subject of the following formal disciplinary actions:

August 2006 (NASD Case No. 2005001870-01). The Firm violated NASD Conduct Rules 2110, 3010, and 6230(a) related to TRACE reporting. The Firm reported transactions late, reported transactions it was not required to report, and had an inadequate supervisory system related to TRACE. The Firm agreed to a \$17,500 fine and undertakings.

June 2005 (NASD Case No. C07050036). The Firm violated MSRB Rules G-14 and G-27 relating to municipal trade reporting by failing to timely report transactions and failing to adequately monitor its trade reporting system. The Firm agreed to a fine of \$90,000.

November 2004 (NASD CAF040101). The Firm violated Article V, sections 2(c) and 3(b) of NASD's By-laws, and NASD Rules 2110 and 3010 related to Form U-4 and Form U-5 filings. BAI filed at least 170 late amendments to Forms U-4 and U-5, which represented approximately 56% of the required amendments to the Forms U-4 and U-5. The Firm agreed to a fine of \$200,000 and undertakings.

I.

WAIVER OF PROCEDURAL RIGHTS

We specifically and voluntarily waive the following rights granted under NASD's Code of Procedure:

- A. To have a Formal Complaint issued specifying the allegations against us;
- 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, we specifically and voluntarily waive 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.

We further specifically and voluntarily waive 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

- A. We hereby accept and consent, without admitting or denying the findings, and solely for the purposes of this proceeding and any other proceeding in which NASD is a party, prior to a hearing and without adjudication of any issue of law or fact, to the entry of the following findings by NASD:

Banc of America Investment Services, Inc. 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. Background

BAI (or the "Firm") failed to obtain customer information for certain high-risk accounts. Specifically, BAI's anti-money laundering procedures required the Firm to obtain the names of true beneficial owners for over thirty domestic brokerage accounts (the "Accounts") maintained by private investment companies located in the Isle of Man. In fact, BAI received numerous communications from its clearing

firm requesting beneficial ownership information and pointing out circumstances that could signal suspicious activity. Although BAI was engaged in discussions with the customers about providing the beneficial ownership information, BAI failed to obtain the information and the clients continued to conduct transactions in the accounts. Some at BAI expressed concerns that insisting upon the beneficial ownership information might cause the account holders to move to another institution.

The Firm did not require the customer to provide the names of the beneficial owners despite the fact that a senior lawyer at BAI and its risk committee had determined that the Firm's procedures required that it obtain the information. Further, as detailed below, the Firm failed to obtain the names of the beneficial owners and to provide them to its clearing firm, despite repeated and ongoing requests by the clearing firm for the information.

Separately, during this time period, BAI did not have adequate communication with its parent bank, a financial institution with its own independent reporting obligations, to ensure that BAI's independent SAR filing obligations were met.

2. BAI Failed to Implement and Enforce its AML Procedures

The Firm failed to implement and enforce its own AML procedures with respect to certain Accounts, requiring identification of the true identity of all clients and beneficial owners requesting Firm products and services. Although the Firm's procedures, a senior lawyer at BAI, and the Firm's risk committee recognized the need to acquire the information, the Firm allowed transactions to be conducted in the accounts without obtaining the information. The Firm, without supporting documentation, made assumptions that it knew the family behind the Accounts. The Firm also assumed based on its history with the family supposedly behind certain accounts, that it would not engage in drug trafficking or terrorist financing and that, therefore, the funds in those accounts were not the result of or being used to finance illegal activity.

From August 2003 through November 22, 2004, BAI failed to implement adequately its AML program with respect to certain accounts to achieve and monitor compliance with the requirements of the Bank Secrecy Act, 31 U.S.C. §5311, et seq., and the regulations promulgated thereunder.

- Beginning in August 2003, BAI maintained 34 brokerage accounts for offshore entities, apparently affiliated with one family (the "Accounts"). The offshore entities were located in the Isle of Man, collectively held 79-

93 million dollars in assets, and engaged in multi-million-dollar wire transfers across international boundaries. In 2003, based on its own risk assessment analysis, BAI had in place AML procedures requiring BAI to obtain the names of the beneficial owners before conducting substantial transactions in the Accounts. BAI, however, allowed the Accounts to engage in large transactions, even while BAI did not have beneficial ownership information for them.

The Firm did not obtain the names of the beneficial owners and never restricted the activities in the Accounts. From August 2003 to October 22, 2004, the Firm did not require the names of the beneficial owners despite the advice from a senior lawyer at the Firm in March 2004 that the Firm should obtain the names of the beneficial owners, and a determination by the BAI risk committee in May 2004 that the information must be obtained. Further, as detailed below, the Firm failed to obtain the names of the beneficial owners, and to provide them to its clearing firm, despite repeated and ongoing requests by the clearing firm for the information.

Without the names of the beneficial owners, the Firm could not reasonably evaluate whether activity in the Accounts, which had been brought to the Firm's attention by its clearing firm, was suspicious and reportable.

Specifically:

August 2003	The Accounts opened at BAI; BAI's written procedures required that the Firm obtain the names of the beneficial owners of the Accounts.
1/15/04	Clearing firm flags transactions involving one of the Accounts and sends an email requesting information. Specifically, the clearing firm notes "this account holding mostly a cash position. The citizenship on the account is indicating the Isle of Man. Consistent wiring activity has become apparent both into and out of the account, the majority of which are involving third parties....No real investments are made in this account, although it does hold some stock." The clearing firm asked BAI for the purpose of the account, why the account was acting as a monetary

	conduit, asked for information regarding the relationship between the account and the third parties involved in the transactions, and asked for the identity of the beneficial owner of the account.
2/18/04	Clearing firm sends a follow-up an e-mail, in which it seeks additional information. The clearing firm points out that the company may not be "reporting the ownership of shares adequately." The request of the clearing firm ends with the statement "This is an important issue that I do not believe can be explained in a paragraph and without documentation. I know that this issue will take a lot of time to resolve, but I do not believe that we understand their business, and I want to make sure they are in compliance with SEC regulations."
3/25/04	Branch Manager of BAI sends e-mail to a senior lawyer at BAI about the Accounts, stating "What we probably cannot do is get a list of the names, addresses, and social security numbers of the beneficiaries."
3/25/04	A senior lawyer at BAI responds that BAI's policies require the Firm to obtain this information, stating "I believe that our policies require that we know the I'd [identity] of all beneficiaries as required by law. If the trustees or beneficiaries are unwilling to disclose, I believe that leaves us and [the clearing firm] with little option."
3/31/04	In a response to a request from his supervisor to "Please find out if we have any way to get the beneficial owners," BAI registered representative for the Accounts responds "as it stands right now, No on beneficial owners"
April 2004	Clearing firm blocked commissions on one of the Accounts, and reiterates its need for beneficial ownership information. Clearing firm also threatened to shut down all of the Accounts due to lack of ownership information, but determines not to do so based on perceived progress. The representative of the Account holders reports that the Account holders will provide beneficial ownership information if a confidentiality

Letter of Acceptance, Waiver,
And Consent
Banc of America Investment Services, Inc.
Case No. E062004038601
Page No. 7

	agreement is in place.
4/23/04	Registered representative responsible for the Accounts begins exploring a move of the Accounts to Banc of America Securities, LLC (a self-clearing affiliate broker-dealer).
4/29/04	Clearing firm rejects proposals that beneficial owners be disclosed to a third party other than BAI and the clearing firm, stating "By not knowing the names of the beneficial owners does not allow us to fulfill our Patriot Act obligations."
5/11/04	Contrary to the position taken by the Account holders in April, one of the representatives of the Account holders declines to provide the requested beneficial ownership information, incorrectly representing that Isle of Man law prohibits the provision of such information and attaching a letter from counsel to that effect.
5/25/04	A member of Bank of America's legal department explained to the BAI registered representative for the Accounts that there is a risk of a regulatory violation if the Bank does not obtain the beneficial ownership information.
5/27/04	Email from Banc of America Private Bank executive to BAI's risk committee states that the risk committee will discuss eleven of the Accounts. The e-mail sets forth the dollar value of the business that the family supposedly behind the Accounts has brought to the private bank and the broker-dealer, including lines of credit of \$54 million, checking accounts with average balances over \$7 million, mortgages with \$22.1 million in outstanding balances, an airplane loan of \$2.7 million, overnight investing with BAI of \$5 million and bank revenues for 2003 of over \$1.2 million. The email states "[t]he directorates of the offshore trusts do not want to disclose the beneficial owners for two reasons: they are not being asked to do it anywhere else and they need confidentiality." The e-mail concludes "We would definitely lose the offshore business to someone else which would open the door for another institution to take the loan and

	deposit business as well."
5/28/04	BAI's risk committee determines that BAI needs to obtain the names of the beneficial owners.
June 1 to July 15, 2004	BAI proposes to the clearing firm that beneficial ownership information be disclosed to a law firm rather than directly to BAI. The clearing firm rejects the proposal and outlines regulatory concerns beyond beneficial ownership information, stating that BAI should be as nervous about the Accounts as the clearing firm and further stating that if the activity resulted in any exception reports that the clearing firm would file a suspicious activity report.
July 15 to Oct. 2004	BAI continues to conduct transactions on behalf of the Accounts while working with the clearing firm to compile a list of questions regarding the Accounts.
Fall 2004	BAI receives subpoenas from law enforcement seeking information about the Accounts.
10/22/04	BAI demands beneficial ownership information from the Account holders of the Accounts.
10/28/04	Account holders do not provide the information, but instead ask for copies of the legal authority pursuant to which BAI makes the requests.
11/08/04	BAI makes a decision to close the Accounts.

- Due to the failure to implement its own procedures requiring that it obtain beneficial ownership information, the Firm could not reasonably evaluate whether activity in the Accounts was suspicious and reportable. Although the clearing firm repeatedly raised issues for many months about the beneficial ownership information, the Firm did not obtain the specific beneficial ownership information for the Accounts and provide it to the clearing firm.

3. Separately, the Firm relied on its parent corporation, a financial institution with its own independent reporting obligations, to determine whether a suspicious activity report ("SAR") should be filed. At the time, the Firm did not have sufficient procedures in place to ensure that there was adequate communication between the Firm and its parent corporation as to whether a SAR should be filed and whether a SAR had in fact been filed. Consequently, the Firm's processes did not make certain that its independent obligations regarding the filing of a SAR were met. The Firm was also unable to reliably incorporate the information that a SAR had been filed into an ongoing risk assessment of its customers and to evaluate account activity going forward.

Such acts, practices and conduct constitute separate and distinct violations of NASD Conduct Rules 2110 and 3011(a) and (b) and MSRB Rule G-41 by Banc of America Investment Services, Inc.

B. We also consent to the imposition, at a maximum, of the following sanctions:

A censure and a monetary fine in the amount of \$3,000,000 to be assessed against Banc of America Investment Services, Inc.

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

III.

OTHER MATTERS

- A. We understand that we may attach a Corrective Action Statement to this AWC that is a statement of demonstrable corrective steps taken to prevent future misconduct. We understand that we 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.

Letter of Acceptance, Waiver,
And Consent
Banc of America Investment Services, Inc.
Case No. E062004038601
Page No. 10

- B. We agree to pay any monetary sanctions imposed on us upon notice that this AWC has been accepted and that such payments are due and payable as noted above and have attached an Election of Payment form showing the method by which we propose to pay any fine imposed.
- C. We specifically and voluntarily waive any right to claim that we are unable to pay, now or at any time hereafter, any monetary sanction imposed in this matter.

We certify that we have read and understand all of the provisions of this AWC and have 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 us to submit it.

December 20, 2006_____
Date

Banc of America Investment Services, Inc.

By: Ronald J. Newth

Ronald J. Newth, SVP
[Name and Title]

Reviewed by:

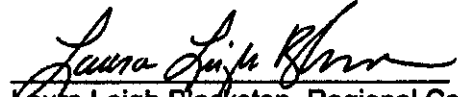
Counsel for Respondent
Banc of America Investment Services, Inc.

Letter of Acceptance, Waiver,
And Consent
Banc of America Investment Services, Inc.
Case No. E062004038601
Page No. 11

Accepted by NASD:

January 26, 2007
Date

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


Laura Leigh Blackston, Regional Counsel
NASD, District No. 5
1100 Poydras Street, Suite 850
New Orleans, Louisiana 70163-0802
Phone: 504/522-6527
FAX: 504/522-4077

District Director
Keith E. Hinrichs
NASD, District No. 5
1100 Poydras Street, Suite 850
New Orleans, Louisiana 70163-0802

Attachment: Election of Payment Form