COMMONWEALTH OF MASSACHUSETTS
OFFICE OF THE SECRETARY OF THE COMMONWEALTH
SECURITIES DIVISION
ONE ASHBURTON PLACE, ROOM 1701
BOSTON, MASSACHUSETTS 02108

IN THE MATTER OF: )
) )
BANC OF AMERICA ) Docket No. 2009-0090
INVESTMENT SERVICES, INC. )
) )
RESPONDENT. )

CONSENT ORDER

I. INTRODUCTION

This Consent Order ("Order") is entered into by the Massachusetts Securities Division ("Division") and Banc of America Investment Services, Inc. ("BAI") in connection with the Administrative Complaint filed June 16, 2010 alleging BAI's dishonest and unethical violations of the Act due to the misleading characterizations of the Fannie Mae and Freddie Mac federal agency step-up bonds Respondent's agents portrayed to at least one Massachusetts investor. (Docket No. 2009-0090).

On November 16, 2010, BAI submitted an Offer of Settlement for the purpose of disposing the allegations set forth in the Offer of Settlement. BAI, without admitting or denying the Statement of Facts as set out herein in Section VI and without an adjudication of any issue of law or fact, consents to the entry of this Order by the Division, consistent with the language and terms of the Offer of Settlement, thereby settling the Division's claims with prejudice.
II. JURISDICTION AND AUTHORITY

1. The Massachusetts Securities Division is a Division of the Office of the Secretary of the Commonwealth with jurisdiction over matters relating to securities as provided for by the Act. The Act authorizes the Division to regulate: 1) the offers and/or sales of securities; 2) those individuals offering and/or selling securities within the Commonwealth; and 3) those individuals transacting business as broker-dealer agents within the Commonwealth.

2. The Division brings this action pursuant to the enforcement authority conferred upon it by Section 407A of the Act and M.G.L. c. 30A, wherein the Division has the authority to conduct an adjudicatory proceeding to enforce the provisions of the Act and all regulations and rules promulgated thereunder.

3. This proceeding is brought in accordance with Sections 204 and 407A of the Act and its Regulations. Specifically, the acts and practices constituting violations of the Act occurred in the Commonwealth of Massachusetts.

4. The Division specifically reserves the right to amend this Complaint and/or bring additional administrative complaints to reflect information developed during the current ongoing investigation.

III. RELEVANT TIME PERIOD

5. Except as otherwise expressly stated, the conduct described herein occurred during the approximate period of January 1, 2008 through the present.
IV. RESPONDENT

6. **Banc of America Investment Services, Inc.** (“BAI”) was a Financial Industry Regulatory Authority (“FINRA”) registered broker-dealer with its headquarters at 100 Federal Street, Boston, Massachusetts 02110. BAI’s Central Registration Depository (“CRD”) identification number was 16361. On October 23, 2009, BAI merged with and into CRD 7691, the identification number for Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”) whose main address is One Bryant Park, New York, NY 10036.

V. OTHER INVOLVED AND RELATED PARTIES

7. **John Patrick Keating** (“Keating”) has been an employee of BAI, now Merrill Lynch, since February 2007 with an office located at 101 Derby Street, Hingham, MA 02043. Keating’s CRD number is 2510363. Keating was registered in Massachusetts as a broker-dealer agent and investment adviser representative possessing the Series 7, 63, and 65 registrations.

8. **Reggie Cajigal Aquino** (“Aquino”) was a premier client manager with Bank of America, N.A. and an investment services representative with BAI with an office located at 101 Derby Street, Hingham, MA 02043. Aquino was registered in Massachusetts possessing the Series 6 and 63 registrations that only permitted him to sell Investment Company and variable contract products. Aquino’s CRD number is 5139566. As of April 2, 2009, Aquino was no longer employed by Bank of America, N.A. or BAI.

VI. STATEMENT OF FACTS

A. **Background—Step-Up Bonds**

9. Step-up notes or bonds are “callable debt securities with interest rates that increase over time. If the notes are not called by the issuer, their coupons increase according to a predefined schedule.” [Exhibit 1].
10. BAI has been selling step-up notes and/or bonds since at least the 1990’s.

11. Six registered representatives at the BAI 101 Derby Street, Hingham, MA branch sold step-up bonds to 19 Massachusetts investors over the age of 60 over a twenty-two month period, from January 2008 through October 2009.

12. John Keating was the registered representative of record for 8 of the 19 BAI customers who purchased step-up bonds through the Hingham branch that totaled approximately two million seven hundred thousand dollars ($2,700,000). In addition, for one of the sales, Mr. Keating was partnered with Reggie Aquino, a dual employee of BAI and Bank of America, N.A.

13. When Keating was asked what type of client an agency step-up bond was appropriate for, Keating testified that “...I was talking to clients who were experienced [sic] renewals on either other bonds or CDs or they had cash on hand and they were looking for a higher interest rate than they could get on CDs and they were interested in the AAA rating with step-up agency bonds.”

14. The limited sales and marketing materials provided by BAI indicate that the largest issuers of step-up bonds are the government sponsored enterprises Fannie Mae and Freddie Mac. [Exhibit 1, see also Exhibits 2 and 3 for additional BAI marketing materials].

15. The Freddie Mac step-up bond Offering Circular\(^1\) describes its government charter along with a disclosure that its securities are not guaranteed by the government:

> Though we are chartered by Congress, our business is funded with private capital. We are responsible for making payments on our securities. *Neither the U.S. government nor any other agency or instrumentality of the U.S. government is obligated to fund our mortgage purchase or financing activities or to guarantee our securities and other obligations.*

(emphasis supplied) [Exhibit 4\(^2\)].

\(^1\) An Offering Circular or prospectus is utilized when offering new issues of securities to the public.

\(^2\) The March 17, 2008 Freddie Mac, Global Debt Facility Offering Circular was produced to the Division in its entirety as part of the Offering Circular Supplement dated March 17, 2008 at Bates BOA 9867-BOA 9971.
16. Similarly, the Fannie Mae step-up bond April 1, 2008 Offering Circular describes its status as a government sponsored enterprise and corresponding lack of government guarantee, “[w]hile Fannie Mae is a congressionally-chartered enterprise, the U.S. Government does not guarantee, directly or indirectly, our securities or other obligations.” (emphasis supplied) [Exhibit 5 p. 5].

17. In addition, Fannie Mae pricing supplements dated July 10, 2008 that were to be read together with the April 1, 2008 Offering Circular stated further that “[t]he bonds, together with interest thereon, are not guaranteed by the United States and do not constitute a debt or obligation of the United States or of any agency or instrumentality thereof other than Fannie Mae.” (emphasis in original) [Exhibit 6].

18. The BAI Hingham branch sold federal agency step-up bonds to twelve of its nineteen customers between June 1, 2008 and September 30, 2008.

19. During this June 2008 to September 2008 timeframe, the United States was in the midst of an unprecedented credit crisis and housing meltdown and resulted in Congress passing the Housing and Economic Recovery Act of 2008 on July 24, 2008 which was then enacted on July 30, 2008 when the Act was signed by President Bush.

20. Part of the Housing and Economic Recovery Act of 2008 contained provisions to shore up the government sponsored enterprises, Fannie Mae and Freddie Mac. Specifically, the Federal

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However, only the relevant portion (pages 1-19) of the March 17, 2008 Freddie Mac, Global Debt Facility Offering Circular was included and marked as Complaint Exhibit 4.

3 The April 1, 2008 Fannie Mae Universal Debt Facility Offering Circular was produced to the Division in its entirety as part of the Offering Circular Supplement dated April 4, 2008 at Bates BOA 9972-BOA 10107. However, only the relevant portion (pages 1-25) of the April 1, 2008 Fannie Mae Universal Debt Facility Offering Circular was included and marked as Complaint Exhibit 5.

Housing Finance Agency was established as a safety and soundness regulatory and was granted authority over Fannie Mae and Freddie Mac.\footnote{5 \textit{Housing and Economic Recovery Act of 2008}, Pub. L. 110-289, § 1311, July 30, 2008}

21. In its September 9, 2008 Offering Circular Supplement, Fannie Mae described the Federal Housing Finance Agency’s placing Fannie Mae into conservatorship and described three additional steps that were to be taken by the United States Department of the Treasury. For instance, the Treasury would purchase Fannie Mae’s preferred stock, the Treasury would establish a new secured lending credit facility, and the Treasury would initiate a temporary program to purchase mortgage backed securities. [Exhibit 7].

22. Yet, despite being placed into conservatorship, the U.S. Treasury purchasing Fannie Mae’s preferred stock, and the U.S. Treasury purchasing mortgage backed securities, the September 9, 2008 Offering Circular Supplement still \textit{did not} provide for a guarantee of Fannie Mae’s debt securities, rather the disclosure stated the opposite, “[t]he Debt Securities, together with interest thereon, are not guaranteed by the United States and do not constitute a debt or obligation of the United States or of any agency or instrumentality thereof other than Fannie Mae.” (emphasis in original) [Exhibit 7].

23. Even BAI’s materials regarding federal agency step-up notes provided that “[w]hile not secured by the full faith and credit of the U.S. government, federal agency step-up notes are backed by the implicit support of the federal government as demonstrated by their authorizing legislation, essential purposes and/or ability to borrow from the U.S. Treasury.” [Exhibit 3, \textit{see also} Exhibits 1 and 2].

24. Finally, BAI’s written supervisory procedures provided “[t]here must be no representation or implication that a guarantee applies to the investment return or principal value of Federal Agency Securities unless discussing GNMA\textsuperscript{6}.’” (emphasis in original) [Exhibit 8].
25. Other BAI written supervisory procedures that were available in July 2008 and are still effective state:

When recommending Federal Agency Securities, the client must be aware of the potential market risk involved. Most Federal Agency Securities are **NOT** guaranteed by the U.S. Government and are not as liquid as direct obligations of the U.S. Government. There must be no representation or implication that a guarantee applies to the investment return or principal value of Federal Agency Securities unless discussing GNMA.

(emphasis in original) [Exhibit 9].

26. Despite the agencies’ offering circulars and BAI’s own materials indicating that the step-up bonds were not guaranteed by the full faith and credit of the U.S. government, both Keating and Aquino at different times represented to at least one Massachusetts investor, Investor 1, that the federal agency step-up **are guaranteed by the full faith and credit of the U.S. Government**. [See Exhibits 10 and 11].

**B Recommendation of Securities and Opening an Investor’s Account**

i. **Background and Step-Up Bond Recommendation**

27. Mr. Aquino, the dual employee of BAI and Bank of America, had his first interaction with Investor 1 over the phone on June 23, 2008 to let him know that his $2,000,000 worth of Certificates of Deposit (“CDs”) were coming up for renewal on July 4, 2008.

28. Aquino indicated that in June 2008, the CD renewal rates of 2.70% APY were significantly less than the 4.65% APY Investor 1 had been receiving.

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6. GNMA is the Government National Mortgage Association and a wholly owned corporation of the United States within the Department of Housing & Urban Development.

7. Counsel for BAI represented to the Division that these policies and procedures were in effect from May 6, 2008 to May 16, 2008.

8. Counsel for BAI represented that these policies, with an effective date of 1/08/2009 were available as of April 2008.

9. Names and other private information with respect to investors have been redacted in order to preserve confidentiality.
29. Aquino’s next interaction with Investor 1 was during the week of July 7, 2008, when as an alternative renewing the CDs at a lower rate, Aquino suggested to Investor 1 that he consider federal agency step-up bonds.

30. Further, Aquino represented that Investor 1 demanded that he be sent some information regarding the step-up bonds. Keating stated that Aquino asked him to put together “a brief synopsis of what I would guess is appropriate for him.”

31. Keating testified at the Division that he never directly spoke with Investor 1 prior to making a recommendation, stating, “having no knowledge of him or his specifics, I think I just guessed that [step-up bonds] may be appropriate and that should be something [Aquino] should mention to [Investor 1] in order to get a deeper understanding of what is appropriate for him.”

32. While Aquino’s Series 6 registration limited the products he was authorized to recommend and sell, which included only mutual funds and variable annuities, Aquino recapped the step-up recommendation for Investor 1 to an associate also located at his same 101 Derby Street branch that on July 8, 2008:

   [Investor 1] didn’t have time to meet and I had to think fast on what I could give him. I had a sense this was moving out of my book one way or the other that day! ! I took a chance and I remembered that John Keating gave me a profile of the AAA rated bonds that he has pitched over the appointments we have had together, I mentioned that I had information and would talk to him about it. Long story short, John had the product that blurted out of my mouth and the client bought it. I had John explain the product right then and there and that client took it. Neil, I know I mentioned that I was going to get that appointment for us, but the call didn’t dictate that opportunity and I had to save that money [$2,000,000]. I only gave this client what I knew was a product that was mentioned by John [Keating] because he’s pitched it on our appointments with people who are concerned about FDIC.

   (emphasis supplied) [Exhibit 12].

33. Subsequent to the initial product pitch over the phone, Keating and Aquino both indicated to BAI that Investor 1 requested written information regarding the federal agency step-up bonds.
34. Keating wrote in a statement to BAI that

Reggie [Aquino] asked me to put together a brief synopsis of what I would guess is appropriate for him. I gave [R]eggie a printout of several talking points on AAA rated agency step up bonds. Reggie faxed this to [Investor 1] and he was very interested so he asked for a conference call to review these options. We then called him and detailed the specifics of these bonds and asked for specifics on his current situation and how these might be appropriate. 10

35. When asked under oath about the information and writings contained in the fax that Aquino sent to Investor 1, Keating stated that some of the information on would have come from Aquino and some information, probably would have come from Keating. [See Exhibit 10].

36. When asked what a particular statement meant, in particular on page 2 of the facsimile, “...if called, client would receive entire principal from US government,” Keating clarified for the Division that the principal would have been received from the agency, not the government. Keating went on to explain under oath that the facsimile was not a proposal, rather a bullet point conversation piece, “[the fax] was a pre-cursor to a conversation, and obviously, *there are a lot of gaps in this that would need to be explained* further and were explained further to [Investor 1].” (emphasis supplied) [See Exhibit 10].

37. Keating also testified that the statement, “FDIC is the equivalent of AAA,” needed to be explained more in depth and indicated that it was really “apples and oranges.”11 [See Exhibit 10].

38. Keating admitted to the Division that he would have given Aquino page 3 of the facsimile that was marked *for internal use only*, however he did not expect that Aquino would pass on internal use only materials to a client. [See Exhibit 10].

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10 Keating also testified before the Division that his statement to BAI regarding his interactions with Investor 1 was correct and that his amended statement to BAI just further detailed the disclosures he provided Investor 1 regarding federal agency step-up bonds.

11 For instance, Keating testified during the investigation that “AAA is the best investment rating you can get on a bond,” while “FDIC is an insurance on your bank balance up to $200,000.”
The correspondence Aquino faxed to Investor 1 required approval by Aquino’s manager before sending, however no evidence was produced to confirm that the facsimile was approved before being sent out.

After the three page fax, Keating and Aquino had a discussion with Investor 1 to go over the details of the federal agency step-up bonds.

Keating memorialized for BAI that:

I detailed how these bonds [federal agency step-up bonds] were AAA rated which is the highest possible credit rating and so were categorized as extremely safe. I also detailed how that rating and government guarantee applied to the stated dividend rates and his principal upon maturity. I explained that there could be some variance between his principal and the values quoted on statements. I told him that it could show more or less but that had nothing to do with his principal and dividend guarantee it would just affect how much he would receive if he sold out earlier but he reassured us that he had no intention of that because the dividends were what he was looking for. I explained that the government could call these away at different times (I specified the dates) and if the government called them away he would receive at least his principal back. He was concerned that he would lose the dividends until the call but I reassured him that he would not lose them.

When asked about the approximate seventeen pages of risk factors that were detailed in the Fannie Mae Offering Circular, Keating testified that he would have explained the risk factors in broad terms, but he typically would not have used the Offering Circular as a document to go over the risks.

Keating informed the Division that he did not think he had read the prospectuses for the federal agency step-up bonds recommended to and ultimately purchased for Investor 1.

ii. Investor 1’s New BAI Account

In order to purchase the federal agency step-up bonds recommended by Keating and Aquino, Investor 1 needed to open an account with BAI.

The new account opening documents were faxed to Investor 1 for him and his wife to sign. [Exhibit 13].
46. Keating, the registered representative for Investor 1’s account, indicated to the Division that Investor 1 was not forthcoming with information for the new account documents and most likely the typed information on the new account documents was typed by his assistant with information from Aquino. [See Exhibit 13].

47. Keating testified that Investor 1’s account was out of the norm for him.

48. Keating also testified that despite having reviewed and signed the new account documentation in July 2008, supposedly confirming that the information was accurate, that Investor 1’s primary investment objective of “appreciation” was incorrect, that it should have instead been “income.” [Exhibit 13].

49. Investor 1’s new account documentation indicated that a physical review of original identifications had occurred. [See Exhibit 13].

50. Yet Keating informed the Division that while he may have seen a copy of Investor 1’s license, he would have relied on banking side to have checked Investor 1’s wife’s identity. When asked if Keating was relying on the bank side for verification if he should have marked “no” next to “Did you physically review original ID,” Keating responded that he was “not sure what it should be.” [See Exhibit 13].

51. From the account opening documents, Investor 1 was assigned an account number and on the same day, Keating entered four $500,000 federal agency step-up bond orders.

52. Keating indicated that the “Accepted Time” on the Order Detail page is the time that Investor 1 would have told him to purchase the securities and the “Time(ET)” was the time Keating entered the trades. [Exhibit 14].

53. The Order Detail pages provide the mark-up assessed on the purchase order, of which Keating received approximately thirty one percent (31 %) of the five thousand dollars ($5,000) markup. [Exhibit 14].
54. In addition to Keating receiving a commission, his banking partner indirectly was compensated. Keating testified that if the bank, in this case the dual employee Aquino, introduced a client to him that part of his commission, between five percent (5%) and ten percent (10%) was kicked back to Bank of America. Keating further explained that a portion of his commission that was kicked back would go into a pool of money that would then be paid out to his banking partners.

55. The trade confirmations and federal agency step-up bonds Offering Circulars, Offering Circular Supplements, and Pricing Supplements were sent to Investor 1 after the orders were placed. [See Exhibits 5, 6, 11, and 15].

56. Investor 1 called Keating after he received the issuer’s offering materials because of the risks disclosed in the Offering Circular and that the documents clearly stated that there are no guarantees by the government.

57. Investor 1 complained to Aquino that he did not agree to buy a bond or invest in the federal agencies that were all over the newspapers. (See supra §VII.A ¶¶ 19, 20, 21).

58. Keating confirmed to BAI that Investor 1 called subsequent to receiving the federal agency step-up bond prospectuses, and that to allay Investor 1’s concerns about no guarantee on the investment, Keating reiterated to Investor 1 that his investments were AAA guaranteed with an implied US government guarantee, but the Paulson Proposal would and did make an explicit guarantee.

59. Investor 1 had an in person meeting with Keating at the Hingham branch on July 22, 2008.

13 The Order Detail pages for Investor 1’s purchases of federal agency step-up bonds also indicate that Investor 1 was assessed a $5.00 postage amount. [Exhibit 14]. Keating explained the postage amount to the Division saying, “[t]hat’s a BS term that all brokerage firms throw five dollars on every trade. It’s annoying .... I may have omitted that from [Investor 1], being that there was a postage fee of $20 on a $2,000,000 purchase.”
60. During the in person meeting, Keating wrote on Keating’s Fannie Mae Offering Circular Supplement’s front page, “Paulson proposal early ... July makes full guarantee explicit... Govt. has said probable passage... Govt. full faith now + has said they will + do back bonds but technically implied now.” [Exhibit 11].

61. Keating explained to the Division that he found the information he wrote on Investor 1’s Offering Circular on the internet.

62. Keating further informed the Division that he did not know if at any time Fannie Mae, the issuer of some of Investor 1’s bond purchases, Offering Circulars, supplements, or pricing sheets ever stated that there was backing by the full faith and credit of the government.

63. Keating testified that Investor 1 left the meeting comfortable and added that he orally told Investor 1 that there was an implied guarantee right now, but that the government will back the federal agencies.

64. Investor 1 called Keating again, in the beginning of August 2008 after he received his July 2008 statement, expressing concern about the “not FDIC insured”, “May Lose Value”, and “Not Bank Guaranteed” disclosures on the bottom of the account statement that reflected his federal agency step-up bond holdings.

65. Keating informed BAI in a written statement that again he reiterated to Investor 1 that the “...principal and interest was guaranteed by the US government...”
iii. **Investor 1’s Complaint**

66. Finally, in October 2008, Investor 1 submitted a written complaint to BAI.

67. Investor 1 complained that he had made it clear to both Aquino and Keating that he emphasized his need to have liquidity and no risk.

68. Investor 1 also complained that he did not know the long term maturity of the bonds and that he would never have agreed to purchase the federal agency step-up bonds had he known the specifics.

69. Subsequent to receiving the complaint, a banking compliance manager was assigned to Investor 1’s complaint and requested a signed statement from Keating and Aquino that detailed: a chronological summary of communications with clients, the basis for any investment recommendation, replies to any specific allegations made in the complaint, and a listing of any marketing materials provided to the Investor. [Exhibit 16].

70. Both Keating and Aquino provided written statements in response to the compliance manager’s request.

71. Another compliance manager, Shannon Noonan, also investigated Investor 1’s complaint.

72. Ms. Noonan noted,

- granted client may have been fully disclosed that price would fluctuate which I am not so sure of since this complaint arise when he pulled $100k out for [personal matter] + bond sold slightly below par

- Regardless-FA should have never recommended Fannie/Freddie Bonds

- think MD, AM + FA are hanging their hat on implicit gov’t guarantee which is how it was sold to client – unbalanced presentation

[Exhibit 17].
73. When asked if anyone at BAI had ever expressed to Keating whether he should have sold the federal agency step-up bonds to Investor 1, Keating testified in part that “[e]veryone has told me that I did the exact right thing for [Investor 1] and there was nothing else that he wanted.”

74. Emails from July 2008 demonstrate that Keating and Aquino were applauded for saving $2,000,000 worth of assets from leaving the BAI/Bank of America entities, calling Aquino’s and Keating’s actions a “success story.” [Exhibit 18].

C. Failure of Aquino and Keating To Comply with BAI’s Written Supervisory Policies and Procedures

75. Banc of America Investment Services Inc. Series 6 ISR Compliance Manual (“ISR Compliance Manual”) addresses “legal, regulatory and internal policies and procedures for BAI Investment Services Representatives (“ISRs”) who are dual employees of Bank of America (the “Bank”) and BAI.” [Exhibit 19].

76. BAI’s corresponding Banc of America Investment Services, Inc. Compliance Manual for Full Service (“Full Service Compliance Manual”) addresses “the legal, regulatory and internal policies and procedures for BAI Series 7 Registered Representatives, including but not limited to, Registered Representatives, Registered Sales Assistants, Registered Call Center Personnel and Registered Representatives, and Registered Representatives who are dual employees of the Private Bank of America (the “Private Bank”) and BAI.” (emphasis supplied) [Exhibit 20].

77. Both of BAI’s ISR Compliance Manual and Full Service Compliance Manual state as a general standard that all customers are to be dealt with fairly and honestly and that the

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1 A copy of BAI’s Compliance Manual for Series 6 was produced to the Division encompassing BatesBAI 10275-BAI10690. However, Exhibit 19 compromises the portions of BAI’s Compliance Manual for Series 6 relevant to this Complaint.

2 A copy of BAI’s Compliance Manual for Full Service was produced to the Division encompassing BatesBOA 4517-BOA5417. However, Exhibit 19 comprises the portions of BAI’s Compliance Manual for Full Service relevant to this Complaint.
ISR/Registered Representative is to act in the best interests of their customers. [See Exhibit 19, see also Full Service Compliance Manual Exhibit 20].

78. Both Compliance Manuals go on to state that the obligation to put our customers’ interest first is basic to our business and is required by applicable laws and regulations. [See Exhibit 19, see also Full Service Compliance Manual Exhibit 20].

79. However, the Division alleges Aquino and Keating put BAI’s interests first in saving two million dollars ($2,000,000) from leaving the brokerage/banking business.

80. Both Compliance Manuals require the BAI employees to adhere to suitability obligations. The ISR Compliance Manual provides:

   ISRs may not recommend to a customer the purchase, sale or exchange of any security or account without reasonable grounds to believe the recommendation is suitable for the customer. The suitability of the recommendation should be based on information furnished by the customer, after a reasonable inquiry concerning the customer’s investment objectives, financial situation, prior investment experience, risk tolerance and any other information relative to suitability is made. (emphasis supplied) [Exhibit 19, see also Full Service Compliance Manual Exhibit 20].

81. In this case, Aquino, thinking fast in an effort to save money from leaving BAI and/or Bank of America “blurted” out the federal agency step-up bonds as a recommendation for Investor 1 only knowing that Investor 1 did not like the CD renewal rates. [See Exhibit 12].

82. As Keating testified before the Division, he made the federal agency step-up bond recommendation without knowing anything about Investor 1, rather he just guessed at what would be appropriate.

83. The ISR Compliance Manual also refers to NASD Conduct Rule 2110, stating that it is BAI’s responsibility to “observe high standards of commercial honor and just and equitable principles of trade” and “may not effect any transaction in or induce the purchase or sale of any
security by means of any manipulative, deceptive or other fraudulent device
or contrivance.” [Exhibit 19, see also Full Service Compliance Manual
Exhibit 20].

84. In this same vein, in listing unsound business practices, BAI states that with the limited
scope of the Series 6 license, an ISR may not “[s]olicit or transact business in securities for
which the ISR is not properly registered and not licensed.” [Exhibit 19].

85. Aquino was only registered as a Series 6 and did not have the proper registration to solicit
purchases in federal agency step-up bonds.

86. However, Aquino did solicit and recommend the federal agency step-up bonds to Investor 1.

87. Another unsound business practice in the ISR Compliance Manual is for an ISR to
“[e]xpress opinions about the possible implications political events will have on the market.”
[Exhibit 19, see also Full Service Compliance Manual Exhibit 20].

88. In this case, Keating made written representations to Investor 1 that then Secretary of the
Treasury of the United States Henry Paulson’s proposal during the summer of 2008 to back the
federal agencies, Fannie Mae and Freddie Mac, was an explicit guarantee of Investor 1’s
investment in the Fannie and Freddie step-up bonds. [See Exhibit 11].

89. However, the issuers of Investor 1’s step-up bonds did not provide for any explicit
guarantee by the U.S. government in any of their Offering Circulars, Offering Circular
Supplements, or Pricing Supplements. To the contrary, those documents, after the “Paulson
Proposal,” continued to state that the investments were not backed by the full, faith, and credit of
the U.S. Government. [See Exhibits 4, 5, 6, and 7].
90. Another part of the Compliance Manuals prohibit deceptive acts, omissions of material facts, and misrepresentations including misrepresentations about risk factors and guarantees. [Exhibit 19, see also Full Service Compliance Manual Exhibit 20].

91. In recommending the federal agency step-up bonds to Investor 1, Keating and Aquino omitted to disclose risk factors, guaranteed the principal, and compared FDIC to AAA. [See also Exhibit 10].

92. Keating even testified that there were gaps in the information on the fax provided to Investor. [See Exhibit 10].

93. Both of BAI’s Compliance Manuals state that “[ISRs/Registered Representatives] may not warrant or guarantee the present or future value or price of any security, or that any issuer of securities will meet its promises or obligations, or guarantee the customer against loss.” [Exhibits 19 and 20].

94. Both Keating and Aquino made representations to Investor 1 that his principal that went to purchase of the Fannie Mae and Freddie Mac step-up bonds was guaranteed. (See supra §VII. B).

95. Counsel for BAI represented to the Division that correspondence sent by a Series 6 registered representative needs to be approved prior to its use.

96. BAI also represented that Exhibit 10 sent by Aquino to Investor 1 was not approved.

97. BAI’s ISR Compliance Manual states that oral or written communications must not:
   - Contain any untrue statement or omission of a material fact.
   - Be false or misleading.
   - Make promises of specific results, or exaggerated or unwarranted claims.
○ Make comparisons, which are misleading or irrelevant to investing or specific securities.
○ State opinions for which there is no reasonable basis in fact.

[Exhibit 19].

98. In addition to the above, the Full Service Compliance Manual adds that communications must not “[u]se language which is flamboyant or contain or contains unwarranted superlatives or exaggerations,” and “[c]ontain projections or forecasts which are not clearly identified as such.” [Exhibit 20].

99. Aquino’s facsimile to Investor 1 on July 8, 2008 omitted to disclose risk factors which mislead the investor that the principal of the bonds would be paid by the government, and made misleading comparisons relating to FDIC and AAA. (See supra §VII.B.) [See Exhibit 10].

100. BAI also requires that any advertisements regarding non-deposit products, such as the federal agency step-up bonds, must include disclosures that the investment products provided by BAI “Are Not FDIC Insured”, “May Lose Value”, and “Are Not Bank Guaranteed.” [Exhibit 19, see also Full Service Compliance Manual Exhibit 20].

101. Absent from any of the pages of Aquino’s July 8, 2008 facsimile to Investor 1 is the above required disclosure. [See Exhibit 10].

102. Aquino’s July 8, 2008 also omitted BAI’s required confidentiality language disclosure. [See Exhibits 10, 19, and 20].

103. BAI’s Full Service and ISR Compliance Manuals also prohibit any BAI “internal use only” materials from being distributed or shown to the public.” [Exhibit 19, see also Full Service Compliance Manual Exhibit 20].

104. Yet, page three of Aquino’s July 8, 2008 facsimile to Investor 1 is a BAI “internal use
only” document Keating provided to Aquino. [See Exhibit 10].

105. BAI’s written supervisory procedures explicitly state that “[p]roducts offered by BAI ARE NOT covered by the Federal Deposit Insurance Corporation (“FDIC”). Under no circumstances are non-insured products to be represented as insured.” (emphasis in original) [Exhibits 20 and 21].

106. However, Aquino’s facsimile to Investor one alludes to the fact that the step-up bonds are FDIC insured when he wrote that “FDIC is the equivalent of AAA.” [Exhibit 10].

107. BAI’s ISR Compliance Manual states that each Registered Representative needs to obtain specific client information and that the ISR should not rely upon data from a pervious account for the same client. The policy further states that an ISR should not open brokerage accounts for clients who refuse to provide suitability information. [Exhibit 19].

108. As Keating testified, this account was out of the norm for him and that Investor 1 refused to provide him information. Rather, Investor 1 relied on Keating to get the information from Aquino on the banking side that that was approximately nine months old and was received when the two million dollars ($2,000,000) worth of bonds were purchased.

109. Finally, the Full Service Compliance Manual provides policies for various products offered and sold by BAI. [Exhibit 20].

110. The Full Service Compliance Manual provides a policy for Governments-Federal Agency Securities. This policy covers the federal agency step-up bonds purchased by Investor 1. [Exhibit 20, see also Exhibits 8 and 9].

111. The BAI Federal Agency Securities policy explicitly states “[w]hen recommending Federal Agency Securities, the client must be aware of the potential market risk involved. Most
Federal Agency Securities are NOT guaranteed by the U.S. Government and are not as liquid as direct obligations of the U.S. Government.” (emphasis in original) [Exhibit 20].

112. In this case, Keating and Aquino took liberties in recommending the federal agency step-up bonds to Investor 1 and falsely promoted the idea that the securities were guaranteed by the U.S. Government.

113. BAI’s Federal Agency Securities policies also state that purchase orders when the bonds are not long in the customer’s account of one million dollars ($1,000,000) or more, then the purchase must be pre-approved by a manager. [Exhibit 20].

114. Investor 1 was not long in federal agency securities and based on the policy, his purchase of two million dollars ($2,000,000) worth of federal agency step-up bonds should have been pre-approved.

115. However, Keating testified in recommending or putting in an order for agency step-up bonds, the transactions did not need to be pre-approved by a manager.

116. Despite the plethora of written supervisory procedures not complied with by Keating, Keating was not disciplined by BAI, rather his supervisors endorsed his lapses and informed him that he had done the right thing with respect to the recommendation and sale of step-up bonds to Investor 1.

VII. VIOLATION OF SECURITIES LAWS

A. COUNT I: VIOLATION OF § 204(a)(2)(G)

117. Section 204 (a)(2)(G) of the Act provides in pertinent part:

(a) The secretary may by order impose an administrative fine or censure or deny, suspend, or revoke any registration or take any other appropriate action if he finds (1) that the order is in the
public interest and (2) that the applicant or registrant or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

(G) has engaged in any unethical or dishonest conduct or practices in the securities, commodities or insurance business.

118. The Division herein re-alleges and restates the allegations and facts set forth in paragraphs 1-116 above.

119. The Division alleges that BAI’s conduct, as described above, constitutes a violation of M.G.L. c. 110A, § 204(a)(2)(G).
VIII. ORDER

BAI consents to the entry of this Order,

**IT IS HEREBY ORDERED:**

Respondent, in full settlement of these matters, and neither admitting nor denying the Division’s Statement of Fact set forth in Section VI herein, makes the following representations and agrees to the undertakings herein as part of the Order:

A. Respondent agrees to permanently cease and desist from violations of the Act;

B. Respondent shall retain, within 30 days of the date of entry of the Order, the services of an Independent Compliance Consultant not unacceptable to the staff of the Division. The Independent Compliance Consultant's compensation and expenses shall be borne exclusively by BAI or its affiliates. BAI shall require the Independent Compliance Consultant to provide the services described in Appendix A. BAI shall cooperate fully with the Independent Compliance Consultant and shall provide the Independent Compliance Consultant with access to files, books, records, and personnel as reasonably requested for the review;

1. BAI shall require that the Independent Compliance Consultant complete his or her initial review of the programs described in Appendix A on or before January 28, 2011. The Independent Compliance Consultant’s initial report shall be subject to review by representatives of the Division. The Report shall address the issues described in Appendix A, and shall include a description of the review performed, the conclusions reached, and any recommendations by the Independent Compliance Consultant's for changes in or improvements to the programs described in Appendix A, and a procedure for implementing the recommended changes in or improvements to those programs described in Appendix A;
2. BAI shall adopt all recommendations contained in the Report of the Independent Compliance Consultant; provided, however, that, within 30 days after the date of the Independent Compliance Consultant’s Report, BAI shall, in writing, advise the Independent Compliance Consultant and the staff of the Division of any recommendations that it considers to be unnecessary or inappropriate. With respect to any such recommendation, BAI need not adopt that recommendation at that time but shall propose, in writing, an alternative policy, procedure or system designed to achieve the same objective or purpose;

3. As to any of the Independent Compliance Consultant’s recommendations with respect to the programs described in Appendix A, which BAI and the Independent Compliance Consultant do not agree, such parties shall attempt in good faith to reach an agreement within 45 days of the Independent Compliance Consultant’s initial report. In the event that BAI and the Independent Compliance Consultant are unable to agree on an alternative proposal, BAI will abide by the determinations of the Independent Compliance Consultant;

4. BAI shall not have the authority to terminate the Independent Compliance Consultant, without the prior written approval of the staff of the Division. BAI shall compensate the Independent Compliance Consultant, and persons engaged to assist the Independent Compliance Consultant, for services rendered pursuant to the Order at their reasonable and customary rates. BAI shall not be in or have an attorney-client relationship with the Independent Compliance Consultant and BAI shall not seek to invoke the attorney-client or any other doctrine or privilege to prevent the Independent Compliance Consultant from transmitting any information, reports, or documents to the Division; and
5. BAI shall require that the Independent Compliance Consultant, for the period of the engagement and for a period of two years from completion of the engagement shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with BAI or any of their present or former affiliates, directors, officers, employees, or agents acting in their capacity as such. BAI shall require that any firm with which the Independent Compliance Consultant is affiliated in the performance of his or her duties under the Order shall not, without prior written consent of the Division, enter into any employment, consultant, attorney-client, auditing or other professional relationship with BAI 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.

C. Respondent agrees to place FA John Keating on Heightened Supervision

1. FA John Keating will be supervised on a heightened basis, by his branch office manager, beginning within 30 days from the date of entry of the Order. The Firm will notify the Division within two weeks should either the individual or the office responsible for the heightened supervision of Keating change.

2. Heightened supervision of Keating shall, at a minimum, include the following:

a. All orders entered by Keating for Massachusetts accounts will be reviewed on an online trade report on a daily basis (trade date plus one) by a principal supervising Keating;

b. The heightened supervision shall include a requirement that Keating meet in person with his manager each month to discuss compliance with
RSNIP policies and procedures, Keating’s overall business for the past month, any recent trade errors or corrections or surveillance inquiries. Their discussion shall address whether Bank of America, N.A. was the source of funds for any of the new accounts;
c. During the time period of heightened supervision, Keating’s manager shall contact by telephone 25% of all new customers of Keating for whom the source of the account funds is Bank of America, N.A. to determine whether Keating complied with all applicable RSNIP policies and procedures; and
d. All discussions and reviews conducted pursuant to heightened supervision shall be documented and retained by the Firm subject to review by representatives of the Division. On a semi-annual basis, from the date of the Consent Order, the Firm shall provide a written report to the Division with a summary of the monthly meetings and any deficiencies noted with trading and/or compliance with the RSNIP policies and procedures.

3. This undertaking will remain in effect at the Firm for a period of two years from the date of entry of the Order.

D. Within five business days of the entry of this Order, Respondent shall pay a civil penalty in the amount of $100,000 (one hundred thousand dollars). Payment shall be: (a) made by United States postal money order, certified check, bank cashiers check, bank money order, or wire; (b) made payable to The Commonwealth of Massachusetts; and (c) either hand-delivered, mailed to One Ashburton Place, Room 1701, Boston, MA 02108; or wired per Division instructions; and (d) submitted under cover letter or other documentation that identifies the Respondent making the payment and the docket number of the proceedings;
E. Respondent shall preserve for a period provided by BAI’s books and records requirement from the end of the fiscal year last used, the first two years in an easily accessible place, any record of Respondent's compliance with the undertakings set forth herein;

F. No later than twenty-six months after the date of entry of the Order, Respondent’s Regional Managing Director for New England shall certify to the Division, in writing that Respondent has fully adopted and complied in all material respects with the undertakings set forth in this section and with the recommendations of the Independent Compliance Consultant, or, in the event of material non-adoption or noncompliance, shall describe such material non-adoption and non-compliance;

G. For good cause shown, the Division’s staff may extend any of the procedural dates set forth above;

H. The Order as entered into by The Commonwealth hereby waives any disqualification contained in the laws of The Commonwealth, or rules or regulations thereunder, including any disqualifications from relying upon the registration exemptions or safe harbor provisions that BAI or its affiliates may be subject to as a result of the findings contained in the Order. The Consent Order also is not intended to subject BAI or its affiliates to any disqualifications contained in the federal securities laws, rules and regulations thereunder, the rules and regulations of self regulatory organizations or various states’ or U.S. Territories’ securities laws, including, without limitation, any disqualifications from relying upon the registration exemptions or safe harbor provisions. In addition, the Consent Order is not intended to form the basis for any such disqualifications;

I. Respondent agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification, including, but not limited to any payments made pursuant to any
insurance policy, with regard to all amounts that Respondent shall pay to the Division pursuant to the Division's Order; and

J. Respondent further agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any state, federal or local tax for any amounts that Respondent shall pay to the Division pursuant to the Division's Order;

K. Respondent agrees that, upon issuance of an Order by the Division that contains the terms as set forth above, if it fails to comply with any of the terms set forth in the Division's Order, the Enforcement Section may institute an action to have this agreement declared null and void. Upon issuance of an appropriate Order, after a fair hearing, the Enforcement Section may re-institute the actions and investigations that it had brought against the Respondent.

WILLIAM FRANCIS GALVIN
SECRETARY OF THE COMMONWEALTH

By:
Bryan J. Lantagne
Director
Massachusetts Securities Division
One Ashburton Place, 17th Floor
Boston, Massachusetts 02108

Dated: November 17, 2010