

**UNITED STATES OF AMERICA**  
**Before the**  
**SECURITIES AND EXCHANGE COMMISSION**

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 55467 / March 14, 2007**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-12591**

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**In the Matter of**

**Banc of America Securities LLC,**

**Respondent.**

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**ORDER APPOINTING DISTRIBUTION  
FUND ADMINISTRATOR AND  
DIRECTING SUBMISSION OF  
PROPOSED DISTRIBUTION PLAN**

**I.**

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 (“OIP”) against Respondent Banc of America Securities LLC (“Respondent”). The OIP establishes a Fair Fund for the disgorgement and penalties paid by Respondent (“the Distribution Fund”). The OIP further provides that the Distribution Fund shall be distributed pursuant to a distribution plan developed by an administrator appointed by the Commission.

**II.**

Pursuant to the OIP and the Commission’s Rules on Fair Fund and Disgorgement Plans, 17 C.F.R. 201.1101, et seq., **IT IS HEREBY ORDERED THAT**

A. The Distribution Fund Administrator shall be Francis McGovern;

B. The Distribution Fund Administrator, in consultation with the staff of the Division of Enforcement, shall submit a proposed Distribution Fund Plan that is in accordance with the Commission’s Rules on Fair Fund and Disgorgement Plans, and the following principles:

1. The Distribution Fund Plan is intended to provide for the equitable, cost-effective distribution of funds to Eligible Distribution Fund Recipients, as described below. An Eligible Distribution Fund Recipient is not precluded from pursuing, to the extent otherwise available, any other remedy or recourse against Respondent. The Distribution Fund shall be utilized to pay any taxes on income earned by the Distribution Fund;
2. The Distribution Fund Administrator shall formulate a Distribution Fund Plan in consultation with and acceptable to the Commission staff that, to the extent practicable, allocates funds to persons who purchased equity securities of one or more of the companies referenced in the Order for which Respondent published false research reports (“the equity securities in question”). The Distribution Fund Plan need not provide that funds be allocated (i) with respect to purchases of equity securities of *each* company identified in the Order or (ii) to *all* purchasers of equity securities of a company identified in the Order. The Distribution Fund Administrator shall formulate a Distribution Fund Plan that attempts to ensure an equitable (but not necessarily equal) distribution of funds to compensate purchasers of securities for injury to their investment and that those who are allocated funds receive meaningful payments from the Distribution Fund.
3. In formulating the Distribution Fund Plan, the Distribution Fund Administrator shall apply the following criteria to identify Eligible Distribution Fund Recipients:
  - i. The person must have purchased the “equity securities in question” through Respondent during the “relevant period of purchase.” Identification of the “relevant period of purchase” for each such equity security will be set forth (solely for the purpose of administering the Distribution Fund Plan) in the Distribution Fund Plan;
  - ii. The person must have suffered a net loss on his equity securities purchases in question; and
  - iii. The person must not have been an employee of Respondent at the time of the equity securities purchases in question.
4. In formulating the Distribution Fund Plan, the Distribution Fund Administrator may also consider additional criteria in identifying Eligible Distribution Fund Recipients, including:
  - i. Whether the person was a retail or institutional customer of Respondent; and
  - ii. The proximity in time between the person’s purchase of a company’s equity securities and Respondent’s publication of the research in question regarding the company (as a threshold matter, however, the purchase must have been made after the publication or receipt of such

research; assuming that threshold has been met, in general, the shorter the time period, the more likely the person suffered a loss as a result of conduct referenced in the Order).

5. If it is not practicable to formulate a Distribution Fund Plan that allocates funds to persons who purchased the “equity securities in question” during the relevant period as described above, or if it is practicable to allocate only some of the funds in the Distribution Fund to such persons, the Distribution Fund Administrator shall apply alternative or additional criteria, as the case may be, or other considerations in formulating a Distribution Fund Plan. Such alternative or additional criteria or other considerations shall be set forth in the Distribution Fund Plan.
6. If monies remain in the Distribution Fund after all distributions pursuant to a Distribution Fund Plan have been made, then such remaining monies shall be paid in accordance with a plan of residual distribution to be proposed by the Distribution Fund Administrator after consultation with Commission staff and, in his sole discretion, Respondent, and approved by the Commission. If a residual plan of distribution is necessary, the criteria that the Distribution Fund Administrator shall apply in formulating such a plan will be set forth in a further order or orders of the Commission.
7. As soon as is practicable, and after any consultation with experts that the Distribution Fund Administrator believes is necessary or appropriate, but in no event more than three (3) months after the date of the issuance of this Order, the Distribution Fund Administrator will provide the Commission staff and, in his sole discretion, Respondent for review and comment a Distribution Fund Plan, which shall, among other things, describe a process for (1) identifying and categorizing Eligible Distribution Fund Recipients in accordance with the considerations described above; (2) determining the amount of the Distribution Fund that each Eligible Distribution Fund Recipient shall receive; and (3) distributing the Distribution Fund to Eligible Distribution Fund Recipients. Sixty (60) days after the Distribution Fund Plan has been submitted to the Commission staff, the Plan, with any revisions that the Distribution Fund Administrator deems appropriate, shall be presented to the Commission for notice and comment. The Distribution Fund Administrator shall implement the Plan, in accordance with the Commission’s Order approving the Distribution Fund Plan. Upon the completion of the process of identifying the Eligible Distribution Fund Recipients and determining the amount that each should receive, but in no event later than six (6) months from the Commission’s approval of the Distribution Fund Plan, the Distribution Fund Administrator shall submit a Distribution Fund Report to the Commission staff and, in his sole discretion, Respondent. The Distribution Fund Report shall set forth (1) the identities of the Eligible Distribution Fund Recipients; (2) the amount of the Distribution Fund that each Eligible Distribution Fund Recipient shall receive; and (3) procedures for distributing the Distribution Fund to Eligible Distribution Fund Recipients.

Thirty (30) days after submission of the Distribution Fund Report to the Commission staff, the Report shall be presented to the Commission for its approval.

8. The Distribution Fund Administrator may apply to the Commission staff for extension of any procedural deadlines set forth herein, in the Distribution Fund Plan, or in the Distribution Fund Report, and the Commission staff may grant any such application for good cause shown.
9. Under no circumstances shall any part of the Distribution Fund be returned to Respondent;

C. Pursuant to the OIP, Respondent shall pay all fees, costs, and expenses related to the development and implementation of the Distribution Fund Plan, including all fees, costs and expenses incurred by the Distribution Fund Administrator in connection with and incidental to the performance of his duties under this Order and any further applicable orders of the Commission; and all fees, costs, and expenses of any persons engaged to assist the Distribution Fund Administrator. The Distribution Fund Administrator shall on a quarterly basis submit invoices to Respondent, with copies sent to the Commission staff, indicating the amount of the payment due, the deadline for payment, and the instruction for transmitting the payment. Pursuant to the OIP, Respondent shall promptly submit payments to the Distribution Fund Administrator upon receipt of such invoices from the Distribution Fund Administrator;

D. The Distribution Fund is deemed a qualified settlement fund by the Internal Revenue Service and may incur tax obligations under Treasury Regulation §1.468B-1(e). A tax administrator will be appointed by Commission staff to fulfill such obligation (the "Tax Administrator"). Respondent and the Distribution Fund Administrator shall cooperate with the Tax Administrator to see that all tax payments are timely made. Pursuant to the OIP, Respondent shall pay all fees, costs, and expenses of the Tax Administrator, including all fees costs and expenses incurred by the Tax Administrator in connection with the preparation of tax returns and/or seeking IRS rulings. Pursuant to the OIP, Respondent shall promptly submit payments to the Tax Administrator upon notice from the Tax Administrator as to the amount of the payment due, the deadline for payment, and the instruction for transmitting the payment.

By the Commission.

Nancy M. Morris  
Secretary