

UNITED STATES OF AMERICA
Before the
SECURITIES AND EXCHANGE COMMISSION

SECURITIES EXCHANGE ACT OF 1934
Release No. 68023 / October 9, 2012

ADMINISTRATIVE PROCEEDING
File No. 3-12591

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| In the Matter of | : | ORDER AMENDING |
| | : | ORDER INSTITUTING |
| | : | ADMINISTRATIVE AND |
| Banc of America Securities LLC | : | CEASE-AND-DESIST PROCEEDINGS, |
| with Merrill Lynch, Pierce, Fenner | : | MAKING FINDINGS, AND IMPOSING |
| & Smith Incorporated as | : | REMEDIAL SANCTIONS AND |
| Successor, | : | A CEASE-AND-DESIST ORDER |
| | : | PURSUANT TO SECTIONS 15(b)(4) |
| Respondent. | : | AND 21C OF THE SECURITIES |
| | : | EXCHANGE ACT OF 1934 |

I.

On March 14, 2007 the U. S. Securities and Exchange Commission (“Commission”) issued an 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 against Banc of America Securities LLC (the “2007 BAS Order”). The 2007 BAS Order found that, from January 1999 through December 2001, BAS issued materially false and misleading research on three different companies. The 2007 BAS Order also found that 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.

The 2007 BAS Order censured BAS and ordered BAS to: (i) cease and desist from committing or causing any violations or future violations of Sections 15(c) and 15(f) of the Securities Exchange Act of 1934, and Rule 15c1-2(a) promulgated thereunder; (ii) pay \$26 million in disgorgement and penalties into a fair fund for distribution to its affected customers; (iii) retain an independent consultant to conduct a comprehensive review of the firm’s internal controls to prevent the misuse of material nonpublic information concerning BAS research; (iv) certify to the Commission’s staff in the second year following the issuance of the 2007 BAS Order that BAS had established and continued to maintain Exchange Act Section 15(f) policies, practices, and procedures consistent with the findings of the 2007 BAS Order; and (v) comply with Addendum A to the 2007 BAS Order, which

implemented certain structural changes to the operations of the firm's equity research and investment banking departments. Section 1.1.a. of Addendum A to the 2007 BAS Order specifies that it applies to successors and assigns of BAS's investment banking and research operations.

II.

Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPFS"), as the successor to BAS, has submitted an Amended Offer of Settlement (the "Amended Offer") in which it consents to the entry of an Order amending the 2007 BAS Order. 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 MLPFS, as the successor to BAS, admits, MLPFS consents to the issuance of this Order Amending 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 ("Amended Order").

On the basis of this Amended Order and the Amended Offer of MLPFS, as the successor to BAS, the Commission finds that:

A. Respondent

Banc of America Securities LLC ("BAS") was a Delaware corporation with its principal place of business in New York City, New York. It was a subsidiary of Bank of America Corporation. BAS was registered with the Commission as a broker-dealer pursuant to Section 15(b) of the Exchange Act and as an investment adviser pursuant to Sections 203(c) and 15(f) of the Investment Advisers Act of 1940 until it filed Form BDW on November 29, 2010 and was terminated by the Commission on January 27, 2011 and by the Financial Industry Regulatory Authority ("FINRA") on January 31, 2011. BAS was the successor-in-interest to NationsBanc Montgomery Securities. BAS was a member of the New York Stock Exchange ("NYSE"), the National Association of Securities Dealers and other national securities exchanges. On November 1, 2010, BAS was merged into MLPFS. BAS no longer exists as an entity, and MLPFS is the surviving entity.

B. Related Entities

1. **Bank of America Corporation**, ("BAC") is a Delaware corporation, a bank holding company and a financial holding company under the Gramm-Leach-Bliley Act. BAC's principal offices are located in Charlotte, North Carolina. BAC's common stock is registered with the Commission pursuant to Section 12(b) of the Exchange Act and trades on the NYSE. BAC was the ultimate parent company of BAS.

2. **Merrill Lynch & Co., Inc.**, ("Merrill") is a Delaware corporation, and is now a wholly-owned subsidiary of BAC. Prior to its acquisition by BAC on January 1, 2009,

Merrill's common stock was registered with the Commission pursuant to Section 12(b) of the Exchange Act and traded on the NYSE. Merrill is the parent company of MLPFS.

3. **Merrill Lynch, Pierce, Fenner & Smith Incorporated** ("MLPFS") is a Delaware corporation with its principal executive offices in New York, New York. MLPFS is a broker-dealer registered with the Commission pursuant to Section 15(b) of the Exchange Act. MLPFS is a wholly-owned subsidiary of Merrill, and, since January 1, 2009, an indirect wholly-owned subsidiary of BAC. On November 1, 2010, BAS was merged into MLPFS, and MLPFS is the surviving entity.

C. Facts

On April 28, 2003, the Commission filed a complaint against MLPFS in the U.S. District Court for the Southern District of New York, entitled, inter alia, Securities and Exchange Commission v. Merrill Lynch, Pierce, Fenner & Smith Inc., 03 Civ. 2941 (WHP) (S.D.N.Y. April 28, 2003), alleging that the investment banking interests of MLPFS exercised undue influence over its securities research operations and that MLPFS issued fraudulent and inconsistent research reports in violation of Section 15(c) of the Exchange Act and Rule 15c1-2 thereunder, as well as various related SRO rules (the "MLPFS action"). On October 31, 2003, the Court issued a Final Judgment as to Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated (the "2003 MLPFS Final Judgment"), wherein the Court ordered MLPFS, inter alia, to "comply with the undertakings set forth in Addendum A hereto." (Section VIII of the 2003 MLPFS Final Judgment). BAS was not involved in the district court action.

On March 14, 2007, the Commission issued an 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 against BAS (the "2007 BAS Order"). The 2007 BAS Order found that from January 1999 through December 2001, BAS investment bankers inappropriately influenced equity research analysts, resulting in the publication of materially false and misleading research reports on at least three companies in violation of Sections 15(c) and 15(f) of the Exchange Act and Rule 15c1-2(a) thereunder. The 2007 BAS Order, among other things, ordered BAS to comply with Addendum A to the 2007 BAS Order. Addendum A by its terms applies to successors and assigns of BAS' investment banking and research operations. At that time, the language of Addendum A to the 2007 BAS Order was, in all material respects, essentially identical to Addendum A to the 2003 MLPFS Final Judgment.

On January 1, 2009, BAC, the parent company of BAS, acquired Merrill, the parent company of MLPFS. Following that acquisition, BAC transferred legacy BAS equity research operations from BAS to MLPFS. In that regard, the registrations of the legacy BAS equity research analysts were transferred to MLPFS, and MLPFS assumed supervisory responsibility for these analysts.

On November 1, 2010, BAS was merged into MLPFS, and BAS ceased to exist. A Form BDW for BAS was filed on November 29, 2010. BAS' registration was terminated by the Commission on January 27, 2011 and FINRA on January 31, 2011. As the successor to

BAS, MLPFS became subject to Addendum A of the 2007 BAS Order. At the same time, MLPFS remains subject to Addendum A to the 2003 MLPFS Final Judgment.

On March 15, 2010, in the MLPFS action, the District Court modified Addendum A to the 2003 MLPFS Final Judgment by, inter alia, removing certain provisions that remain in Addendum A to the 2007 BAS Order. Since that date, MLPFS has been subject to two differing Addenda concerning substantially identical subjects.

VI.

In view of the foregoing, the Commission deems it appropriate and in the public interest to amend the 2007 BAS Order as agreed to in the Amended Offer of MLPFS as successor to BAS.

Accordingly, IT IS HEREBY ORDERED that the 2007 BAS Order is amended to:

- (1) Strike Addendum A to the 2007 BAS Order;
- (2) Order that henceforth the successors and assigns of BAS shall comply with all orders, addenda and undertakings in SEC v. Merrill Lynch, Pierce, Fenner & Smith Inc., 03 Civ. 2941 (WHP) (S.D.N.Y. April 28, 2003), as modified on March 15, 2010; and
- (3) Order that in all other respects, aside from Addendum A, the 2007 BAS Order remains in effect and binding on Respondent's successors and assigns.

By the Commission.

Elizabeth M. Murphy
Secretary