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	:	**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**
Banc of America Securities LLC,	:	
Respondent.	:	

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.

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[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

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[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. <u>BAS Proprietary Positions in Advance of Research</u>

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 firms' 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

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[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.

clients.[9] BAS recognized the imbalance in the use of its ratings under the three-tier rating system and changed to the five-tier system to try to address it. Nevertheless, even after BAS changed to a five-tier system, the firm continued to have an imbalance in its ratings and maintained a de facto three-tier system. As of June 2001, BAS had more than 700 companies under coverage, yet it had no Sell ratings and only three Underperform ratings (less than 1%). BAS closely monitored its research by reviewing and approving reports prior to publication and by tracking analysts' stock recommendation performance. On occasion, BAS received complaints concerning its research from certain BAS employees, issuers, and customers. Thus, during the relevant period, BAS was aware of questions about whether its research was inconsistent with the firm's rating system, the analysts' views, or the performance and prospects of covered companies.

2. BAS Published False Equity Research Reports on Three Companies

BAS published materially false and misleading research reports on three companies that did not reflect the analysts' true views: Intel Corporation ("Intel"); TelCom Semiconductor, Inc. ("TelCom"); and E-Stamp Corporation ("E-Stamp").

a. Intel

BAS initiated coverage of Intel, a leading semiconductor chip manufacturer, with a Buy rating in August 1999. Intel was not a BAS investment banking client. BAS upgraded Intel to a Strong Buy in November 1999 and maintained that rating throughout 1999 and most of 2000. On September 13, 2000, at a time when most semiconductor analysts were bullish on semiconductor industry stocks, BAS's semiconductor analyst downgraded Intel and Advanced Micro Devices, Inc. ("AMD") from Strong Buy to Market Perform. After these early morning "double" downgrades, which cited negative demand indications, Intel's stock price dropped almost 5% in pre-market trading. Other semiconductor stocks also declined, including Elantec Semiconductor, Inc. ("Elantec"), a BAS investment banking client, which dropped more than 3% in pre-market trading.[10]

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[9] For example, shortly after initiating positive coverage of an Internet retailer in 1999, the firm's analyst informed several investment bankers that BAS had a chance to "develop a relationship" with the company due to positive conversations he had had with company management. The analyst subsequently downgraded the company to a Market Perform rating in part because of the company's poor Q3 1999 performance. The analyst noted in the report that the stock then traded at more than $10 above his 12-month target price. That same day, another BAS analyst told the analyst that his rating was too high given the target price and asked how a Market Perform rating could be justified when the target price suggested a -12% return over 12 months. The analyst responded: "Because we are in the investment banking business. It will go out verbally from our sales force that this stock should be sold." Notwithstanding the analyst's private belief that the stock should be sold, BAS maintained its Market Perform rating.

[10] Elantec manufactured analog circuits for a variety of markets. In July 2000, BAS solicited a role in Elantec's anticipated follow-on offering. The firm's semiconductor industry analyst participated in the Elantec pitch meeting and offered to provide positive research. (BAS did not at the time provide research coverage on Elantec.) In August 2000, BAS was selected to participate in Elantec's follow-on offering as one of several co-managers.

The analyst informed the firm's investment bankers on September 12 that he was planning to downgrade Intel. After the downgrades were released, the BAS investment banker responsible for the firm's Elantec relationship commented about the downgrades to another BAS banker, stating: "A downgrade to buy would at least have given us some wiggle room." During the next few days, the firm's Elantec banker contacted the analyst and expressed concern that the downgrades would negatively impact the firm's ability to successfully complete Elantec's upcoming follow-on offering. He also pressured the analyst not to issue further negative semiconductor industry reports until after the completion of the Elantec deal, for which BAS was acting as a co-manager. During this period, the semiconductor analyst, who had been brought "over the wall" for the offering, actively participated in the marketing of the Elantec transaction and learned it would be priced on September 19 after the market close.

In the pre-market hours of September 19, less than a week after the downgrades, the analyst upgraded Intel and AMD one level to Buy ratings. That day, Intel's stock price increased 8% and Elantec's stock price increased more than $3 or almost 5%. After the close of trading, the Elantec follow-on offering was priced. BAS earned more than $1.3 million in fees on the deal. The next day, the analyst e-mailed the firm's Marketing Director and asked: "now that intel's up, should we go back to a Hold?"

b. TelCom

Between January and October 2000, BAS initiated and maintained positive research coverage of TelCom, an investment banking client. The maintenance of a positive research rating on TelCom, during a period when TelCom's stock price dropped almost 50%, was inconsistent with the analyst's privately-expressed views.

TelCom manufactured analog circuits for a variety of markets. BAS's predecessor participated in TelCom's 1995 IPO. On January 13, 2000, at the urging of the firm's investment bankers, BAS initiated coverage of TelCom. BAS's initial research report carried a Buy rating and a $25 target price. During the next several months, BAS did not publish additional reports, but maintained its Buy rating. In March 2000, TelCom made a secondary offering in which BAS was awarded a small participation. On June 21, in response to an inquiry about TelCom from the firm's TelCom trader, the analyst replied:

> I am ashamed to say that ever since we were left on the last secondary I've gone to sleep on this one, which I only picked up because our (now departed) bankers told me to. Frankly, unless you tell me otherwise, I'd just as soon drop them. On the other hand, the semi upcycle we're in is by far the biggest I've seen and it should keep sweeping the refuse along with it – that's how I'd classify [TelCom]. Definitely, lower rung of the ladder.

Later that same day, the analyst advised a senior BAS investment banker that he wanted to drop coverage of TelCom. The banker asked the analyst to delay dropping coverage while he confirmed whether a new BAS investment banker had a relationship with the company that might open the door to future investment banking business. The analyst acceded to the banker's wishes, and BAS maintained its Buy rating in reports issued on June 22 and on July 24.

On August 14, BAS's TelCom trader e-mailed news that a competing investment banking firm, which had been a key TelCom underwriter, had downgraded TelCom. The analyst replied: "This should reopen the door for us… no coverage drop here…." Three days later, BAS reiterated its TelCom Buy rating. Just a week later, the analyst once again privately disparaged TelCom and expressed a desire to cease coverage. A BAS institutional sales person e-mailed the analyst for a second time with TelCom questions, and the analyst replied:

> can't hide, can I? I've been hoping these question[s] would go away. Why? Because [TelCom] is a crappy company with suspect management and I'd just as soon drop them.… Now, there's no doubt that management is trying to dress the company up to be sold, but that's as good as it gets, I'm afraid. I'd rather not have to "recommend" them to a real client, so now maybe you can understand why I've been ducking the issue.

The sales person responded: "Enough said…I appreciate the honesty and we will look elsewhere…" BAS publicly maintained its positive TelCom coverage as the company's stock price continued to drop.

On October 19, with the stock trading at around $10 per share, an associate analyst suggested to the analyst that BAS downgrade or drop coverage of TelCom. The analyst replied: "I don't mind dropping coverage but let's see what [the firm's investment bankers] wish to do first." The next day, BAS lowered its estimates but once again maintained its Buy rating in a report on TelCom's Q3 2000 financial results, which were negative and below estimates. Several days later, on October 25, BAS downgraded TelCom to a Market Perform rating in a semiconductor industry report that downgraded virtually the entire semiconductor sector.

c. E-Stamp

E-Stamp made products that allowed customers to purchase postage via the Internet. BAS acted as a co-manager for E-Stamp's 1999 IPO, earning more than $2 million in fees. Following the IPO, BAS initiated coverage of E-Stamp with a Buy rating and a $30 target price. BAS's Internet retail analyst and an associate analyst were responsible for covering the company. E-Stamp was never profitable and was delisted from the Nasdaq Stock Market less than two years after its IPO. Between November 1999 and August 2000, as E-Stamp's stock price declined from over $22 per share to around $1 per share, BAS maintained its Buy rating on the stock and failed to lower its $30 target price.

On January 19, 2000, BAS published a detailed E-Stamp report maintaining its Buy rating and $30 target price. Several days later, on January 27, a BAS employee asked the analyst whether E-Stamp was "worth a look" and the analyst responded: "Hold off on it." During the next several months, E-Stamp failed to meet its financial projections and its stock price sunk to below $4 per share. Contrary to the analyst's negative views and the company's dismal financial performance, BAS maintained its E-Stamp Buy rating in two reports. Though the BAS rating system required all Buy-rated stocks to be based on target prices, in each of these reports, BAS failed to publish a target price or disclose any change to its previously published $30 target.

On July 20, with the stock trading below $2 per share, E-Stamp announced its Q2 2000 results, which included substantial losses and a significant business model revision. Following

this announcement, the associate analyst wrote to a relative concerning E-Stamp: "just had a thoroughly [expletive deleted] company chunk numbers once again and totally change their business model. nice." Hours later, contrary to those negative views and the company's dim prospects, BAS once more maintained its E-Stamp Buy rating, but did not publish a target price. Two weeks later, the analyst sought permission from investment bankers to drop coverage of E-Stamp. The responsible banker replied: "Please, before officially dropping we should talk… My concern is potential market perception that we are kicking our .Com clients when they are down…." The analyst acceded to the request of the banker and continued E-Stamp coverage. During the next week, the analyst e-mailed the banker several times to encourage him to contact E-Stamp and authorize the coverage drop. BAS maintained its E-Stamp Buy rating for several more weeks.

On August 25, BAS bankers informed E-Stamp that BAS intended to drop coverage. E-Stamp management, upset at the decision, complained to the firm's research director, who then contacted the analyst and suggested moving E-Stamp into coverage-in-transition as an alternative to dropping coverage. The analyst responded:

> …this thing [E-stamp] is terminal. …I wrote more research than the lead manager, we kept a Buy on the stock (and shouldn't have) all the way through it. We've done more than our share. They have missed every quarter by a mile and now have completely changed the model. I told [E-Stamp's CEO] that it only complicates the situation that we [have] a Buy on the stock. At a minimum, that should be reduced. Not really an option at this point, however, because it makes us look that much worse. …I'll do whatever you like but do not want to take up anymore of your time. I vote for dropping.

Shortly thereafter, BAS dropped coverage of E-Stamp.

3. "Ratings Reset" Week

By mid-2001, BAS was concerned that its research ratings and price targets were either inconsistent with the analysts' views or unrealistic in light of changes that had occurred in the securities markets.[11] As a result, BAS administered a firm-wide research rating adjustment. On July 24, BAS announced "BAS Ratings Reset Week" to the research department as an amnesty program pursuant to which analysts would have an opportunity to reset their ratings to more accurately reflect their views or current market conditions. BAS did not publicly announce the program and did not inform its customers. BAS told analysts the reset would take place over an entire week in order "to avoid a massive rush of rating changes all at once" and to keep the changes "way below the radar scope." Beginning August 13, and continuing for at least a week, BAS analysts reduced ratings, target prices, and earnings estimates as part of the firm's reset week. Nonetheless, the reset project did not correct the firm's research problems. In the following months, concern was expressed within BAS that many of its ratings and target prices

[11] For example, in January 2001, BAS was aware that more than 120 Buy and Strong Buy rated stocks required greater than 50% appreciation to reach the firm's target price, more than 70 stocks required 100% appreciation, and at least 16 required over 300% appreciation.

still were unrealistic.[12] Accordingly, throughout the relevant period, BAS was aware of problems with its research and failed adequately to address them.

IV.

LEGAL ANALYSIS

A. Section 15(f) of the Exchange Act

Section 15(f) of the Exchange Act requires broker-dealers to establish, maintain and enforce written policies and procedures reasonably designed, taking into consideration the nature of the broker's or dealer's business, to prevent the misuse, in violation of the federal securities laws, of material, nonpublic information by such broker or dealer or any of its employees or associated persons. Congress enacted Section 15(f) as part the Insider Trading and Securities Fraud Enforcement Act of 1988 ("ITSFEA") in an effort to strengthen the internal controls of broker-dealers. H.R. Rep. No. 910, 100th Cong., 2nd Sess. (1988). Section 15(f) is intended to protect against a broad range of potential market violations, including insider trading and broker-dealer front running.

The internal controls requirements imposed by Section 15(f) are essential to protect against the risk of misuse of material nonpublic information and to further the Commission's mission to protect investors and maintain market integrity. The securities industry has long been aware of the need for effective compliance policies to guard against the risk of misuse of material nonpublic information, and the need to tailor those policies to the specific activities of the individual firm. *See, e.g., In re Goldman Sachs & Co.*, Exchange Act Release No. 48436 (Sept. 4, 2003); *In re Guy P. Wyser-Pratte*, Exchange Act Release No. 44283 (May 9, 2001); *In re Gabelli & Co. and Gamco Investors, Inc.*, Exchange Act Release No. 35057 (Dec. 8, 1994) (a broker-dealer must establish and enforce procedures that expressly address issues raised by an associated person who has access to material nonpublic information while at the same time performs multiple employment responsibilities). The mere establishment of policies and procedures alone is not sufficient to prevent the misuse of material nonpublic information. It also is necessary to implement measures to monitor compliance with and enforcement of those policies and procedures. *See, e.g., In the Matter of Morgan Stanley & Co. Inc. and Morgan Stanley DW Inc.*, Exchange Act Release No. 54047 (June 27, 2006) (firm established certain written policies and procedures to prevent the misuse of material nonpublic information by the firm or persons associated with it, but failed to maintain and enforce them and to conduct any surveillance of a massive number of accounts and securities).

BAS's policies and procedures were not reasonably designed, given the nature of its business, to prevent the misuse of material nonpublic information. The firm failed to maintain adequate controls over the dissemination and public release of its material nonpublic research

[12] Approximately one month after reset week, BAS learned that more than 126 Strong Buy and Buy rated stocks still required greater than 100% appreciation to reach the firm's target prices, and at least 21 stocks required more than 250% appreciation. More than six months later, a senior supervisory analyst complained to the firm's Research and Compliance Directors that the firm's ratings and target prices were still "unrealistic."

information. BAS lacked adequate controls to track the actual release time for its research and thus was unable to accurately monitor for potential misuse of that information. BAS also failed to establish and maintain written policies governing the firm's position traders' access to and use of the firm's material nonpublic research information. The Marketing Director's multiple responsibilities, extensive personal trading, and position straddling the firm's research information wall presented a significant risk that he and others could misuse the firm's material nonpublic information. BAS failed to establish any specific policies and procedures regarding the Marketing Director's possession and use of material nonpublic research information other than the firm's general requirements that were applicable to all employees. Furthermore, when confronted with indications of potentially violative trading, BAS either failed reasonably to enforce the firm's policies and procedures to protect against the misuse of the firm's research information, or failed to act at all. Accordingly, BAS willfully violated Section 15(f) of the Exchange Act.

B. Section 15(c) of the Exchange Act and Rule 15c1-2(a) Thereunder

Section 15(c)(1)(A) of the Exchange Act prohibits brokers and dealers from using "any manipulative, deceptive, or other fraudulent device or contrivance" in connection with securities transactions. Exchange Act Rule 15c1-2(a) defines the phrase "manipulative, deceptive, or other fraudulent device or contrivance" as "any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person." Among the conduct prohibited by these provisions is the making of any untrue statement of a material fact or omitting to state a material fact necessary in order to make the statements made, in light of the circumstances in which they were made, not misleading. Congress enacted the antifraud provisions "to provide for the establishment of a mechanism of regulation among over-the-counter brokers and dealers ... to prevent acts and practices inconsistent with just and equitable principles of trade." H.R. Rep. No. 2307, 75th Cong., 3d Sess. (1938).

Violations of the antifraud provisions require the misstatements or omissions concern material facts. *See Basic, Inc. v. Levinson*, 485 U.S. 224, 231-32 (1988) (quoting *TSC Industries, Inc. v. Northway, Inc.*, 426 U.S. 438, 449 (1976)). A fact is material if there is a substantial likelihood that a reasonable investor would consider it important in making an investment decision. *See TSC Industries*, 426 U.S. at 449. The scienter requirement is the same for Section 15(c)(1) violations as for violations of Section 10(b). *SEC v. Dowdell*, 2002 WL 424595 at *6 (W.D. Va. March 14, 2002); *In the Matter of Fundamental Portfolio Advisors, Inc., et al.*, Exchange Act Release No. 48177 (July 15, 2003).

During 1999 through 2001, BAS published research reports regarding Intel, TelCom, and E-Stamp that were unduly influenced by investment banking considerations and failed to disclose the analysts' actual, negative views concerning the companies. By publishing research reports that were contrary to the privately held views of its analysts, BAS violated Section 15(c) of the Exchange Act and Rule 15c1-2(a) thereunder.

V.

Based on the foregoing, the Commission finds that BAS willfully violated Sections 15(c) and 15(f) of the Exchange Act and Rule 15c1-2(a) thereunder.

VI.

UNDERTAKINGS

A. Section 15(f) Undertakings

BAS undertakes to:

1. Retain, at BAS's expense and within thirty (30) days of the issuance of this Order, a qualified independent consultant (the "Consultant") not unacceptable to the staff to conduct a comprehensive review of BAS' policies, practices and procedures to prevent the misuse of material nonpublic information concerning BAS research, to determine the adequacy of such policies, practices and procedures under Section 15(f) of the Exchange Act, and to prepare a Report, referenced below, reviewing the adequacy of BAS' current policies, practices, and procedures and making recommendations regarding how BAS should modify or supplement the policies, practices, and procedures to prevent the misuse of material nonpublic information in compliance with Section 15(f). BAS shall provide a copy of the engagement letter detailing the Consultant's responsibilities to Kara N. Brockmeyer, Assistant Director, Division of Enforcement, U.S. Securities and Exchange Commission, 100 F Street, N.E., Washington, DC, 20549-8549;

2. Cooperate fully with the Consultant, including providing the Consultant with access to its files, books, records, and personnel as reasonably requested for the above-mentioned review, and obtaining the cooperation of its employees or other persons under its control;

3. Require the Consultant to report to the Commission staff on his/her activities as the staff shall request;

4. Permit the Consultant to engage such assistance, clerical, legal or expert, as necessary and at reasonable cost, to carry out his/her activities, and the cost, if any, of such assistance shall be borne exclusively by Respondent;

5. Within one hundred and fifty (150) days of the issuance of this Order, unless otherwise extended by the staff for good cause, BAS shall require the Consultant to complete the review and prepare a written Report that: (i) evaluates the adequacy under Section 15(f) of the Exchange Act of BAS' policies, practices, and procedures to prevent the misuse of material nonpublic information concerning BAS research; and (ii) makes any recommendations about modifications thereto or additional or supplemental procedures deemed necessary to remedy any deficiencies described in the Report. The Consultant shall provide

the Report simultaneously to both the Commission staff (at the address set forth above) and Respondent. BAS shall afford the Consultant the option to seek an extension of time to submit the Report by making a written request to the staff at the address set forth above, a copy of which the Consultant shall provide to Respondent;

6. Within one hundred and twenty (120) days of BAS' receipt of the Report, BAS shall adopt and implement all recommendations set forth in the Report; provided, however, that as to any recommendation that BAS considers to be, in whole or in part, unduly burdensome or impractical, BAS may submit in writing to the Consultant and the staff (at the address set forth above), within sixty (60) days of receiving the Report, an alternative policy, practice, or procedure designed to achieve the same objective or purpose. BAS and the Consultant shall then attempt in good faith to reach an agreement relating to each recommendation that BAS considers to be unduly burdensome or impractical and the Consultant shall reasonably evaluate any alternative policy, practice, or procedure proposed by Respondent. Such discussion and evaluation by BAS and the Consultant shall conclude within ninety (90) days after BAS' receipt of the Report, whether or not BAS and the Consultant have reached an agreement. Within fourteen (14) days after the conclusion of the discussion and evaluation by BAS and the Consultant, BAS shall require that the Consultant inform BAS and the staff (at the address set forth above) of his/her final determination concerning any recommendation that BAS considers to be unduly burdensome or impractical. BAS shall abide by the determinations of the Consultant and, within sixty (60) days after final agreement between BAS and the Consultant or final determination by the Consultant, whichever occurs first, BAS shall adopt and implement all of the recommendations that the Consultant deems appropriate;

7. Within fourteen (14) days of BAS' adoption of all of the recommendations that the Consultant deems appropriate, BAS shall certify in writing to the Consultant and the staff (at the address set forth above) that BAS has adopted and implemented all of the Consultant's recommendations and that BAS has established policies, practices, and procedures pursuant to Section 15(f) of the Exchange Act that are consistent with the findings of this Order;

8. BAS may apply to the staff for an extension of the deadlines described above before their expiration, and upon a showing of good cause by Respondent, the staff may, in its sole discretion, grant such extensions for whatever time period it deems appropriate;

9. To ensure the independence of the Consultant, BAS shall not have the authority to terminate the Consultant without prior written approval of the Commission's staff, and shall compensate the Consultant and persons engaged to assist the Consultant for services rendered pursuant to this Order at their reasonable and customary rates;

10. BAS shall require the Consultant to enter into an agreement that provides that, for the period of engagement and for a period of two years from completion of the engagement, the Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with BAS or any of their present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. The agreement will also provide that the Consultant will require that any firm with which he/she is affiliated or of which he/she is a member, and any person engaged to assist the Consultant in the performance of his/her duties under this Order shall not, without the prior written consent of the staff, enter into any employment, consultant, attorney-client, auditing or other professional relationship with BAS, or any of their present or former affiliates, directors, officers, employees, or agents acting in their capacity as such, for the period of the engagement and for a period of two years after the engagement;

11. BAS agrees to certify in writing to the staff (at the address set forth above), in the second year following the issuance of this Order, that BAS has established and continues to maintain policies, practices, and procedures pursuant to Section 15(f) of the Exchange Act that are consistent with the findings of this Order.

B. <u>Research Undertakings</u>

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BAS has informed the staff of the Commission that it has implemented policies and procedures relating to its equity research and investment banking operations to ensure compliance with the terms of Addendum A to this Order, which is incorporated herein with the same force and effect as if fully set forth in the Order.

BAS undertakes to:

1. Within 30 days from the date of the issuance of this Order: (i) conduct a review of the implementation and effectiveness of the firm's policies and procedures relating to its equity research and investment banking operations to ensure compliance with all terms of Addendum A, and (ii) provide a written report to the staff of the Commission setting forth its findings and its recommendations regarding any revisions or improvements to the firm's policies and procedures necessary or appropriate to ensure compliance with all terms of Addendum A ("the Report"); and

2. Within 30 days from the date of the Report: (i) adopt and implement all recommendations of the Report, and (ii) certify that the firm's policies and procedures relating to its equity research and investment banking operations ensure compliance with all terms of Addendum A.

VII.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions specified in Respondent Banc of America Securities LLC's Offer.

ACCORDINGLY, IT IS HEREBY ORDERED THAT:

A. Pursuant to Section 21C of the Exchange Act, Respondent shall cease and desist from committing or causing any violations and any future violations of Sections 15(c) and 15(f) of the Exchange Act and Rule 15c1-2(a) promulgated thereunder;

B. Respondent is censured pursuant to Section 15(b)(4) of the Exchange Act;

C. Respondent shall comply with the undertakings enumerated in Section VI above;

D. Respondent shall, within ten days of the entry of this Order, pay a civil money penalty in the amount of $6,000,000 for its violations of Section 15(f) of the Exchange Act, and shall pay disgorgement in the amount of $10,000,000 and a civil money penalty in the amount of $10,000,000 for its violations of Section 15(c) of the Exchange Act. Such payments shall be: (i) made by United States postal money order, certified check, bank cashier's check or bank money order; (ii) made payable to the U.S. Securities and Exchange Commission; (iii) hand-delivered or mailed to the Office of Financial Management, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Stop 0-3, Alexandria, VA 22312; and (iv) submitted with a cover letter that identifies BAS as the Respondent in this proceeding and includes the file number of this proceeding, a copy of which cover letter and money order or check shall be sent to Kara N. Brockmeyer, Assistant Director, Division of Enforcement, Securities and Exchange Commission, 100 F Street, N.E., Washington DC, 20549-8549;

E. Pursuant to Section 308(a) of the Sarbanes-Oxley Act of 2002, a Fair Fund is created for the disgorgement and penalties referenced in Section VII.D above (the "Distribution Fund"). Regardless of whether any such Fair Fund distribution is made, amounts ordered to be paid as civil money penalties pursuant to this Order shall be treated as penalties paid to the government for all purposes, including all tax purposes. To preserve the deterrent effect of the civil penalty, Respondent agrees that it shall not, after offset or reduction in any Related Investor Action based on Respondent's payment of disgorgement in this action, argue that it is entitled to, nor shall it further benefit by offset or reduction of any part of Respondent's payment of a civil penalty in this action ("Penalty Offset"). If the court in any Related Investor Action grants such a Penalty Offset, Respondent agrees that it shall, within 30 days after entry of a final order granting the Penalty Offset, notify the Commission's counsel in this action and pay the amount of the Penalty Offset to the United States Treasury or to a Fair Fund, as the Commission directs. Such a payment shall not be deemed an additional civil penalty and shall not be deemed to change the amount of the civil penalty imposed in this proceeding. For purposes of this paragraph, a "Related Investor Action" means a private damages action brought against Respondent by or on behalf of one or more investors based on substantially the same facts as alleged in the Order instituted by the Commission in this proceeding;

F. The Distribution Fund shall be deposited at the Bureau of Public Debt for investment in government obligations. The Distribution Fund shall be distributed pursuant to a distribution plan (the "Distribution Fund Plan") developed by an administrator (the "Distribution Fund Administrator") appointed by the Commission pursuant to the Commission's Rules on Fair Fund and Disgorgement Plans, 17 C.F.R. 201.1101, et seq. (Rule 1101 through Rule 1106). The Distribution Fund shall be utilized to pay any taxes on income earned by the Distribution Fund. Under no circumstances shall any part of the Distribution Fund be returned to Respondent;

G. 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. Respondent shall promptly submit payments to the Distribution Fund Administrator upon receipt of such invoices from the Distribution Fund Administrator;

H. 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. 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. 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;

I. Respondent shall cooperate with the Distribution Fund Administrator, including upon request, providing the following non-privileged documents, records, and information to the Distribution Fund Administrator: (1) research reports issued by Respondent during the relevant period identified in this Order; (2) documents, records, and information relating to customers' equity securities transactions with or through Respondent, including but not limited to account statements, order tickets, confirmations, and related documents, records and information; and (3) such other documents, records, and information as are necessary for the Distribution Fund Administrator to carry out his duties. Respondent shall cooperate in arranging for interviews of Respondent's employees to explain to the Distribution Fund Administrator and otherwise assist the Distribution Fund Administrator in understanding such documents, records, and information and the distribution of such reports. Respondent shall take such actions as the Distribution Fund Administrator may require (including, but not limited to, providing any notices to any of Respondent's present or former customers that the Distribution Fund Administrator deems appropriate) to ensure proper implementation of the Distribution Fund Plan. Respondent shall indemnify, defend, and hold harmless the Distribution Fund Administrator, his agents, and his attorneys from and against liabilities, claims, and demands, whether civil, administrative, or investigative, judgments, fines, and amounts paid in settlement, and costs and expenses

(including attorneys' fees), arising from or relating to any act or omission to act in the course of performing his duties, except and to the extent that a court of competent jurisdiction finds that such person acted criminally, or in bad faith, or with gross negligence, or with reckless disregard of his duties, or in a manner that he knew was contrary to the terms of this Order or any further applicable order of the Commission; and

J. For a period of three years from the effective date of this Order or such shorter or longer period as the Commission may order, Respondent, its officers, directors, agents, affiliates, servants, employees, attorneys, and those persons in active concert or participation with them, and each of them, are hereby enjoined from destroying, mutilating, concealing, altering, or disposing of (a) any research concerning any issuers referenced in Section III above distributed by Respondent during the relevant period identified in this Order; (b) documents sufficient to identify all customers who bought or sold equity securities of such issuers during the relevant period identified in the Order (the "Transactions"), including but not limited to documents sufficient to identify the dates, amounts, and prices of the Transactions; (c) documents sufficient to identify which customers received which research concerning such issuers distributed by Respondent during the relevant period identified in the Order; (d) order entry information sufficient to identify whether the Transactions were solicited by Respondent; and (e) any and all written (including electronic) communication, including communications to and from customers and intra-firm communications, relating to Respondent's investment banking and equity research operations concerning such issuers during the relevant period identified in the Order; *provided, however*, that Respondent need not retain duplicate identical copies of public documents filed with the Commission or any other regulatory authority.

By the Commission.

Nancy M. Morris
Secretary

Addendum

Addendum A

Research Undertakings

BAS shall comply with the following undertakings:

I. Separation of Research and Investment Banking

1. Reporting Lines. Research and Investment Banking will be separate units with entirely separate reporting lines within the firm – i.e., Research will not report directly or indirectly to or through Investment Banking. For these purposes, the head of Research may report to or through a person or persons to whom the head of Investment Banking also reports, provided that such person or persons have no direct responsibility for Investment Banking or investment banking activities.

    a. As used throughout this Addendum, the term “firm” means the Respondent, Respondent’s successors and assigns (which, for these purposes, shall include a successor or assign to Respondent’s investment banking and research operations), and their affiliates, other than “exempt investment adviser affiliates.”

    b. As used throughout this Addendum, the term "exempt investment adviser affiliate" means an investment adviser affiliate (including, for these purposes, a separately identifiable department or division that is principally engaged in the provision of investment advice to managed accounts as governed by the Investment Advisers Act of 1940 or investment companies under the Investment Company Act of 1940) having no officers (or persons performing similar functions) or employees in common with the firm (which, for purposes of this Section I.1.b., shall not include the investment adviser affiliate) who can influence the activities of the firm's Research personnel or the content of the firm's research reports; provided that the firm (i) maintains and enforces written policies and procedures reasonably designed to prevent the firm, any controlling persons, officers (or persons performing similar functions), or employees of the firm from influencing or seeking to influence the activities of Research personnel of, or the content of research reports prepared by, the investment adviser affiliate; (ii) obtains an annual independent assessment of the operation of such policies and procedures; and (iii) does not furnish to its customers research reports prepared by the investment adviser affiliate or otherwise use such investment adviser affiliate to do indirectly what the firm may not do directly under this Addendum.

    c. As used throughout this Addendum, the term “Investment Banking” means all firm personnel engaged principally in investment banking activities, including the solicitation of issuers and structuring of public offering and other investment banking transactions. It also includes all firm personnel who are directly or indirectly supervised by such persons and all personnel who directly or indirectly supervise such persons, up to and including Investment Banking management.

d. As used throughout this Addendum, the term "Research" means all firm personnel engaged principally in the preparation and/or publication of research reports, including firm personnel who are directly or indirectly supervised by such persons and those who directly or indirectly supervise such persons, up to and including Research management.

e. As used throughout this Addendum, the term "research report" means any written (including electronic) communication that is furnished by the firm to investors in the U.S. and that includes an analysis of the common stock, any security convertible into common stock, or any derivative thereof, including American Depositary Receipts (collectively, "Securities"), of an issuer or issuers and provides information reasonably sufficient upon which to base an investment decision; provided, however, that a "research report" shall not include:

i. the following communications, if they do not include (except as specified below) an analysis, recommendation or rating (e.g., buy/sell/hold, under perform/market perform/outperform, underweight/market weight/overweight, etc.) of individual securities or issuers:

1) reports discussing broad-based indices, such as the Russell 2000 or S&P 500 index;

2) reports commenting on economic, political or market (including trading) conditions;

3) technical or quantitative analysis concerning the demand and supply for a sector, index or industry based on trading volume and price;

4) reports that recommend increasing or decreasing holdings in particular industries or sectors or types of securities; and

5) statistical summaries of multiple companies' financial data and broad-based summaries or listings of recommendations or ratings contained in previously-issued research reports, provided that such summaries or listings do not include any analysis of individual companies; and

ii. the following communications, even if they include information reasonably sufficient upon which to base an investment decision or a recommendation or rating of individual securities or companies:

1) an analysis prepared for a current or prospective investing customer or group of current or prospective investing customers by a registered salesperson or trader who is (or group of registered salespersons or traders

who are) not principally engaged in the preparation or publication of research reports; and

2) periodic reports, solicitations or other communications prepared for current or prospective investment company shareholders (or similar beneficial owners of trusts and limited partnerships) or discretionary investment account clients, provided that such communications discuss past performance or the basis for previously made discretionary investment decisions.

f. As used throughout this Addendum, the term "technical research report" means any written (including electronic) communication that is furnished by the firm to investors in the U.S. and that includes an analysis of the Securities of an issuer or issuers, that is based solely on prices and trading volume and not on the issuer's financial information, business prospects, or contact with issuer management, and that provides information reasonably sufficient upon which to base an investment decision.

g. As used throughout this Addendum, the term "quantitative research report" means any written (including electronic) communication that is furnished by the firm to investors in the U.S. and that includes an analysis of the Securities of an issuer or issuers, that relies solely on the systematic application of statistical or numerical techniques to publicly available data, that does not include a qualitative assessment of an issuer's business prospects or contact with issuer management, and that provides information reasonably sufficient upon which to base an investment decision.

h. As used throughout this Addendum, the term "Institutional Customer" means an entity other than a natural person having at least $10 million invested in securities in the aggregate in its portfolio and/or under management.

i. As used throughout this Addendum the term "Small Institutional Customer" means an entity other than a natural person having less than $10 million and more than $1 million invested in securities in the aggregate in its portfolio and/or under management.

2. Legal/Compliance. Research will have its own dedicated legal and compliance staff, who may be a part of the firm's overall compliance/legal infrastructure.

3. Budget. For the firm's first fiscal year following 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") against Respondent and thereafter, Research budget and allocation of Research expenses will be determined by the firm's senior management (e.g.,

CEO/Chairman/management committee, other than Investment Banking personnel) without input from Investment Banking and without regard to specific revenues or results derived from Investment Banking, though revenues and results of the firm as a whole may be considered in determining Research budget and allocation of Research expenses. On an annual basis thereafter, the Audit Committee of the firm's holding/parent company (or comparable independent persons/group without management responsibilities) will review the budgeting and expense allocation process with respect to Research to ensure compliance with this requirement.

4. Physical Separation. Research and Investment Banking will be physically separated. Such physical separation will be reasonably designed to prevent the intentional and unintentional flow of information between Research and Investment Banking.

5. Compensation. Compensation of professional Research personnel will be determined exclusively by Research management and the firm's senior management (but not including Investment Banking personnel) using the following principles:

   a. Investment Banking will have no input into compensation decisions.

   b. Compensation may not be based directly or indirectly on Investment Banking revenues or results; provided, however, that compensation may relate to the revenues or results of the firm as a whole.

   c. A significant portion of the compensation of anyone principally engaged in the preparation of research reports (as defined in this Addendum) that he or she is required to certify pursuant to Regulation AC (such person hereinafter a "lead analyst") must be based on quantifiable measures of the quality and accuracy of the lead analyst's research and analysis, including his or her ratings and price targets, if any. In assessing quality, the firm may rely on, among other things, evaluations by the firm's investing customers, evaluations by the firm's sales personnel and rankings in independent surveys. In assessing accuracy, the firm may use the actual performance of a company or its equity securities to rank its own lead analysts' ratings and price targets, if any, and forecasts, if any, against those of other firms, as well as against benchmarks such as market or sector indices.

   d. Other factors that may be taken into consideration in determining lead analyst compensation include: (i) market capitalization of, and the potential interest of the firm's investing clients in research with respect to, the industry covered by the analyst; (ii) Research management's assessment of the analyst's overall performance of job duties, abilities and leadership; (iii) the analyst's seniority and experience; (iv) the analyst's productivity; and (v) the market for the hiring and retention of analysts.

e. The criteria to be used for compensation decisions will be determined by Research management and the firm's senior management (not including Investment Banking) and set forth in writing in advance.

f. Research management will document the basis for each compensation decision made with respect to (i) anyone who, in the last 12 months, has been required to certify a research report (as defined in this Addendum) pursuant to Regulation AC; and (ii) anyone who is a member of Research management (except in the case of senior-most Research management, in which case the basis for each compensation decision will be documented by the firm's senior management).

On an annual basis, the Compensation Committee of the firm's holding/parent company (or comparable independent persons/group without management responsibilities) will review the compensation process for Research personnel. Such review will be reasonably designed to ensure that compensation decisions have been made in a manner that is consistent with these requirements.

6. Evaluations. Evaluations of Research personnel will not be done by, nor will there be input from, Investment Banking personnel.

7. Coverage. Investment Banking will have no input into company-specific coverage decisions (i.e., whether or not to initiate or terminate coverage of a particular company in research reports furnished by the firm), and investment banking revenues or potential revenues will not be taken into account in making company-specific coverage decisions; provided, however, that this requirement does not apply to category-by-category coverage decisions (e.g., a given industry sector, all issuers underwritten by the firm, companies meeting a certain market cap threshold).

8. Termination of Coverage. When a decision is made to terminate coverage of a particular company in the firm's research reports (whether as a result of a company-specific or category-by-category decision), the firm will make available a final research report on the company using the means of dissemination equivalent to those it ordinarily uses; provided, however, that no final report is required for any company as to which the firm's prior coverage has been limited to quantitative or technical research reports. Such report will be comparable to prior reports, unless it is impracticable for the firm to produce a comparable report (e.g., if the analyst covering the company and/or sector has left the firm). In any event, the final research report must disclose: the firm's termination of coverage; and the rationale for the decision to terminate coverage.

9. Prohibition on Soliciting Investment Banking Business. Research is prohibited from participating in efforts to solicit investment banking business. Accordingly, Research may not, among other things, participate in any "pitches" for investment banking business to prospective investment banking clients, or have other communications with companies for the purpose of soliciting investment banking business.

10. Firewalls Between Research and Investment Banking. So as to reduce further the potential for conflicts of interest or the appearance of conflicts of interest, the firm must create and enforce firewalls between Research and Investment Banking reasonably designed to prohibit all communications between the two except as expressly described below:

    a. Investment Banking personnel may seek, through Research management (or an appropriate designee with comparable management or control responsibilities ("Designee")) or in the presence of internal legal or compliance staff, the views of Research personnel about the merits of a proposed transaction, a potential candidate for a transaction, or market or industry trends, conditions or developments. Research personnel may respond to such inquiries on these subjects through Research management or its Designee or in the presence of internal legal or compliance staff. In addition, Research personnel, through Research management or its Designee or in the presence of internal legal or compliance staff, may initiate communications with Investment Banking personnel relating to market or industry trends, conditions or developments, provided that such communications are consistent in nature with the types of communications that an analyst might have with investing customers. Any communications between Research and Investment Banking personnel must not be made for the purpose of having Research personnel identify specific potential investment banking transactions.

    b. In response to a request by a commitment or similar committee or subgroup thereof, Research personnel may communicate their views about a proposed transaction or potential candidate for a transaction to the committee or subgroup thereof in connection with the review of such transaction or candidate by the committee. Investment Banking personnel working on the proposed transaction may participate with the Research personnel in these discussions with such committee or subgroup. However, the Research personnel also must have an opportunity to express their views to the committee or subgroup outside the presence of such Investment Banking personnel.

    c. Research personnel may assist the firm in confirming the adequacy of disclosure in offering or other disclosure documents for a transaction based on the analysts' communications with the company and other vetting conducted outside the presence of Investment Banking personnel, but to the extent communicated to Investment Banking personnel, such communication shall only be made in the presence of underwriters' or other counsel on the transaction or internal legal or compliance staff.

    d. After the firm receives an investment banking mandate, or in connection with a block bid or similar transaction**,** Research personnel may

i. Communicate their views on the pricing and structuring of the transaction to personnel in the firm's equity capital markets group, which group's principal job responsibility is the pricing and structuring of transactions;

ii. Provide to personnel in the firm's equity capital markets group information obtained from investing customers relevant to the pricing and structuring of the transaction;

iii. Participate with the equity capital markets group**,** or independently**,** in efforts to educate the firm's sales force regarding the transaction, including assisting in the preparation of internal-use memoranda (including presentations in electronic format) and communicating with the firm's sales force, provided that Research personnel may not appear jointly with management of the issuer or Investment Banking personnel other than members of the equity capital markets group in such communications with the firm's sales force, and provided that the following conditions are satisfied:

1) Such oral communications by Research personnel with the firm's sales force personnel regarding the transaction in which a recommendation or view**,** whether or not labeled as such, is expressed by such Research personnel regarding the transaction must have a reasonable basis;

2) Such oral communications to a group of ten or more of the firm's sales force must be "fair and balanced", as such phrase is generally understood under NASD Rule 2210(d)(1) and after taking into consideration the overall context in which such communications are made (hereinafter referred to as the "fair and balanced standard"). In addition, all such oral communications to a group of ten or more of the firm's sales force must be made in the presence of internal legal or compliance personnel;

3) All internal-use memoranda (or portions thereof) regarding such transaction that are identified as being the views of Research personnel (such memoranda or portions thereof hereinafter referred to as "internal Research memoranda") must comply with the fair and balanced standard;

4) Internal Research memoranda that are distributed to a group of ten or more of the firm's sales force must be reviewed in advance by internal legal or compliance personnel;

5) A written log of all oral communications described in (2) above must be maintained; and

6) All written logs and all internal Research memoranda described in (4) above must be retained for the period required by Rule 17a-4(b)(4).

e. Research personnel may attend or participate in a widely-attended conference attended by Investment Banking personnel or in which Investment Banking personnel participate, provided that the Research personnel do not participate in activities otherwise prohibited herein.

f. Research and Investment Banking personnel may attend or participate in widely-attended firm or regional meetings at which matters of general firm interest are discussed. Research management and Investment Banking management may attend meetings or sit on firm management, risk or similar committees at which general business and plans (including those of Investment Banking and Research) and other matters of general firm interest are discussed. Research and Investment Banking personnel may communicate with each other with respect to legal or compliance issues, provided that internal legal or compliance staff is present.

g. Communications between Research and Investment Banking personnel that are not related to investment banking or research activities may take place without restriction.

11. Additional Restrictions on Activities By Research and Investment Banking Personnel.

a. Research personnel are prohibited from participating in company- or Investment Banking-sponsored road shows related to a public offering or other investment banking transaction.

b. Investment Banking personnel are prohibited from directing Research personnel to engage in marketing or selling efforts to investors with respect to an investment banking transaction.

c. After the firm receives an investment banking mandate relating to a public offering of securities, Research personnel may communicate with investors regarding such offering provided that Research personnel may not appear jointly with management of the issuer or Investment Banking personnel in such communications, and provided that the following conditions are satisfied:

i. Such oral communications by Research personnel with investors regarding the offering in which a recommendation or view, whether or not labeled as such, is expressed by such Research personnel regarding the offering must have a reasonable basis;

ii. Such oral communications to a group of ten or more investors regarding such offering must comply with the fair and balanced standard;

iii. All such oral communications to a group of ten or more investors must be made in the presence of internal legal or compliance personnel;

iv. A written log of all oral communications described in (ii.) above must be maintained; and

v. All written logs must be retained for the period required by Rule 17a-4(b)(4).

12. Oversight. An oversight/monitoring committee or committees, which will be comprised of representatives of Research management and may include others (but not personnel from Investment Banking), will be created to:

a. review (beforehand, where practicable) all changes in ratings, if any, and material changes in price targets, if any, contained in the firm's research reports;

b. conduct periodic reviews of research reports to determine whether changes in ratings or price targets, if any, should be considered; and

c. monitor the overall quality and accuracy of the firm's research reports;

provided, however, that Sections I.12.a. and I.12.b. of this Addendum shall not be required with respect to quantitative or technical research reports.

II. Disclosure/Transparency and Other Issues

1. Disclosures. In addition to other disclosures required by rule, the firm must disclose prominently on the first page of any research report and any summary or listing of recommendations or ratings contained in previously-issued research reports, in type no smaller than the type used for the text of the report or summary or listing, that:

a. "[Firm] does and seeks to do business with companies covered in its research reports. As a result, investors should be aware that the firm may have a conflict of interest that could affect the objectivity of this report."

b. "Investors should consider this report as only a single factor in making their investment decision."

2. Transparency of Analysts' Performance. The firm will make publicly available (via its website, in a downloadable format), no later than 90 days after the conclusion of each quarter (beginning with the first full calendar quarter that commences at least 120 days following the issuance of the Order), the following information, if such information is included in any research report (other than any quantitative or technical research report) prepared and furnished by the firm during the prior quarter: subject company, name(s) of analyst(s) responsible for certification of the report pursuant to Regulation AC, date of report, rating, price target, period within which the price target is to be achieved, earnings per share forecast(s) for the current quarter, the next quarter and the current full year, indicating the period(s) for which such forecast(s)

are applicable (e.g., 3Q03, FY04, etc.), and definition/explanation of ratings used by the firm.

3. Applicability. Except as specified in the second and third sentences of this Section II.3., the restrictions and requirements set forth in Section I [Separation of Research and Investment Banking] and Section II [Disclosure/Transparency and Other Issues] of this Addendum will only apply in respect of a research report that is both (i) prepared by the firm, and (ii) that relates to either (A) a U.S. company, or (B) a non-U.S. company for which a U.S. market is the principal equity trading market; provided, however, that such restrictions and requirements do not apply to Research activities relating to a non-U.S. company until the second calendar quarter following the calendar quarter in which the U.S. market became the principal equity trading market for such company. Notwithstanding the foregoing, Section I.7. [Coverage] of this Addendum will also apply to any research report that has been *furnished* by the firm to investors in the U.S., but not prepared by the firm, but only to the extent that the report relates to either (A) a U.S. company, or (B) a non-U.S. company for which a U.S. market is the principal equity trading market. Also notwithstanding the foregoing, Section II.1. [Disclosures] of this Addendum will also apply to any research report that has been *furnished* by the firm to investors in the U.S., but not prepared by the firm, including a report that relates to a non-U.S. company for which a U.S. market is not the principal equity trading market, but only to the extent that the report has been furnished under the firm's name, has been prepared for the exclusive or sole use of the firm or its customers, or has been customized in any material respect for the firm or its customers.

   a. For purposes of this Section II.3., the firm will be deemed to have furnished a research report to investors in the U.S. if the firm has made the research report available to investors in the U.S. or has arranged for someone else to make it available to investors in the U.S.

   b. For purposes of this Section II.3., a "U.S. company" means any company incorporated in the U.S. or whose headquarters is in the U.S.

   c. For purposes of this Section II.3., the calendar quarter in which a non-U.S. company's "principal equity trading market" becomes the U.S. market is a quarter when more than 50% of worldwide trading in the company's common stock and equivalents (such as ordinary shares or common stock or ordinary shares represented by American Depositary Receipts) takes place in the U.S. Trading volume shall be measured by publicly reported share volume.

4. General.

   a. The firm may not knowingly do indirectly that which it cannot do directly under this Addendum.

b. The firm will adopt and implement policies and procedures reasonably designed to ensure that its associated persons (including but not limited to the firm's Investment Banking personnel) cannot and do not seek to influence the contents of a research report or the activities of Research personnel for purposes of obtaining or retaining investment banking business. The firm will adopt and implement procedures instructing firm personnel to report immediately to a member of the firm's legal or compliance staff any attempt to influence the contents of a research report or the activities of Research personnel for such a purpose.

5. Timing. Unless otherwise specified, the restrictions and requirements of this Addendum will be effective within 30 days of the issuance of the Order.

6. Superseding Rules and Amendments. In the event that the SEC adopts a rule or approves an SRO rule or interpretation with the stated intent to supersede any of the provisions of this settlement, the SEC or SRO rule or interpretation will govern with respect to that provision of the settlement and such provision will be superseded.

7. Other Obligations and Requirements. Except as otherwise specified, the requirements and prohibitions of this Addendum shall not relieve the firm of any other applicable legal obligation or requirement.