

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

**SECURITIES EXCHANGE ACT OF 1934**  
**Release No. 60870 / October 22, 2009**

**ADMINISTRATIVE PROCEEDING**  
**File No. 3-13664**

**In the Matter of**

**BANC OF AMERICA**  
**INVESTMENT SERVICES, INC.**  
**and VIRGINIA HOLLIDAY,**

**Respondents.**

**ORDER INSTITUTING ADMINISTRATIVE**  
**PROCEEDINGS PURSUANT TO SECTION**  
**15(b) OF THE SECURITIES EXCHANGE ACT**  
**OF 1934, MAKING FINDINGS, AND IMPOSING**  
**REMEDIAL SANCTIONS**

**I.**

The Securities and Exchange Commission ("Commission") deems it appropriate and in the public interest that public administrative proceedings be, and hereby are, instituted pursuant to Section 15(b) of the Securities Exchange Act of 1934 ("Exchange Act") against Banc of America Investment Services, Inc. ("BAI") and Virginia Holliday ("Holliday"), (collectively, "Respondents").

**II.**

In anticipation of the institution of these proceedings, Respondents have each 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 them and the subject matter of these proceedings which are admitted, Respondents consent to the entry of this Order Instituting Administrative Proceedings Pursuant to Section 15(b) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions ("Order"), as set forth below.

**III.**

On the basis of this Order and Respondents' Offer, the Commission finds that

## Summary

These proceedings arise out of BAI's and Holliday's failure reasonably to supervise Brent Lemons, a former registered representative in BAI's Tyler, Texas branch office. Between May 2005 and April 2007, while on heightened supervision, Lemons misappropriated over \$1.3 million from BAI customers' accounts primarily by liquidating their variable annuities. After placing Lemons on heightened supervision, Holliday failed to determine whether the Tyler branch office complied with BAI's correspondence procedures and did not respond appropriately to red flags raised by additional customer complaints. BAI failed to develop a reasonable system to implement its policies and procedures for reviewing customer accounts and securities transactions and failed reasonably to implement its procedures for branch office compliance inspections by failing to provide for follow-up on deficiencies identified in these inspections.

## Respondents

1. **BAI**, a Florida corporation with its principal place of business in Boston, has been a Commission-registered broker-dealer (File No. 8-33805) since 1985. It is a wholly-owned retail brokerage subsidiary of Bank of America Corporation. Bank of America, N.A. ("BANA") is a wholly-owned national bank subsidiary of Bank of America Corporation. Bank of America Corporation is a Delaware corporation with its principal place of business in Charlotte, North Carolina.

2. **Holliday**, age 51, was the market director for BAI's Addison, Texas Office of Supervisory Jurisdiction ("Addison OSJ") from February 2005 until July 2007. She was Lemons's immediate supervisor for the entire period he was on heightened supervision. Holliday holds Series 3, 7, 8, 24, 63 and 65 securities licenses and has no disciplinary history.

## Other Relevant Person

3. **Brent Steven Lemons**, age 52, was a registered representative in BAI's Tyler, Texas branch office from September 24, 2004 through April 23, 2007, when BAI terminated him for violating BAI's policies and procedures. From 1982 to 2004, Lemons was associated with another national broker-dealer as a registered representative and as a branch office manager. Lemons holds Series 3, 7, 8 and 63 securities licenses.

4. On August 20, 2008, Lemons pleaded guilty to one count of Interstate Transportation of Stolen Money (18 U.S.C. §2314) and one count of Transaction with Criminally Derived Property (18 U.S.C. §1957). On February 24, 2009, Lemons was sentenced to 75 months and ordered to pay restitution. On May 27, 2009, in the Commission's civil action, Lemons was permanently enjoined from future violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

## Lemons's Fraudulent Scheme While Associated with BAI

5. On April 23, 2007, BAI terminated Lemons for handling customer funds in violation of its policies and procedures. Thereafter, BAI learned that Lemons had misappropriated at least \$1.3 million from his customers' brokerage and bank accounts by, among other things, liquidating customers' variable annuities. To perpetrate his scheme, Lemons typically faxed notices to annuity providers directing them to liquidate all or part of his customers' annuities and deposited

the proceeds in the customers' bank accounts. Lemons then withdrew cash from the customers' bank accounts using the pre-signed withdrawal slips.<sup>1</sup> In part, using his apparent authority as a BANA representative, Lemons convinced BANA tellers to give him the funds. To hide his scheme, Lemons gave his customers manually prepared "statements" (sometimes handwritten) that falsely summarized their securities holdings. Because certain variable annuities were not listed on his customers' brokerage statements, Lemons was able to mislead his customers about the true value of their annuities through his manually prepared statements.<sup>2</sup>

### **Complaints Against Lemons for his Conduct at his Former Firm**

6. Between January and March 2005, after Lemons arrived at BAI, his former firm disclosed four customer complaints on his Central Registration Depository ("CRD") record. One of these customer complaints, disclosed in January 2005, alleged that Lemons frequently told the customer that he owned an annuity worth over \$100,000, but that Lemons never provided supporting documentation. Lemons's former firm disclosed on the CRD that it had no record of the annuity and never located any documents showing that the complainant owned an annuity.

### **Holliday Relied Solely on Information from Lemons in Investigating Customer Complaints**

7. After learning that Lemons's former firm disclosed customer complaints, Holliday asked Lemons to provide a written response to each. In addition to his responses, Lemons gave Holliday a December 1, 2004 customer questionnaire that his former firm had sent to his customers. Lemons told Holliday that he believed his former firm used the questionnaire to instigate the complaints in retaliation for his leaving them for BAI. The questionnaire asked whether customers believed they had purchased annuities that did not appear on their account statements. Holliday neither asked Lemons for additional information about his variable annuity business nor did she attempt to corroborate or confirm Lemons's responses or his statements to her.

### **BAI Placed Lemons on Heightened Supervision**

8. BAI's written supervisory procedures ("WSPs") provide for mandatory heightened supervision for registered representatives with multiple sales practice complaints.<sup>3</sup> Based on the former firm's customer complaints filed against him, BAI placed Lemons on heightened supervision on May 23, 2005. Holliday developed a heightened supervision plan ("HSP") for Lemons that required, among other things, increased contact between Lemons and Holliday through bi-weekly telephone conversations and quarterly office visits.

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<sup>1</sup> Telling his investors that it would facilitate the reinvestment of their funds, Lemons directed some of his customers to sign various blank documents, including withdrawal slips and letters of authorization.

<sup>2</sup> Unless annuity providers have made arrangements with BAI's clearing firm, their annuities do not appear on BAI's monthly statements. Similarly, Lemons's customers' annuities owned prior to transferring their brokerage account to BAI are supposed to receive account statements directly from the annuity provider, unless the annuity provider has made arrangements with BAI's clearing firm.

<sup>3</sup> Regulatory actions or arbitrations resulting in a Form U-4 amendment on the registered representative's CRD record are also counted.

## **Holliday Failed to Determine Whether Lemons Complied with BAI's Procedures and Missed Red Flags**

9. BAI's WSPs mandate that its managers ensure incoming mail is promptly forwarded to the OSJ and that the manager, or a designee, reviews the content of outgoing correspondence. Additionally, BAI's procedures require that its supervisors determine whether the office(s) that they manage comply with all rules, regulations and policies applicable to BAI's business. During her visits, Holliday failed to determine whether Lemons or the Tyler branch office complied with BAI's correspondence procedures. Moreover, during these visits, Holliday neither reviewed the Tyler branch office's mail or faxes nor inquired about the Tyler branch office's correspondence procedures with the branch office employees who handled its correspondence. Therefore, she did not discover that the Tyler branch office only sent some of Lemons's incoming and outgoing correspondence to the OSJ for review. Had Holliday addressed whether the Tyler branch office and Lemons were complying with BAI's correspondence procedures, she likely would have found correspondence between Lemons and his customer (from his former firm), in which Lemons admits that he did not purchase an annuity for the customer contrary to Lemons's previous representations to him. In addition, Holliday likely would have discovered Lemons's correspondence with annuity providers seeking to liquidate prematurely his customers' variable annuities (often incurring significant fees for the customers). Such correspondence, in conjunction with correspondence relating to the complaint from Lemons's former firm, would have presented red flags of Lemons's suspicious conduct. If Holliday had followed up on this correspondence, for example, with customers, she likely would have detected and prevented Lemons's fraudulent activities.

### **Holliday Failed to Respond Reasonably to Additional Customer Complaints**

10. Once on heightened supervision, if Lemons was subject to any additional complaints, BAI's WSPs required Holliday to re-evaluate Lemons's HSP to determine an appropriate course of action, including termination. BAI received two customer complaints after placing Lemons on heightened supervision. Holliday, however, did not reasonably follow up on these complaints. She did not re-evaluate Lemons's HSP or consider terminating him.

11. In August 2005, three months after placing Lemons on heightened supervision, two of Lemons's customers (a married couple) complained to Holliday orally that Lemons had represented the value of their accounts to be over \$580,000, including a purported annuity worth over \$450,000, but had never given them any supporting documentation for that annuity. In September 2005, Holliday agreed to review the customers' accounts. They provided her with several years of investment records, including monthly account statements with handwritten notes reflecting an outside investment valued at over \$400,000. Holliday claims to have reviewed these documents, but she made no further inquiry about the handwritten notes. Despite the similarities between these customers' complaint and the customer complaint from Lemons's former firm, Holliday conducted no further investigation about the customers' annuity and never re-evaluated Lemons's HSP.

12. When BAI failed to resolve their oral complaint, the customers filed a written complaint on January 6, 2006 alleging that, as late as August 2005, Lemons represented in writing that they owned an annuity worth over \$471,000. They attached a document to their complaint, which they claimed Lemons wrote, listing several annuities, including one valued at \$471,021. Lemons denied preparing the document. Holliday made no effort to confirm whether

the customers owned such an annuity or to determine the basis for the customers' belief that they did own such an annuity. Had she made any inquiry, she likely would have discovered that Lemons had lied to these customers about their annuity.

13. On December 19, 2006, BAI received a second written customer complaint about Lemons. This complaint alleged that Lemons reimbursed the customer for some losses by depositing funds directly into the customer's personal bank account. Again, Holliday did not re-evaluate or change Lemons's HSP or reasonably follow-up on this customer complaint.

#### **Lemons Misappropriated Funds After BAI Received Additional Customer Complaints**

14. Following the additional customer complaints in August 2005 and January 2006, Lemons continued to engage in fraudulent activity. Between January 6, 2006 and December 19, 2006, Lemons misappropriated approximately \$550,000 from two other customers.<sup>4</sup> Lemons misappropriated another \$500,000 from customers between December 19, 2006 and April 2007, when BAI finally terminated him when the firm discovered his unauthorized withdrawals. Holliday failed to respond reasonably to the customer complaints and thus failed to prevent or detect Lemons' continuing fraud on his customers.

#### **Lemons's Title of Tyler Market President Enabled Him to Misappropriate Customer Funds**

15. On September 8, 2005, three weeks after BAI received its first verbal customer complaint against Lemons, BANA named Lemons "President, Tyler Market." In that role, Lemons was responsible for coordinating BANA's charitable activities to local community organizations. Using a BANA business card identifying him as "President, Tyler Market," Lemons touted his new position throughout the Tyler community, which led many BANA employees, including BANA tellers, to believe that he held a position of authority within BANA.

16. Holliday recommended Lemons for the Market President position, but never advised, nor required Lemons to advise, BANA of his heightened supervision or that Lemons, as a BAI registered representative, was not permitted to handle customer funds. Lemons used this position to further his fraudulent activities. For example, in April 2007, because BANA tellers believed that Lemons was a bank officer and did not know he was prohibited from handling customer funds, Lemons was able to withdraw a total of \$27,000 from his customer's bank account at two different BANA banking centers in Tyler.

#### **BAI's Failure to Supervise Lemons**

##### **Review of Customer Accounts and Securities Transactions**

17. BAI's WSPs generally require supervision over each customer account and securities transaction. BAI failed to develop reasonable systems to implement this procedure. For example, the WSPs do not direct managers to conduct a periodic review or any other review of customer accounts or customer files, or provide a mechanism for managers to review customer securities transactions. If BAI had developed systems to implement the general requirement for oversight of customer accounts and securities transactions, Holliday likely would have uncovered

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<sup>4</sup> Prior to January 6, 2006, Lemons had misappropriated approximately \$250,000 from his customers.

red flags of Lemons' conduct during reviews of customer files maintained at the Tyler branch office during her branch office visits. These files contained information concerning Lemons's customers' accounts and securities transactions. Had she reviewed the customer files, Holliday likely would have discovered suspicious and incriminating materials, such as withdrawal slips that his customers signed in blank, suspiciously large annuity liquidations with significant early withdrawal fees, or handwritten customer statements containing clearly inflated values or fictitious securities holdings, all of which Lemons used to perpetrate his fraudulent scheme.

### **Periodic Compliance Inspections**

18. BAI's WSPs require compliance inspections of each branch office at least every three years. The procedures directed that the results of the inspection be documented in an *Annual Compliance Inspection Report* addressed to OSJ management. BAI, however, failed implement this procedure so that the compliance department or supervisors followed up with the branch office regarding corrective action.

19. Eight months after hiring Lemons and ten days before placing him on heightened supervision, BAI conducted its first compliance inspection of the Tyler branch office. This inspection revealed that the Tyler branch office was not forwarding correspondence to the Addison OSJ as required by the WSPs. Holliday never received the results of the inspection. If BAI had reasonably implemented its procedures regarding compliance inspections to provide a mechanism for addressing whether appropriate compliance and/or supervisory staff received inspection reports and followed up on deficiencies, it is likely that Lemons's fraudulent activity would have been prevented or detected.

### **Applicable Law**

20. Section 15(b)(4)(E) of the Exchange Act provides for imposing of sanctions against a broker-dealer who "has failed reasonably to supervise, with a view to preventing violations of such statutes, rules, and regulations, another person who commits such a violation, if such person is subject to his supervision." See *Smith Barney, Harris Upham & Co., Inc.*, Exchange Act Release No. 21813, 32 SEC Docket 999, 1004 (March 5, 1985). Section 15(b)(6) of the Exchange Act is also incorporated by reference and permits imposition of sanctions against persons associated with a broker or dealer. These sections also provide an affirmative defense for supervisors who show that: (1) there are established procedures, and a system for applying such procedures, which would reasonably be expected to prevent and detect, insofar as practicable, any such violation by such other person, and (2) that supervisor has reasonably discharged those duties and obligations incumbent upon him or her by reason of such procedures and system without reasonable cause to believe that such procedures and system were not being complied with.<sup>5</sup>

21. The Commission has emphasized the broker-dealer's supervision of its employees through effective, established procedures is a critical component in the regulatory scheme to protect investors. See *Lehman Brothers, Inc.*, 52 SEC 982 (Sept. 12, 1996), 1996 SEC LEXIS 2453, at \*21 (settled order)(citing *Smith Barney, Harris Upham & Co.*, Exchange Act Rel. No. 21813 (March 5, 1985), 1985 SEC LEXIS 2051 (settled order)) (broker-dealer lacked sufficient firm-wide policies and procedures reasonably designed to detect and prevent excessive markups

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<sup>5</sup> See Sections 15(b)(4)(E)(i) and (ii) of the Exchange Act.

on large retail transactions). Establishing policies and procedures alone, however, is not sufficient to discharge supervisory responsibilities; on-going monitoring and review is necessary to ensure that the established supervisory procedures are effective in preventing and detecting violations. *See Consolidated Investment Services, Inc.*, 52 SEC 582 (Jan. 5, 1996), 1996 SEC LEXIS 83. (broker-dealer had supervisory system in place, but took no steps to ascertain whether representative followed its procedures). Moreover, broker-dealers with off-site offices must inspect those offices to discharge their supervisory obligations. *Consolidated Investment Services*, 61 SEC Docket at 26 (broker-dealer's supervision of small office run by a single registered representative inadequate without inspections).

22. A branch manager must respond reasonably when suspecting that a registered representative may be engaging in improper activity. *In re Nicholas A. Boccella*, Exchange Act Release No. 26,574 (Feb. 27, 1989). "Even where the knowledge of supervisors is limited to 'red flags' or 'suggestions' of irregularity, they cannot discharge their supervisory obligations simply by relying on the unverified representations of employees." *In the Matter of John H. Gutfreund*, Exchange Act Release No. 31,554 (Dec. 3, 1992). A supervisor must conduct "adequate follow-up and review" whenever he or she detects unusual trading activity or other irregularities. *Id.* "Red flags and suggestions of irregularities demand inquiry as well as adequate follow up and review. When indications of impropriety reach the attention of those in authority, they must act decisively to detect and prevent violations of federal securities laws." *Edwin Kantor*, Exchange Act Release No. 32,341 (May 20, 1993). In large organizations, "it is especially imperative that those in authority exercise particular vigilance when indications of irregularity reach their attention." *See Wedbush Securities, Inc.*, 48 SEC 963 (Mar. 24, 1988), 1988 SEC LEXIS 568, at \*10. (broker-dealer's top management ignored warning signals or took inadequate action when confronted with information indicating that customers were being defrauded).

### **Violations**

23. As a result of the conduct described above, BAI and Holliday failed reasonably to supervise Lemons within the meaning of Sections 15(b)(4)(E) and 15(b)(4)(6)(A), respectively, with a view to preventing and detecting Lemons's violations of Section 10(b) of the Exchange Act and Rule 10b-5 thereunder.

### **Civil Penalty**

24. Respondent Holliday has submitted a sworn Statement of Financial Condition dated May 26, 2009 and other evidence and has asserted her inability to pay a civil penalty.

## **IV.**

### **Undertakings**

Respondent BAI undertakes:

25. to retain within 30 days of the entry of the Order, at its own expense, the services of an Independent Consultant not unacceptable to the Commission's Division of Enforcement, to review and evaluate the effectiveness of BAI's supervisory and compliance systems, policies and procedures designed to detect and prevent violations of the federal securities laws concerning the

following: (1) review of customer accounts and securities transactions; and (2) periodic compliance inspections.

26. to require the Independent Consultant, at the conclusion of the review, which in no event shall be more than 120 days after the entry of the Order, to submit a written Initial Report to BAI and the Commission's staff. The Initial Report shall describe the review performed, the conclusions reached and the Independent Consultant's recommendations deemed necessary to make the policies, procedures and system of supervision and compliance adequate.

27. to adopt, implement and maintain all policies, procedures and practices recommended in the Initial Report of the Independent Consultant. As to any of the Independent Consultant's recommendations about which BAI and the Independent Consultant do not agree, the parties shall attempt in good faith to reach agreement within 180 days of the date of the entry of the Order. In the event that BAI and the Independent Consultant are unable to agree on an alternative proposal, BAI will abide by the determinations of the Independent Consultant and adopt those recommendations deemed appropriate by the Independent Consultant.

28. to cooperate fully with the Independent Consultant in its review, including making such information and documents available as the Independent Consultant may reasonably request, and by permitting and requiring BAI employees and agent to supply such information and documents as the Independent Consultant may reasonably request.

29. that, in order to ensure the independence of the Independent Consultant, BAI (1) shall not have the authority to terminate the Independent Consultant without the prior written approval of the Division; (2) shall compensate the Independent Consultant, and persons engaged to assist the Independent Consultant, for services rendered pursuant to the order at their reasonable and customary rates.

30. to require the Independent Consultant to enter into an agreement that, for the period of engagement and for a period of two years from completion of the engagement, the Independent Consultant shall not enter into any employment, consultant, attorney-client, auditing or other professional relationship with BAI or any of its present or former affiliates, directors, officers, employees, or agents acting in their capacity. The agreement will also provide that the Independent Consultant will require that any firm with which it is affiliated or of which it is a member, and any person engaged to assist the Independent Consultant in performance of its duties under this Order shall not, without prior written consent of the Division of Enforcement in Fort Worth Texas, enter into any employment, consultant, attorney-client, auditing or other professional relationship with BAI, or any of its 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.

## V.

In view of the foregoing, the Commission deems it appropriate and in the public interest to impose the sanctions agreed to in Respondents' offers.

Accordingly, pursuant to Section 15(b) of the Exchange Act, it is hereby ORDERED that:

A. Respondent BAI is censured.



B. Respondent BAI shall within, ten (10) days of the entry of this Order, pay a civil money penalty in the amount of \$150,000 to the United States Treasury. If timely payment is not made, additional interest shall accrue pursuant to 31 U.S.C. 3717. Such payment shall be: (A) made by United States postal money order, certified check, bank cashier's check or bank money order; (B) made payable to the Securities and Exchange Commission; (C) 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 (D) submitted under cover letter that identifies BAI as a Respondent in these proceedings, the file number of these proceedings, a copy of which cover letter and money order or check shall be sent to Stephen Korotash, Securities and Exchange Commission, Burnett Plaza, Suite 1900, 801 Cherry Street., Unit 18, Fort Worth, Texas 76102.

C. Respondent BAI shall comply with its undertaking as enumerated in Section IV.

D. Respondent Holliday be, and hereby is barred from association in a supervisory capacity with any broker or dealer with the right to reapply for association after one (1) year to the appropriate self-regulatory organization, or if there is none, to the Commission.

E. Any reapplication for association by the Respondent will be subject to the applicable laws and regulations governing the reentry process, and reentry may be conditioned upon a number of factors, including, but not limited to, the satisfaction of any or all of the following: (a) any disgorgement ordered against the Respondent Holliday, whether or not the Commission has fully or partially waived payment of such disgorgement; (b) any arbitration award related to the conduct that served as the basis for the Commission order; (c) any self-regulatory organization arbitration award to a customer, whether or not related to the conduct that served as the basis for the Commission order; and (d) any restitution order by a self-regulatory organization, whether or not related to the conduct that served as the basis for the Commission order.

F. Based upon Respondent Holliday's sworn representations in her State of Financial Condition dated May 26, 2009 and other documents submitted to the Commission, the Commission is not imposing a penalty against Respondent Holliday.

By the Commission.

Elizabeth M. Murphy  
Secretary