

NASD
LETTER OF ACCEPTANCE, WAIVER AND CONSENT
NO. E102003158301

TO: Department of Enforcement
NASD

RE: Quick & Reilly, Inc. (BD No. 11217) ("Quick & Reilly")
now merged with and into
Banc of America Investment Services, Inc. (BD No. 16361)
Respondent

Pursuant to Rule 9216 of NASD 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 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 Respondent;
 - 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 finding in this AWC or create the impression that the AWC is

without factual basis. Nothing in this provision affects the 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:

Quick & Reilly was a member of NASD from May 1983 through December 2004. Quick & Reilly's parent, FleetBoston Financial Corporation, merged with Bank of America Corporation in 2004. As part of that transaction, Quick & Reilly was merged into Respondent. During the Relevant Period (defined below), Quick & Reilly was owned by FleetBoston Financial Corporation and conducted a general retail securities business from Quick & Reilly offices and from other Quick & Reilly locations at Fleet Bank branches.

Quick & Reilly has no relevant formal disciplinary history with NASD, the Securities and Exchange Commission, any self-regulatory organization or any state securities regulator.

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 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.

II.

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 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 December 18, 2001, through March 5, 2003 (the "Relevant Period"), Quick & Reilly failed to maintain and enforce an adequate system to supervise the activities of certain registered representatives, with respect to the sale of variable annuities. The system was not reasonably designed to conduct an adequate suitability review of certain variable annuity transactions in that the Designated Supervisors¹ were not supplied with information that was material to determining whether a transaction was suitable. Specifically, in assessing the transactions the Designated Supervisors were not supplied with the time horizon information provided by the customer for the variable annuity transaction.

NASD Conduct Rule 3010 requires firms to establish and maintain a system to supervise the activities of its registered representatives that is reasonably designed to achieve compliance with applicable securities laws and regulations and NASD Rules. NASD Conduct Rule 2310 requires that, when recommending that a customer purchase, sell or exchange a security, that recommendation be suitable. Quick & Reilly's supervisory system failed to comply with NASD Conduct Rules 3010 and 2110.

Facts & Analysis

A variable annuity is an insurance contract that offers a range of investment options for the owner. The value of a variable annuity generally is dependent on the performance of the investments chosen. Variable annuities typically allow investors to allocate their money among a variety of subaccounts, which can be mutual fund-style investments or provide a fixed return. Because the contract owner assumes the investment risks, variable annuities are securities. Most

¹ The "Designated Supervisor" was the principal with supervisory responsibility for approving the variable annuity transactions of the Roaming Broker (defined below).

variable annuities are designed to be long-term investments for retirement.

A customer's investment time horizon is material to determining suitability. Like Class B shares of mutual funds, many variable annuities do not charge a front-end sales charge, but they do impose asset-based sales charges or surrender charges. These charges normally decline and eventually disappear as the variable annuity contract ages. Surrender charges generally last from six to eight years, but can be longer or shorter for specific variable annuity products.

Additionally, withdrawals from a variable annuity before an investor reaches the age of 59½ are generally subject to a 10% tax penalty. Further, certain variable annuities have optional benefits that add to the annual cost of holding the contract. Some of those benefits require holding periods before they can be realized. As such, an investor's time horizon is an important factor to consider in determining whether a variable annuity transaction is suitable for a particular investor.

At Quick & Reilly, when a Roaming Broker² sold a variable annuity to a customer, that broker would complete the annuity application as well as certain Quick & Reilly forms, including a Variable Annuity Acknowledgment Form ("VAAF"), and send the paperwork to the firm's administrative processing center located in Albany, New York. The Roaming Broker also sent the subaccount allocations for the transaction directly to that broker's Designated Supervisor. The administrative processing center generated a Daily Variable Annuity Transaction Log (the "Log") that captured certain information about the transactions sent in by Roaming Brokers. The Log was emailed to the appropriate Designated Supervisor for review. The Designated Supervisor reviewed the variable annuity transaction based on the information on the Log, the subaccount allocations provided by the Roaming Broker and the firm's electronic system for capturing customer information from account opening documents. The Designated Supervisor used that information to determine whether the transactions on the Log were suitable and to record his or her approval or rejection of the transactions.

In addition to the review by Designated Supervisor, a registered principal at the Albany administrative processing center (the "Albany Principal") performed a suitability review of the variable annuity transactions. The Albany Principal reviewed the paperwork for a transaction, including the VAAF that contained the customer's transaction-specific time horizon information. The Albany Principal could, and did, question transactions, but did not have the authority to reject transactions because the ultimate responsibility for doing so was with the Designated Supervisor.

² Quick & Reilly had two types of brokers during the Relevant Period: Roaming Brokers who worked out of Quick & Reilly locations at various Fleet Bank branches; and brokers who worked in a specific Quick & Reilly branch. Roaming Brokers accounted for the vast majority, approximately 95%, of overall variable annuity sales at Quick & Reilly during the Relevant Period. The supervisory review process described in this AWC was applied exclusively to Roaming Brokers.

During the Relevant Period, Quick & Reilly's policies provided that a Designated Supervisor should review customer information, including time horizon information, in order to determine whether the transaction was suitable. Quick & Reilly's Annuity Suitability Policy, Procedures and Guidelines provided that a variable annuity sale could be unsuitable based on the customer's need for liquidity or for a short-term investment. However, during the Relevant Period, Designated Supervisors were not provided with the customer's time horizon information from the VAAF for most of the Roaming Brokers' variable annuity transactions that they reviewed and approved.

Although the Designated Supervisor could access the time horizon ranges reflected in the firm's database of customer information, that information was not sufficient because it was obtained from new account forms or updates of those forms and did not necessarily reflect the time horizon provided by customers for specific variable annuity transactions. Further, the firm's database of customer information captured ranges (i.e. 5-10 years) that did not necessarily provide sufficient information to assess suitability for variable annuity transactions. Finally, the firm's procedures required that the Designated Supervisor compare the customer information in the database to that on the Log for potential discrepancies, making exclusive reliance on the customer's time horizon ranges stated in the database for assessment of the suitability of the variable annuity transaction at odds with the firm's procedures.

Despite the fact that the Quick & Reilly procedures required that Designated Supervisors review a customer's investment time horizon in determining if a variable annuity sale was suitable, and the suitability policy recognized the importance of knowing a customer's time horizon needs, Designated Supervisors reviewed and approved thousands of variable annuity transactions without having the transaction specific time horizon information from the VAAs appearing on the Log.

As a result of this deficiency, Designated Supervisors approved transactions without information material to a suitability determination. Further, transactions were approved in cases where the time horizon stated by the customer should have caused the Designated Supervisor to question the transaction. For example, during the Relevant Period some variable annuity transactions were approved in which the customer's stated time horizon was either shorter than the surrender schedule on the variable annuity product or it was unclear (which indicates a risk of surrender charges). In each instance, a review of the time-horizon should have led to supervisory follow-up.

Conclusion

For the reasons described above, Quick & Reilly's systems and procedures were not reasonably designed to conduct an adequate suitability review of certain variable annuity transactions. Designated Supervisors reviewed and approved transactions from the Log without information concerning a customer's time horizon for that particular transaction. That information was required by the firm's own procedures and was material to a reasonable suitability review.

Accordingly, Quick & Reilly violated NASD Rules 3010 and 2110 by failing to establish, maintain, and enforce a supervisory system, including written procedures, reasonably designed to review and monitor certain of its variable annuity transactions.

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

- Censure;
- Fine in the amount of \$75,000.00.

III.

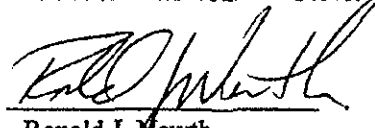
OTHER MATTERS

- 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 have attached an Election of Payment form showing the method by which Respondent proposes to pay any fine imposed. Respondent specifically and voluntarily waives any right to claim that Respondent 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.

11/21/2006
Date

Quick & Reilly, Inc.
now merged with and into
Banc of America Investment Services, Inc.

By: 
Ronald J. Newth
Governance Process Executive
Chief Administrative Officer

Reviewed by:



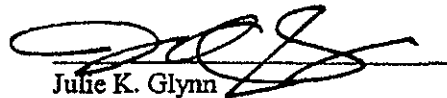
Counsel for Respondent
William E. Goydan
Wolff & Samson PC
One Boland Drive
West Orange, New Jersey 07052
(973) 530-2022; fax: (973) 530-2222

Accepted by NASD:

December 1, 2006

Date

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



Julie K. Glynn
Regional Counsel
NASD Department of Enforcement
One Liberty Plaza
New York, New York 10006
(212) 858-4776; fax (212) 858-4770

NASD District Director

Hans Reich
Senior Vice President
NASD, District 10
One Liberty Plaza
New York, New York 10006