

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 55466 / March 14, 2007

ADMINISTRATIVE PROCEEDING
File No. 3-12591

In the Matter of	:	
Banc of America Securities LLC,	:	ORDER INSTITUTING ADMINISTRATIVE
Respondent.	:	AND CEASE-AND-DESIST PROCEEDINGS,
	:	MAKING FINDINGS, AND IMPOSING
	:	REMEDIAL SANCTIONS AND A CEASE-
	:	AND-DESIST ORDER PURSUANT TO
	:	SECTIONS 15(b)(4) AND 21C OF THE
	:	SECURITIES EXCHANGE ACT OF 1934
	:	

I.

The Securities and Exchange Commission (“Commission”) deems it appropriate and in the public interest that public administrative and cease-and-desist proceedings be, and hereby are, instituted pursuant to Sections 15(b)(4) and 21C of the Securities Exchange Act of 1934 (“Exchange Act”) against Banc of America Securities LLC (“Respondent” or “BAS”).

II.

In anticipation of the institution of these proceedings, Respondent has submitted an Offer of Settlement (the “Offer”), which the Commission has determined to accept. Solely for the purpose of these proceedings and any other proceedings brought by or on behalf of the Commission, or to which the Commission is a party, and without admitting or denying the findings herein, except as to the Commission’s jurisdiction over it and the subject matter of these proceedings, which Respondent admits, Respondent consents to the issuance of this Order Instituting Administrative and Cease-and-Desist Proceedings, Making Findings, and Imposing Remedial Sanctions and a Cease-and-Desist Order Pursuant to Sections 15(b)(4) and 21C of the Securities Exchange Act of 1934 (“Order”).

III.

FACTS

On the basis of this Order and Respondent's Offer, the Commission finds that:¹

A. Respondent

Banc of America Securities LLC is a broker-dealer registered with the Commission since March 22, 1990 (File No. 8-42263) and is the successor-in-interest to NationsBanc Montgomery Securities. BAS is a subsidiary of Bank of America Corporation and, during 1999 through 2001, had its principal offices in San Francisco, California; New York, New York; and Charlotte, North Carolina. BAS is a member of the New York Stock Exchange, the National Association of Securities Dealers and other national securities exchanges.

B. Summary

During the period January 1999 through December 2001, BAS violated the antifraud and internal controls provisions of the federal securities laws in connection with its issuance of research. First, BAS lacked policies and procedures to prevent the misuse by the firm and its employees of material nonpublic information concerning the content and timing of its research reports. Second, BAS issued materially false and misleading research on three different companies.²

BAS failed to establish, maintain and enforce written policies and procedures reasonably designed to detect and prevent the misuse of material nonpublic information concerning the firm's equity research. Specifically, BAS's policies and procedures regarding the handling and dissemination of its nonpublic equity research were not reasonably designed to prevent the potential misuse of that information by the firm and its employees. BAS also permitted its Marketing Director for Equity Research to have access to and communications with the firm's research analysts without establishing additional policies and procedures to protect against the potential misuse of material nonpublic research information and without maintaining or enforcing the policies that were already in place. As a result, in at least two instances, BAS position traders improperly received access to material nonpublic information concerning forthcoming research reports and established proprietary positions in those securities prior to the release of the research to the firm's customers. BAS therefore willfully violated Section 15(f) of the Exchange Act.

¹ The findings herein are made pursuant to Respondent's Offer of Settlement and are not binding on any other person or entity in this or any other proceeding.

² This matter stems from an investigation that resulted in a prior Commission enforcement action. In March 2004, the Commission issued an order finding that BAS violated the recordkeeping and access requirements of the federal securities laws by repeatedly failing promptly to furnish documents requested by the staff, providing misinformation concerning the availability and production status of such documents, and engaging in dilatory tactics that delayed the investigation. The firm was censured and ordered to pay a \$10 million civil penalty. See *In the Matter of Banc of America Securities LLC*, Exchange Act Release No. 49386 (Mar. 10, 2004).

During 1999 through 2001, BAS also employed business practices that linked research and investment banking and incentivized research analysts to support the firm's investment banking efforts. In so doing, BAS fostered an environment in which BAS investment bankers inappropriately influenced analysts, who were charged with producing objective research. BAS failed adequately to manage the conflicts of interest created by its practices. As a result, BAS published equity research reports on three companies which did not reflect the true views of the research analyst covering the security. By engaging in this conduct, BAS violated Section 15(c) of the Exchange Act and Rule 15c1-2(a) thereunder.

C. BAS Failed to Establish, Maintain and Enforce Written Policies and Procedures to Prevent the Misuse of Material Nonpublic Information Regarding Equity Research

During 1999 through 2001, BAS experienced a breakdown in its internal controls designed to detect and prevent the misuse of material nonpublic information concerning forthcoming equity research. As set forth below, BAS failed to establish, maintain, and enforce: (i) adequate controls over the release and dissemination of its research; (ii) effective written policies governing access to and use of information concerning forthcoming research by the firm's traders; and (iii) policies and procedures regarding the BAS Marketing Director's access to information concerning forthcoming research. As a result, BAS did not establish, maintain, and enforce policies and procedures reasonably designed to detect and prevent the misuse of material nonpublic information by the firm and its employees.³

1. The Firm's Breakdown in Internal Controls

a. BAS Failed to Adopt Adequate Controls Over the Dissemination and Release of Its Research

During the relevant period, BAS maintained written policies pursuant to which information concerning forthcoming BAS research, which had not yet been published, disseminated or released to the public, was deemed to be material nonpublic information. The firm's written policies also required BAS to "fairly" and "simultaneously" disseminate BAS research to its customers. These policies were designed to prevent the misuse and selective disclosure of the firm's research information and to ensure that research was available to all customers at or about the same time.

To achieve simultaneous dissemination, the firm adopted policies restricting access to research prior to its simultaneous release to the firm's sales and trading force and the firm's customers. For example, the firm's written policies prohibited analysts from sharing information concerning "forthcoming reports" with anyone outside of the research department, including BAS sales and trading associates. The policy prohibited analysts from disclosing the "timing, status, or content" of a research report prior to its release, except to members of research management, supervisory analysts and compliance personnel. After BAS research was reviewed

³ In 2002, BAS moved its equities trading business to New York and closed its equities trading platform in San Francisco. Most of the senior managers for the firm's San Francisco equities trading business left the firm prior to or at the time of the move.

by supervisory analysts and approved by research management, it was disseminated at regularly scheduled sales meetings. The sales force was prohibited from leaving these meetings prior to their conclusion. At the end of the meetings, the sales force was free to contact customers to inform them of the new research, and the reports were simultaneously released to the firm's customers, employees, and various third-party vendors via the firm's computer systems. This system was designed to ensure that BAS sales and trading employees and firm customers had access to copies of the research reports at roughly the same time.

Contrary to the firm's stated policies, during 1999 through 2001, BAS sales and trading employees were on multiple occasions able to obtain access to forthcoming BAS research before the simultaneous release of the research. Through various distribution channels, BAS sales and trading employees received advance access to forthcoming material research changes, including upgrades and downgrades.⁴ At the same time, BAS did not provide clear or effective written policies and procedures as to how its employees were permitted to use that information in a lawful manner. In addition, BAS failed adequately to establish procedures to track the actual release times for its equity research. BAS therefore could not effectively monitor or investigate for potential misuse of that information because it was unable accurately to determine when its material nonpublic research information became public. Accordingly, BAS failed to maintain and enforce its written research dissemination policies and failed to implement procedures to control the access to and the release of its research.

b. BAS Failed to Adopt Effective Written Policies and Procedures Governing Its Traders' Access to Forthcoming Research

Prior to mid-1999, BAS did not maintain an information wall between its equity research and trading departments. BAS traders received advance access to material nonpublic research information but were required to keep such information confidential until after its release.⁵ The policy prohibited the firm's traders from establishing or accumulating proprietary positions while unreleased research changes were pending. This trading prohibition continued until the information had been released to customers and was "reflected in the price of the stock." In approximately mid-1999, BAS changed its policy and erected an information wall between the research and trading departments. Under the new policy, BAS traders were not permitted to have advance access to material nonpublic research information except in limited circumstances. BAS traders were thus free to continue to trade notwithstanding that research changes were pending, provided that they did not have advance access to the research information. BAS did not promptly reduce this new policy to writing and failed effectively to implement the change.⁶ In light of the breakdown in the firm's research dissemination policies and procedures, discussed

⁴ For example, prior to formal release of the firm's research, BAS regularly disseminated to its sales and trading personnel various electronic and hard copy documents that summarized its forthcoming research. BAS also broadcast its sales meetings, at which forthcoming material research changes were discussed, to the trading floor prior to the formal release of the research.

⁵ Under this policy, BAS position traders were "over the wall" and analysts were required to inform them of pending research changes.

⁶ As a result, BAS has been unable precisely to determine when the policy officially changed.

above, the firm's failure to effectively implement this new policy heightened the potential for misuse of the firm's material nonpublic research information by the firm's traders.

c. BAS Failed to Adopt Specific Policies and Procedures to Address the Multiple Roles of Its Marketing Director

In mid-2000, BAS established within its institutional sales department a new position titled Director of Marketing. The new Marketing Director's responsibilities included: (i) branding the firm's analysts and obtaining a broader distribution of the firm's research, (ii) supervising the firm's morning sales meeting, (iii) providing guidance to the firm's analysts concerning research positioning, and (iv) organizing the firm's non-deal roadshows. In these various roles, the Marketing Director acted as a liaison between the firm's sales and research departments and served as a "sounding board" for the firm's analysts. The Marketing Director thus had frequent personal interaction with the firm's analysts, assisted them with shaping their research coverage, and, as a result, routinely came into possession of material nonpublic information concerning forthcoming BAS research. At the same time, the Marketing Director was the primary conduit for the dissemination of public market and firm-generated information (or 'Sales Chatter') to the Sales and Trading Departments. From his location on the firm's trading floor, the Marketing Director also had contact with, and regularly provided trading advice to, the firm's position traders. In addition, BAS knew that the Marketing Director was one of the most active personal traders at the firm. BAS failed to establish specific policies and procedures to address the conflicts created by the multiple roles and activities performed by the firm's Marketing Director; to the extent policies existed to address them, BAS failed adequately to enforce and maintain them.

2. BAS Proprietary Positions in Advance of Research

By late 1999, BAS was aware that there were significant weaknesses in the firm's information wall dividing research from sales and trading. Nevertheless, BAS failed to establish new policies to address these problems or to enforce and maintain the policies that existed. As a result of these breakdowns in the firm's internal controls, in at least two instances, BAS established proprietary positions in stocks in advance of the issuance of research.

In January 2000, BAS and a number of its employees and customers traded ahead of the firm's upgrade of PLX Technology, Inc. ("PLXT"). On or about January 11 or 12, 2000, the firm's Head of Technology Sales learned that the firm's semiconductor analyst intended to upgrade PLXT. He communicated this information to the firm's PLXT trader. Several BAS employees placed orders to buy PLXT shares and the firm's trader filled these orders and established a long position in PLXT in the firm's account. BAS issued the analyst's PLXT research report before the market opened on January 13, 2000. PLXT's stock price increased in response to the upgrade, and the firm made a profit on its PLXT position. Despite the firm's proprietary PLXT position in advance of the upgrade, BAS failed to conduct a review of the firm's PLXT trading.

In June 2001, BAS traded ahead of the firm's downgrade of Cree, Inc. ("CREE"). On June 11, 2001, prior to the market open, one of the firm's semiconductor analysts sought

approval to downgrade CREE to a Buy from a Strong Buy. A BAS trader became aware of the forthcoming downgrade and sent an e-mail to a BAS customer warning him, “Don’t buy any CREE, news pending from here. Will let you know when it comes.” When the downgrade was approved but not yet disseminated, the trader e-mailed his customer that the firm had just downgraded CREE. The firm’s CREE trader also became aware of the forthcoming downgrade and positioned the firm’s proprietary account to profit from the pending research. Later that morning, the research report was officially disseminated. CREE’s stock price declined. Despite the firm’s CREE short position prior to the downgrade, BAS failed to conduct a review of the firm’s CREE trading.

D. BAS Published False Equity Research Reports

1. Background

a. BAS Analysts Were Subjected to Conflicts of Interest

BAS’s research analysts provided BAS’s customers and the public with reports on various public companies and industries. BAS distributed its research directly to its customers through its sales force and third-party vendors.⁷ The firm held out its analysts as providing independent and objective analysis, ratings, and recommendations upon which investors could rely in reaching investment decisions. BAS’s research policies required that all research opinions should be “devoid of actual and potential conflicts of interest.” Nevertheless, during 1999 through 2001, BAS intertwined research with investment banking and rewarded analysts for their support of investment banking activities.⁸ BAS’s failure to address the conflicts of interest that compromised the independence and objectivity of the firm’s analysts resulted in the publication of research reports on three companies that did not reflect the analysts’ true views.

b. BAS Research Rating System

Each BAS research report included an investment rating that purportedly reflected the analyst’s objective opinion of the relative attractiveness of a stock for investors. In early 1999, BAS utilized a three-tier rating system of Buy, Hold, and Sell. In mid-1999, BAS changed to a five-tier system of Strong Buy, Buy, Market Perform, Underperform, and Sell. Under both systems, ratings were required to be predicated on an analysis of a stock’s expected 12-month return (based upon an established target price) versus the market.

During 1999 through 2001, BAS analysts rarely rated companies an Underperform and almost never a Sell, in part to avoid aggravating current or prospective investment banking

⁷ BAS also from time to time communicated its research directly to the media.

⁸ Among other things, BAS expected analysts to (i) develop investment banking business from public and private companies in their sectors, (ii) solicit business from prospective clients at pitch meetings, and (iii) support the firm’s trading volume for issuers that were current or prospective investment banking clients. BAS considered investment banking contributions, among other factors, when evaluating analyst performance and determining analyst compensation. BAS investment bankers also often participated in the analyst performance review process.

