

**ADMINISTRATIVE PROCEEDING  
BEFORE THE  
SECURITIES COMMISSIONER OF MARYLAND**

<b>IN THE MATTER OF:</b>	*	CASE NO. 2007-0658
	*	
BANC OF AMERICA INVESTMENT SERVICES, INC.	*	
Respondent.	*	
	*   *   *	

**CONSENT ORDER**

WHEREAS, the Securities Division of the Office of the Attorney General (the "Division") initiated an investigation into the activities of Banc of America Investment Services, Inc. ("BAI"); and

WHEREAS, the Maryland Securities Commissioner (the "Securities Commissioner") has found that grounds exist to allege that Respondent violated the Maryland Securities Act, contained at Md. Code Ann., Corps. and Ass'ns, §§11-101 *et seq.* (2007 Repl. Vol.) (the "Securities Act"), by failing to reasonably supervise its agents within the meaning of §11-412(a)(10) of the Securities Act; and

WHEREAS, before the holding of a hearing, without trial or final adjudication of any issue of fact or law, and prior to the issuance of a final order in this proceeding, the Securities Commissioner and Respondent have reached an agreement whereby Respondent, without admitting or denying the Statement of Facts and Findings of Fact and Conclusions of Law contained herein, consents to the terms of this Order:

**I.**

**JURISDICTION**

1. The Securities Commissioner has jurisdiction in this proceeding pursuant to Section 11-701 of the Securities Act.

**II.**

**RESPONDENT**

2. BAI has been registered as a broker-dealer with the SEC and FINRA (formerly “NASD, Inc.”) since 1985, and has been registered with the Securities Division since 1987.

3. BAI’s principal place of business is located in Boston, Massachusetts. BAI has offices throughout Maryland.

4. BAI is a nonbank subsidiary of Bank of America, N.A. (“Bank of America”) (“BANA”).

**III.**

**STATEMENT OF FACTS**

**Activities of M.M.**

5. From March 2003 to August 2004, M.M. was registered in Maryland as a broker-dealer agent and investment adviser representative affiliated with BAI. M.M. was a “Private Client Advisor” for BANA’s Private Bank, and worked out of the BANA branch located at 5550 Friendship Boulevard, Chevy Chase, Maryland.

6. In June 2003, M.M. sold his Private Bank customer, O.D., a fraudulent security – a “Direct Access Note” – for \$500,000. M.M. told O.D. that he would not see any official Bank of America statement due to the nature of the instrument.

7. M.M. deposited O.D.'s \$500,000 check into his, M.M.'s, Bank of America checking account. Bank of America's Daily Activity Risk Tracking System ("DARTS") identified the transaction as a large deposit into an account with a low average daily balance.

8. The BANA fraud analyst who reviewed the transaction contacted O.D.'s bank to verify that there were sufficient funds to cover the \$500,000 check (made payable to "Bank of America") and that there were no stops or holds on the check. O.D. was not personally contacted regarding the transaction.

9. In June 2004, M.M. paid O.D. \$11,250 – purportedly as interest earned on the \$500,000 note. M.M. suggested to O.D. that he roll over the investment for another year, but the customer wanted a return of his principal.

10. In July 2004, M.M. falsified a required client authorization and gave instructions to two BANA associates to wire \$500,000 from the BANA checking account of P.F., one of his Private Bank customers who was also a Banc of America Securities LLC associate – into O.D.'s BANA checking account.

11. Private Bank procedures in effect at that time required that an independent call back to the requesting party be performed for wire transfer requests received by phone, fax, or e-mail, but allowed for a waiver of that requirement if the administrative officer knew the client and the amount of the request was not more than \$500,000.

12. Bank of America procedures further specified that "[t]he call back should be performed by someone other than the associate who accepted the request and [should be] documented on the wire transfer request form."

13. M.M. was a BANA associate with authority to initiate a wire of this amount on behalf

of his client, at the client's request. He knew both O.D. and P.F., and the amount of the request was not in excess of \$500,000. Per the Private Bank policy, therefore, the call back requirement could be waived.

14. In 2003 and 2004, M.M. had deposits of other relatively large amounts into his checking account, however, no inquiry was made into those deposits.

**Activities of T.G.**

15. From January 1, 1998 to April 21, 2005, T.G. was registered in Maryland as a broker-dealer agent and investment adviser representative affiliated with BAI. T.G. worked out of BAI's Towson, Maryland office.

16. From February 1999 to March 2005, T.G. converted a total of approximately \$1,567,423 from four of his BAI client's brokerage accounts, primarily by forging the endorsement on withdrawal slips and on checks and having bank teller(s) convert the client funds or check into cashier's checks made out to an entity he controlled called L&S Computer Consultants, or "LSCC."

17. Between December 2003 and February 2005, T.G. defrauded his brokerage customer A.D. out of at least \$501,014.84, which represented the proceeds from the sale of approximately 10,891 shares of her Exxon stock through a "Client Stock Direct" account. A.D. obtained the shares directly from Exxon, and held them at Equiserve, Exxon's transfer agent.

18. T.G. recommended that A.D. sell some of her Exxon stock and invest in variable annuities sold by LSCC. T.G. was able to set up an online account, used to sell the shares, by obtaining the necessary information from A.D.

19. T.G. caused the Exxon checks issued to A.D. to be sent to BANA's Perring

Parkway branch, where he would meet with clients. T.G. then picked up the checks, endorsed them by signing A.D.'s name, and caused the branch tellers to issue cashiers' checks made out to LSCC. T.G. deposited the checks into an LSCC account located at Provident Bank, then into another Provident bank account, and finally into a BANA account in his and his wife's names.

20. T.G. diverted a total of \$35,000 from D.A.'s BANA checking account, which was linked to her BAI brokerage account. T.G. caused cashiers checks to be issued for the benefit of LSCC for \$25,000 and \$10,000 on September 21, 2003 and October 31, 2003, respectively.

21. T.G. diverted a total of \$84,962 from A.Z.'s BANA checking account, which was linked to her BAI brokerage account. T.G. caused cashiers checks to be issued for the benefit of "LSC Company" for \$57,737 and \$27,225, on March 14, 2002 and March 21, 2003, respectively.

22. T.G. diverted more than \$900,000 from S.M. and L.M.'s BANA account, which was linked to their BAI brokerage account. From February 1999 through November 2003, numerous cashiers checks were issued for the benefit of "LSC Company." Part of that amount was repaid by T.G. to the customers.

23. Prior to July 2000, T.G. told his manager that he was struggling with an alcohol addiction. Accordingly, T.G.'s manager gave him the name and telephone number of the employee assistance program. Furthermore, T.G.'s production was low, and he was consistently on a review list for production-related reasons. However, BAI did not institute any special supervision over T.G.

### **Remedial Measures Taken**

24. Subsequent to the incidents involving Messrs. M.M. and T.G., BAI and BANA revised certain policies and procedures in an effort to prevent similar incidents of fraud from

occurring.

25. BAI modified its policies and procedures relating to employees drawing checks to third parties against customers accounts. The policies now provide that registered representatives may not “[p]ersonally request cash or checks from a bank associate on behalf of a client” and that they “must always instruct the client to personally obtain the funds directly from a bank associate.” In that regard, BAI also issued several compliance alerts for the benefit of registered representatives.

26. In September 2007, BANA also modified its policies and procedures relating to the issuance or exchange of cashiers checks. The policies now provide that BANA associates must “not issue or exchange cashier’s checks for Banc of America Investment Services, Inc. (BAI) associates on behalf of BAI customers, unless the customer is present,” and that employees should report any suspicious or unusual activity and/or transactions with a manager or supervisor. Associates were alerted to the new policy via e-mail.

27. Around June 2005, the Private Bank modified its policies and procedures relating to wire transfers such that a callback to the requestor or other authorized account owner for the purpose of verifying the identity of the client and the money movement instructions was required in all cases, except for those exceptionally requiring the completion of a form to document an exception pursuant to policy.

28. Beginning on or around January 16, 2004, BAI’s clearing firm, National Financial Services (“NFS”) began sending customers confirmation of all third party checks (check disbursements made payable to a third party and/or sent to an alternative address of record). As

an additional protection against fraud, customers are provided with NFS contact information in the event they feel a transaction was unauthorized.

#### IV.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

29. In connection with the facts described in the Statement Of Facts contained in this Order, incorporated herein by reference, Respondent failed to reasonably supervise its agents, M.M. and T.G., within the meaning of §11-412(a)(10) of the Securities Act.

#### V.

#### CONSENT TO CEASE AND DESIST AND OTHER RELIEF

30. NOW, THEREFORE, IT IS HEREBY **ORDERED**, and Respondent expressly consents and agrees that:

- a. Contemporaneous with the issuance of this Consent Order, Respondent shall pay a \$10,000 fine by way of a check made payable to "Office of the Attorney General."
- b. Respondent shall do the following:
  1. BAI will advise the appropriate BANA personnel by written correspondence that there have been instances in which a BAI customer's mail, or registered person's mail, was addressed to a BANA branch in an effort to circumvent BAI's policies relating to incoming and outgoing mail. BAI will attach a signed copy of this Consent Order to such correspondence, and forward a copy to the Maryland Division of Securities.
  2. BAI will include training related to the supervision of financial advisors with potential performance problems related to personnel issues in the annual "Firm Element" training program. Beginning in the third quarter of 2008 (on or around August 31<sup>st</sup>, 2008), such training will be included in the "Ethics, Sales Practices, and General Supervision" course for supervisors.

- c. Respondent shall cease and desist from engaging in activities in violation of the Securities Act.
- d. Respondent shall in all future activities in Maryland comply with the Securities Act.

## VI.

### **SCOPE OF SETTLEMENT AND OTHER PROVISION**

31. This Consent Order relates only to the Securities Commissioner and Respondent. This Consent Order does not waive or relinquish the Securities Commissioner's right to take any action against any other persons not affiliated with Respondent. Nor does this Consent Order prevent the Securities Commissioner from bringing any action against Respondent relating to any acts or omissions not arising out of the facts stated in this Consent Order.

32. This Consent Order shall not disqualify BAI, or any other person in which officers, directors, promoters and control persons of BAI act as an officer, director, promoter or control person (or occupying a similar status or performing similar functions) with respect to such person, from relying upon any exemption, exclusion, waiver or similar provision contained in the Securities Act or any rules, regulations, statements of policy or positions or releases issued thereunder that otherwise would be unavailable solely because of the existence of this Consent Order.

## VII.

### **JURISDICTION RETAINED**

33. Jurisdiction shall be retained by the Securities Commissioner for such further orders and directions as may be necessary or appropriate for the construction or enforcement of the Consent Order.



34. If Respondent fails to materially comply with any term of this Consent Order, the Securities Commissioner may institute administrative or judicial proceedings against Respondent to seek to enforce this Consent Order, to sanction Respondent for violating an Order of the Securities Commissioner or for making a misrepresentation of material fact upon which this Order was based, and may take any other action authorized under the Securities Act or under any other applicable law, including the issuance of fines or penalties as provided by the Securities Act. In any such proceeding in which, after an opportunity for a hearing, the Securities Commissioner or the court finds that Respondent has violated this Consent Order or made any material misrepresentations in their dealings with the Division, the Division may also seek other sanctions for the violations that initiated this matter. For the purpose of determining those sanctions, the Statement of Facts and violations of the Securities Act set forth in this Consent Order shall be deemed admitted, and may be introduced into evidence against Respondent.

35. In the event that judicial intervention in this matter is sought by the Securities Commissioner or Respondent, subject matter jurisdiction will lie in the Circuit Court for Baltimore City pursuant to §11-702 of the Securities Act. Respondent agrees that that Court will have personal jurisdiction over Respondent, and that venue will be properly in that Court.

36. The terms of this Consent Order may only be vacated or modified by a subsequent order issued by the Securities Commissioner.

**DATE OF THIS ORDER:**

May 21, 2008

**SO ORDERED:**

**Commissioner's Signature is  
on File with Original Document**  
Melanie Senter Lubin  
Securities Commissioner

**CONSENTED TO:**

May 15, 2008

\_\_\_\_\_/S/\_\_\_\_\_  
Banc of America Investment Services, Inc.  
By: \_\_\_\_\_  
Please print name and title:  
\_\_\_\_\_  
\_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 2008, personally appeared \_\_\_\_\_, signer of the foregoing Consent Order, who did duly acknowledge his/her signature to be his/her free act and deed, and that he/she was authorized to sign on behalf of Bank of America Investment Services, Inc.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_  
Seal: