Banc of America Investment Services, Inc.®

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August 31, 2007

Ms. Nancy M. Morris
Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

Re: File No. S7-11-07, Securities and Exchange Commission Release No. 33-8813

Dear Ms. Morris:

Banc of America Investment Services, Inc. appreciates the opportunity to comment upon the Securities and Exchange Commission's (the "Commission") proposed revisions to Rule 144 and Rule 145 included in the Commission's Release No. 33-8813. In response to the Commission's request for comments, we offer the following as suggested revisions to Rule 144 of the Securities Act of 1933 (the "Securities Act"):

I. Notice of Sale (Form 144) Requirement

Elimination of the Notice Required By Rule 144(h). The Commission has proposed eliminating the Form 144 notice of sale requirement for non-affiliates and is considering combining Form 144 with Form 4 for affiliates. While we generally support the Commission's current proposal, we would strongly support a proposal to eliminate the notice of sale requirement under Rule 144 in its entirety (both for affiliates as well as non-affiliates).

We believe that the current requirement of Rule 144 to file a notice of proposed sale provides no significant information to investors or the market in general. The vast majority of Forms 144 are filed in paper format, and there does not appear to be strong investor demand for Forms 144 to be accessible in electronic format. Unless a Form 144 has been voluntarily made public by an affiliate (either by voluntarily filing the Form on EDGAR or posting the Form on the issuer's website), the general public has no practical notice of the sale until a Form 4 is filed, reporting the sale that has already occurred. Thus, as has been addressed by others (including the American Bar Association in its March 22, 2007 comment letter to the Commission), we do not believe that the elimination of the Rule 144(h) notice requirement would have any adverse consequences for investors, or the market in general.

We also do not believe that eliminating Form 144 in its entirety would have a detrimental effect on ensuring compliance with the safe harbor provided by Rule 144. The elimination of Form 144 would not affect the due diligence process that we undertake in connection with proposed trades by our clients, and would not affect our ability to promote compliance with Rule 144. We have various policies, processes and procedures (collectively, "Policies") in place that are designed to, among other things, help ensure compliance with the requirements of current Rule 144(g)(3) and to determine whether or not a proposed sale meets the requirements of Rule 144. We expect that all financial services institutions employ similar policies, processes and procedures. For example, our Policies include, among other things, a requirement that a client proposing to sell securities complete a detailed representation letter which we use to help determine whether the proposed sale meets the requirements for the safe harbor provided by Rule 144.

Modified or Combined Notice. To the extent that the Commission determines it needs to retain some of the information that is currently provided on Form 144, we generally support the proposal to combine Form 144 and Form 4. In combining the two forms, we believe the Commission will still receive the necessary information from filers to ensure compliance with the safe harbor provided by Rule 144. We are, however, concerned that an overly complicated form has the potential to confuse both the filer and the market. For example, if the newly combined form reports the sale that was made, future potential sales that may be made (which, in fact, may not actually be made), as well as volume limits and aggregated share amounts, we are concerned that the filer and the market may become unnecessarily confused. To the extent that the filer is confused, and incorrect information is inadvertently

reported, this could have the unfortunate effect of causing both (i) the loss of the safe harbor provided by Rule 144, and (ii) a deficient Form 4 (which the issuer may then be required to report in its next proxy statement as being delinquent, pursuant to Item 405 of Regulation S-K). Instead, we believe that a certification (check the box) from the filer on the new form that certifies that the sale, if applicable, complies with the requirements of Rule 144 would be sufficient.

Remedy for Failure to File. Currently, failure to timely file Form 144 results in the loss of the safe harbor provided by Rule 144. We urge the Commission to take this opportunity to further amend Rule 144 to provide that the failure to timely file Form 144 (or the newly combined form) pursuant to Rule 144(h) will not result in the filer's loss of the safe harbor provided by Rule 144 in certain circumstances. While the loss of the safe harbor does not preclude the use of a statutory exemption from Section 5 of the Securities Act, an exemption is generally unavailable for affiliates. For affiliates, the loss of the safe harbor provided by Rule 144 at best results in the broker having to "bust" the trade (if that option is available), and at worst, results in a potential Section 5 violation. In the event of a Section 5 violation, the affiliate, the issuer and the broker face the potential of civil, criminal and regulatory action. While the safe harbor provided by Rule 144 is invaluable to sellers (both affiliates and non-affiliates), issuers and the market in general, loss of the safe harbor based solely on a failure to timely file the notice pursuant to Rule 144(h) seems to be an unnecessarily punitive result.

We request that the Commission consider adopting a less punitive provision in Rule 144 to enable a security holder to "cure" an inadvertent failure to timely file a Form 144. We note that the Commission has previously adopted cure provisions for potential Section 5 violations in other contexts. For example, in its Securities Offering Reform rulemaking (SEC Release No. 33-8591, July 2005) the Commission adopted Rule 164(b), which provides an ability to cure a potential Section 5 violation related to the failure to file a free writing prospectus. We request that the Commission amend Rule 144 in a similar fashion, permitting a security holder to retain the protections of the safe harbor provided by Rule 144 so long as: (i) the notice required by Rule 144(h) is promptly filed upon discovery that it was not filed; (ii) the filer otherwise satisfied all of the other requirements of Rule 144 at the time sale; and (iii) the failure to file the notice was not part of a plan or scheme to evade the requirements of Section 5. If Form 144 and Form 4 are combined, we would expect that, to the extent the filer did not timely file such form, the filer would be delinquent for Section 16 purposes, but nevertheless should not lose the ability to rely on the safe harbor under Rule 144, as discussed above.

II. Codify or Confirm the Staff's Interpretive Position Regarding Sales of Control Securities by Non-Affiliate Pledgees.

In the context of a bona fide pledge of non-restricted securities by an affiliate, the Staff of the Division of Corporation Finance (the "Division") in April 2007 reaffirmed its long standing interpretive position (which is now set forth in Section 209.01 of the Telephone Interpretations Manual) that although current Rule 144(k) by its terms applies only to restricted securities, Rule 144(k) could be applied constructively where a non-affiliate pledgee acquires non-restricted securities from an affiliate pledgor and where, under the calculation method prescribed by Rule 144(d)(3), a two-year holding period exists. *See* the Division's interpretive letters in *Security Pacific National Bank* (available January 24, 1983); *Morgan Stanley & Co., Inc.* (available November 29, 1984); *Mbank Fort Worth, N.A.* (available February 1, 1988); and *Union Bank* (available August 26, 1992).

This long standing interpretive position has been very important to financial services institutions in considering the type of lending arrangements that will be entered into with clients, many of whom are affiliates and make bona fide pledges of control (non-restricted) securities as collateral in lending arrangements.

The Commission's current proposed amendments to Rule 144 include the removal of Rule 144(k). We would like the Commission to clarify that it is not the Commission's intent to indirectly diminish the Staff's interpretive position as it relates to a non-affiliate pledgee's ability to constructively rely on Rule 144(k) in the context discussed above, and that following the adoption of the amendments to Rule 144 (assuming Rule 144(k) is removed), a non-affiliate pledgee will be able to sell the pledged securities without regard to the current public information requirement (currently Rule 144(c)), the limitation on the amount of securities sold (currently Rule 144(e)), the manner of sale requirement (currently Rule 144(f)), and the notice requirement (currently, Rule 144(h)), so long as the non-affiliate pledgee:

- is not at the time of sale, and has not been during the three months (or other limited period of time as may be amended by the Commission upon adoption of the amendments to Rule 144) preceding the sale, an affiliate of the issuer;

- the combined holding period of the pledgor and the pledgee total the applicable holding period using the calculation method prescribed by Rule 144(d)(3); and

- the pledge agreement is bona fide.

We request the Commission to codify this interpretation in the final release through either the inclusion of a note to Rule 144(d)(3) or the inclusion of interpretative guidance in the final release that confirms the Staff's prior interpretation contained in Section 209.01 of the Telephone Interpretations Manual.

III. Clarify the Tolling Requirements in Proposed Rule 144(d)(3)(xi) and Rule 144(d)(3)(xi)(C)

Amount of Securities Subject to the Tolling Provisions. The Commission's proposed Rule 144(d)(3)(xi) extends, for up to an additional six months, the holding period for restricted equity securities proposed to be sold by a security holder, if the security holder is engaged in short sales or certain hedging transactions with respect to "any equity securities" of the same class (or any securities convertible into securities of the class). To the extent that tolling is adopted, we believe that proposed Rule 144(d)(3)(xi) is unnecessarily restrictive. By way of an extreme example, in the event that a security holder hedged just one share of common stock of an issuer, the holding period for all of the security holder's restricted shares of the same class of that issuer would be tolled for up six months in addition to the original holding period (which holding period, including the tolling provision, would not exceed one year in total). The concern raised by this example is compounded after taking into account proposed Rule 144(d)(3)(xi)(C) (discussed below), which extends the tolling provision to any period that a previous security holder (if tacking is needed to meet the holding period requirements) had a short position or a "put equivalent position" with respect to any equity securities of the same class (or any securities convertible into securities of the class).

While we acknowledge the Commission's statements about certain hedging transactions, we think that the operation of Proposed Rule 144(d)(3)(xi) is too restrictive, as demonstrated by the above example. Accordingly, we urge the Commission to revise proposed Rule 144(d)(3)(xi), if adopted, so that any tolling provision applies only to the specific quantity of restricted equity securities that equals the number of equity securities that are being hedged by the security holder. In making this revision, the Commission can avoid unnecessarily restricting investors.

Applicable Period to Determine whether Tolling Applies. As proposed, the tolling provisions in proposed Rule 144(d)(3)(xi) and Rule 144(d)(3)(xi)(C) could be read to extend the holding period for "any period" during which the security holder (or previous owner) was engaged in a hedging transaction, even if such hedging activity ceased prior to, or even occurred years prior to, the acquisition of the restricted securities that are sought to be resold pursuant to Rule 144. To the extent that the tolling provisions are adopted, we urge the Commission to clarify that:

- As it relates to Rule 144(d)(3)(xi) – Tolling would not apply to any hedging transactions engaged in by a security holder (in the same class of equity securities of the issuer) that ceased prior to the date of acquisition of the restricted securities that are sought to be resold.

- As it relates Rule 144(d)(3)(xi)(C) – Security holders only need to look back six months from the date of acquisition of restricted securities from a previous security holder and the current security holder need only exclude the period of time during which the previous security holder was engaged in certain hedging transactions in the six months that immediately preceded the date of acquisition of the securities by the current security holder. Assuming that a previous security holder was engaged in hedging transactions for the full six months that immediately preceded the acquisition of the restricted securities by the current security holder, the holding period would be tolled for six months and the current security holder would be required to hold the restricted securities for an additional six months (for a total of twelve months from the date of acquisition from the previous security holder) before the securities could be resold pursuant to the safe harbor provided by Rule 144.

IV. Clarify the "Reasonable Belief" Standard in Proposed Rule 144(d)(3)(xi)(C)

Proposed Rule 144(d)(3)(xi)(C) imposes a tolling period unless the person for whose account the securities are to be sold "reasonably believes" that no relevant hedging position was held by a previous owner. In Footnote 69 of the proposing release, the Commission articulates that by "reasonable belief" it means "[i]f the security holder … is unable to determine that the previous owner did not engage in hedging activities with respect to the securities, then the security holder should omit [such] period …when calculating the holding period under Rule 144(d)." Under this standard, any security holder that is unable to determine definitively whether or not the prior security holder

engaged in hedging, will be required to hold the securities for six months. As such, to the extent that a security holder makes a good faith effort to determine whether or not a prior security holder had engaged in a hedging transaction with respect to the securities (to establish a reasonable belief), but (through no fault of the selling security holder) is unable to make the determination because the prior security holder is unable (or unwilling) to divulge this information, then the selling security holder must toll her applicable holding period for up to six months.

The Commission's standard articulated in footnote 69 imposes a knowledge requirement, even though the proposed text of the rule purports to impose a reasonable belief standard. We believe that such a knowledge requirement is an onerous burden on security holders that seek to tack the holding periods of previous owners. Accordingly, we request that the Commission revise this standard so that a security holder, acting in good faith to make a determination, is not penalized if she is unable to determine definitively whether or not a prior security holder had engaged in a hedging transaction.

We suggest resolving this issue by clarifying the proposed "reasonable belief" standard to include a "reasonable inquiry" element. That is, if a selling security holder reasonably believes, after a reasonable inquiry, that no hedging by the prior owner of securities of the same class had occurred (and the selling security holder had no actual knowledge to the contrary), then the selling security holder would be permitted to tack the full holding period of the prior security holder. By modifying the standard in this way, security holders acting in good faith to make a determination of prior hedging activities will not be penalized if they are unable to determine (through no fault of their own) whether or not hedging did in fact occur. Additionally, the inclusion of a "reasonable inquiry" element, as discussed above, is consistent with the Commission's proposed revisions to Note (ii) to Rule 144(g)(3). Proposed Note (ii) to Rule 144(g)(3) would have brokers ask selling security holders whether such security holders have inquired as to the hedging activities of the previous owner of the securities, and what the results of that inquiry were.

* * *

Thank you for this opportunity to comment on the proposed amendments to Rule 144. Please feel free to call the undersigned at (949) 722-2610 if you would like to discuss these views or if we can be of any further assistance.

Sincerely,

/s/ Beth M. Tangney

Beth M. Tangney
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