

STATE OF WASHINGTON  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
SECURITIES DIVISION

IN THE MATTER OF DETERMINING  
whether there has been a violation  
of the Securities Act of Washington by:

Order Number S-08-226-09-CO01

CONSENT ORDER

BANC OF AMERICA SECURITIES LLC;  
MERRILL LYNCH, PIERCE, FENNER &  
SMITH INCORPORATED (AS  
SUCCESSOR BY MERGER OF BANC OF  
AMERICA INVESTMENT SERVICES,  
INC.),

Respondents.

**INTRODUCTION**

WHEREAS, Banc of America Securities LLC (“BAS”) and Merrill Lynch, Pierce, Fenner & Smith Incorporated (“MLPF&S”), as successor by merger of Banc of America Investment Services, Inc. (“BAI” and, together with BAS, “Banc of America”) are broker-dealers registered in the State of Washington; and

WHEREAS, coordinated investigations into Banc of America’s activities in connection with certain of their sales practices regarding the underwriting, marketing, and sale of Auction Rate Securities (“ARS”) during the period of approximately August 1, 2007, through February 11, 2008, have been conducted by a multistate task force; and

WHEREAS, Banc of America has cooperated with regulators conducting the investigations by responding to inquiries, providing documentary evidence and other materials, and providing regulators with access to facts relating to the investigations; and

WHEREAS, on October 23, 2009, BAI merged with MLPF&S; and whereas, it is in the interest of the parties to this order to address only pre-merger conduct and customers of BAI; and

CONSENT ORDER

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DEPARTMENT OF FINANCIAL INSTITUTIONS  
Securities Division  
PO Box 9033  
Olympia, WA 98507-9033  
360-902-8760

1 WHEREAS, BAS and MLPF&S (as successor to BAI) have advised regulators of their  
2 agreement to resolve the investigations relating to the practices of Banc of America in  
3 connection with the underwriting, marketing, and sale of ARS; and

4 WHEREAS, BAS and MLPF&S (as successor to BAI) agree to make (or to have made  
5 on their behalf) certain payments as part of the resolution of the investigations; and

6 WHEREAS, BAS and MLPF&S (as successor to BAI) elect to permanently waive any  
7 right to a hearing and appeal under RCW 21.20.440 and RCW 34.05 with respect to this  
8 Administrative Consent Order (the "Order");

9 NOW, THEREFORE, the Securities Administrator, as administrator of the Securities Act  
10 of Washington, RCW 21.20, hereby enters this Order:

11 **I.**

12 **FINDINGS OF FACT**

13 1. BAS and MLPF&S (as successor to BAI) admit the jurisdiction of the Securities  
14 Division of the Washington State Department of Financial Institutions, neither admit nor deny  
15 the Findings of Fact and Conclusions of Law contained in this Order, and consent to the entry of  
16 this Order by the Securities Division of the Washington State Department of Financial  
17 Institutions.

18 2. Beginning in March 2008, the task force began its investigation of Banc of  
19 America's underwriting, marketing, and sale of ARS.

20 3. In or about August and September 2007, some ARS auctions experienced failures.  
21 These failures were primarily based on credit quality concerns related to the ARS at issue, which  
22 often involved underlying assets of collateralized debt obligations.

1           4.       During the fall of 2007 and into the beginning months of 2008, as the default rates  
2 on subprime mortgages soared and the market in general began experiencing significant credit  
3 tightening, monoline insurers that insured many issuances of ARS were also becoming distressed  
4 and were at risk of ratings downgrades.

5           5.       The result of the overall market conditions in the fall of 2007 and into the  
6 beginning of 2008 resulted in increasing concerns regarding market liquidity, as well as a  
7 declining demand for ARS.

8           6.       The task force concluded that Banc of America should have had knowledge that,  
9 during the fall of 2007 and winter of 2008, the auction markets were not functioning properly  
10 and were at increased risk for failure.

11          7.       During that time period, significant numbers of buyers had been exiting the  
12 market and the continued success of the auctions was reliant upon the lead broker-dealers, such  
13 as BAS, making increased support bids. These support bids had the effect of artificially  
14 propping up the market and creating the illusion that the auction rate market was functioning as  
15 normal.

16          8.       However, during that time, Banc of America continued to market and sell ARS  
17 without informing customers of the heightened risks associated with holding these securities.

18          9.       Instead, Banc of America engaged in a concerted effort to market ARS  
19 underwritten by BAS towards its large retail customer accounts without advising the retail  
20 customers of any of the potential risks associated with a failed auction or market illiquidity.

21          10.       On or about February 11, 2008, without notifying any of its customers, BAS  
22 stopped broadly supporting the auctions for which BAS was lead broker-dealer.

1 11. The decision left thousands of Banc of America's customers stuck holding illiquid  
2 ARS.

3 12. On or about September 10, 2008, BAS, BAI, Bank of America Corporation  
4 ("BAC"), and Blue Ridge Investments, L.L.C. ("Blue Ridge") agreed, in principle, that BAC  
5 would cause Blue Ridge to buy back, at par plus accrued but unpaid interest or dividends, ARS  
6 for which auctions were in failed mode from "Eligible Investors," which included all individual  
7 investors, all charitable organizations with account values up to \$25 million and small and  
8 medium sized businesses with account values up to \$10 million who purchased ARS from Banc  
9 of America.

## 10 II.

### 11 CONCLUSIONS OF LAW

12 1. The Securities Division of the Washington State Department of Financial  
13 Institutions has jurisdiction over this matter pursuant to the Securities Act of Washington, RCW  
14 21.20. The Securities Act of Washington authorizes the Division to regulate: 1) the offers, sales,  
15 and purchases of securities; 2) those individuals and entities offering and/or selling securities;  
16 and 3) those individuals and entities transacting business as investment advisers within the State  
17 of Washington.

#### 18 A. Banc of America Engaged in Dishonest and Unethical Practices.

19 2. As described in the Findings of Fact section above, Banc of America  
20 inappropriately marketed and sold ARS without adequately informing their customers of the  
21 increased risks of illiquidity associated with the product for the time period August 1, 2007,  
22 through February 11, 2008.

23 3. As a result, Banc of America violated RCW 21.20.110(1)(g).

1 B. Banc of America Failed to Supervise Their Agents.

2 4. As described in the Findings of Fact section above, Banc of America failed to  
3 properly supervise their agents with respect to the marketing and sale of ARS from October 1,  
4 2007, to February 11, 2008.

5 5. As a result, Banc of America violated RCW 21.20.110(1)(j).

6 6. The Securities Division of the Washington State Department of Financial  
7 Institutions finds the following relief appropriate and in the public interest.

8 **III.**

9 **CONSENT ORDER**

10 Based upon the foregoing:

11 IT IS HEREBY ORDERED:

12 1. This Order concludes the investigation by the Securities Division of the  
13 Washington State Department of Financial Institutions and any other action that the Securities  
14 Division of the Washington State Department of Financial Institutions could commence under  
15 applicable Washington State law on behalf of the State of Washington as it relates to Banc of  
16 America's underwriting, marketing, and sales of ARS, provided however, that excluded from and  
17 not covered by this paragraph 1 are any claims by the Securities Division of the Washington  
18 State Department of Financial Institutions arising from or relating to the "Order" provisions  
19 contained herein.

20 2. This Order is entered into solely for the purpose of resolving the referenced  
21 multistate investigation, and is not intended to be used for any other purpose.

22 3. BAS and MLPF&S (as successor to BAI) shall cease and desist from violating the  
23 Securities Act of Washington and shall comply with the Securities Act of Washington.

1           4.       Within ten days after the entry of this Order, BAS and MLPF&S (as successor to  
2 BAI) shall pay the sum of \$1,424,671.43 to the State of Washington as a civil monetary penalty  
3 pursuant to RCW 21.20.110 and RCW 21.20.395, to be deposited in the Securities Prosecution  
4 Fund, RCW 43.320.115, which amount constitutes the State of Washington's proportionate share  
5 of the state settlement amount of 50 million dollars (\$50,000,000).

6           5.       In the event another state securities regulator determines not to accept BAS and  
7 MLPF&S's (as successor to BAI) settlement offer, the total amount of the State of Washington's  
8 payment shall not be affected, and shall remain at \$1,424,671.43.

9           6.       BAS and MLPF&S (as successor to BAI) shall comply with the following  
10 requirements:

11           a.       **Eligible Investors**

12                   i.       No later than October 21, 2008, BAC shall have caused Blue  
13 Ridge to offer to buy back, at par plus accrued and unpaid interest or dividends,  
14 Eligible ARS (as such term is defined below) for which auctions are in failed  
15 mode from Eligible Investors (as such term is defined below) who purchased such  
16 Eligible ARS from Banc of America prior to February 13, 2008 (the "Offer").  
17 For purposes of the Offer, Eligible ARS means ARS purchased from Banc of  
18 America on or before February 13, 2008, that were subject to an auction failure on  
19 or after February 11, 2008. The Offer shall remain open for a period between  
20 October 10, 2008, and December 1, 2009, unless extended by Blue Ridge.

21                   ii.       "Eligible Investors" shall mean:

22                               (a)       Natural persons (including their IRA accounts,  
23                               testamentary trust and estate accounts, custodian IGMA and UTMA  
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1 accounts, and guardianship accounts) who purchased Eligible ARS from  
2 Banc of America;

3 (b) Charities, endowments, or foundations with Internal  
4 Revenue Code Section 501(c)(3) status that purchased Eligible ARS from  
5 Banc of America and that had \$25 million or less in assets in their  
6 accounts with Banc of America as determined by the customer's aggregate  
7 household position(s) at Banc of America as of September 9, 2008; or

8 (c) Small Business that purchased Eligible ARS from Banc of  
9 America. For purposes of this provision, "Small Business" shall mean  
10 Banc of America's customers not otherwise covered in paragraph  
11 III.6.a.ii(a) and ii(b) above that had \$15 million or less in assets in their  
12 accounts with Banc of America as of September 9, 2008.

13 iii. BAS and MLPF&S (as successor to BAI) will have provided  
14 prompt notice to customers of the settlement terms and BAS and MLPF&S (as  
15 successor to BAI) will have established a dedicated telephone assistance line, with  
16 appropriate staffing, to respond to questions from customers concerning the terms  
17 of the settlement.

18 **b. Relief for Eligible Investors Who Sold Below Par**

19 No later than December 31, 2008, BAS and MLPF&S (as successor to BAI) shall  
20 have promptly provided notice to any Eligible Investor that BAS and MLPF&S (as  
21 successor to BAI) could reasonably identify who sold Eligible ARS below par between  
22 February 11, 2008, and September 22, 2008. Such investors will be paid the difference  
23 by BAS and MLPF&S (as successor to BAI) between par and the price at which the  
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1 Eligible Investor sold the Eligible ARS. Any such Eligible Investors identified after  
2 December 31, 2008, shall be promptly paid the difference between par and the price at  
3 which the Eligible Investors sold the Eligible ARS.

4 **c. Consequential Damages Claims**

5 No later than October 10, 2008, BAS and MLPF&S (as successor to BAI) shall  
6 make reasonable efforts promptly to notify those Eligible Investors who own Eligible  
7 ARS that, pursuant to the terms of the settlement, an independent arbitrator, under the  
8 auspices of the Financial Industry Regulatory Authority (“FINRA”), will be available for  
9 the exclusive purpose of arbitrating any Eligible Investor’s consequential-damages claim.

10 BAS and MLPF&S (as successor to BAI) shall consent to participate in the North  
11 American Securities Administrators Association (“NASAA”) Special Arbitration  
12 Procedure (the “SAP”) established specifically for arbitrating claims arising out of an  
13 Eligible Investor’s inability to sell Eligible ARS. BAS and MLPF&S (as successor to  
14 BAI) shall notify Eligible Investors of the terms of the SAP. Nothing in this Order shall  
15 serve to limit or expand any party’s rights or obligations as provided under the SAP.  
16 Arbitration shall be conducted, at the customer’s election, by a single non-industry  
17 arbitrator and BAS and MLPF&S (as successor to BAI) will pay all forum and filing fees.

18 Arbitrations asserting consequential damages of less than \$1 million will be  
19 decided through a single chair-qualified public arbitrator who will be appointed through  
20 the FINRA list selection process for single arbitrator cases. In arbitrations where the  
21 consequential damages claimed are greater than or equal to \$1 million, the parties can, by  
22 mutual agreement, expand the panel to include three public arbitrators who will be  
23 appointed through FINRA’s list procedure.



1 Any Eligible Investors who choose to pursue such claims through the SAP shall  
2 bear the burden of proving that they suffered consequential damages and that such  
3 damages were caused by their inability to access funds invested in Eligible ARS. In the  
4 SAP, BAS and MLPF&S (as successor to BAI) shall be able to defend themselves  
5 against such claims; provided, however, that BAS and MLPF&S (as successor to BAI)  
6 shall not contest liability for the illiquidity of the underlying ARS position or use as part  
7 of their defense any decision by an Eligible Investor not to borrow money from BAS  
8 and/or MLPF&S (as successor to BAI).

9 All customers, including but not limited to Eligible Investors who avail  
10 themselves of the relief provided pursuant to this Order, may pursue any remedies against  
11 BAS and MLPF&S (as successor to BAI) available under the law. However, Eligible  
12 Investors that elect to utilize the SAP are limited to the remedies available in that process  
13 and may not bring or pursue a claim relating to Eligible ARS in another forum.

14 **d. Institutional Investors**

15 BAS and MLPF&S (as successor to BAI) shall endeavor to work with issuers and  
16 other interested parties, including regulatory and governmental entities, to expeditiously  
17 and on a best efforts basis provide liquidity solutions for institutional investors that  
18 purchased Eligible ARS from Banc of America and are not entitled to participate in the  
19 buyback under Section III (“Institutional Investors”).

20 Beginning on December 31, 2008, and then quarterly thereafter, BAS and  
21 MLPF&S (as successor to BAI) shall submit a written report to a representative specified  
22 by NASAA outlining the efforts in which BAS and MLPF&S (as successor to BAI) have  
23 engaged and the results of those efforts with respect to Institutional Investors’ holdings in  
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1 Eligible ARS. The written reports will be submitted 20 days following the end of the  
2 quarter. BAS and MLPF&S (as successor to BAI) shall confer with the representative no  
3 less frequently than quarterly to discuss their progress to date. Such written reports and  
4 quarterly meetings shall continue until no later than December 31, 2009. Following  
5 every quarterly meeting, the representative shall advise BAS and MLPF&S (as successor  
6 to BAI) of any concerns and, in response, BAS and MLPF&S (as successor to BAI) shall  
7 detail the steps that they plan to implement to address such concerns.

8 **e. Relief for Municipal Issuers**

9 BAS and MLPF&S (as successor to BAI) shall refund refinancing fees to  
10 municipal auction rate issuers that issued such securities through Banc of America in the  
11 initial primary market between August 1, 2007, and February 11, 2008, and refinanced  
12 those securities through Banc of America after February 11, 2008. Refinancing fees are  
13 those fees paid to Banc of America in connection with a refinancing and are exclusive of  
14 legal fees and any other fees or costs not paid to Banc of America in connection with the  
15 transaction.

16 **f. Repayment of Interest on Loans Provided To Eligible Investors**

17 To the extent that Banc of America loaned money to Eligible Investors secured by  
18 Eligible ARS, after February 11, 2008, at an interest rate that was higher than that paid on  
19 such Eligible ARS, BAS and MLPF&S (as successor to BAI) shall refund the difference  
20 to such Eligible Investors.

21 **g. Penalties**

22 i. BAS and MLPF&S (as successor to BAI) shall pay a total civil  
23 penalty of FIFTY MILLION (\$50,000,000) DOLLARS, which shall be allocated  
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1 among and paid to the Commonwealth of Massachusetts, the state of New York,  
2 and such other states and territories that enter administrative or civil consent  
3 orders approving the terms of the NASAA settlement (together with the  
4 Commonwealth of Massachusetts and the state of New York, the “Approving  
5 States”). Any such allocation shall be made at the discretion of the Approving  
6 States;

7 ii. The State of Washington’s portion of the civil penalty shall be  
8 \$1,424,671.43 and shall be paid to the Securities Division of the Washington  
9 State Department of Financial Institutions no later than ten business days after the  
10 entry of this Consent Order.

11 **h. In Consideration of the Settlement**

12 The Securities Division of the Washington State Department of Financial  
13 Institutions will:

14 i. Terminate the investigation of Banc of America’s underwriting,  
15 marketing, and sale of ARS to Eligible Investors as defined herein; and

16 ii. Refrain from taking legal action, if necessary, against BAS and  
17 MLPF&S (as successor to BAI) with respect to their institutional investors until  
18 December 31, 2008; the Securities Division of the Washington State Department  
19 of Financial Institutions shall issue continuances of that period as it deems  
20 appropriate; and

21 iii. The Securities Division of the Washington State Department of  
22 Financial Institutions will not seek additional monetary penalties from BAS and  
23 MLPF&S (as successor to BAI) in connection with all underlying conduct  
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1 relating to Banc of America's underwriting, marketing, and sale of ARS to  
2 investors.

3 i. If, after this Order is executed, BAS and/or MLPF&S (as successor to  
4 BAI) fail to comply with any of the terms set forth herein, the Securities Division of the  
5 Washington State Department of Financial Institutions may take appropriate remedial  
6 action.

7 7. If payment is not made by BAS and MLPF&S (as successor to BAI), or if BAS or  
8 MLPF&S (as successor to BAI) default in any of their obligations set forth in this Order, the  
9 Securities Division of the Washington State Department of Financial Institutions may vacate this  
10 Order, at its sole discretion, upon 10 days notice to BAS and MLPF&S (as successor to BAI) and  
11 without opportunity for administrative hearing.

12 8. This Order as entered into by the Securities Division of the Washington State  
13 Department of Financial Institutions waives any disqualification contained in the laws of the  
14 State of Washington, or rules or regulations thereunder, including any disqualifications from  
15 relying upon the registration exemptions or safe harbor provisions that BAS or MLPF&S (as  
16 successor to BAI) or any of their affiliates may be subject to as a result of the findings contained  
17 in this Order. This Order also is not intended to subject BAS or MLPF&S (as successor to BAI)  
18 or any of their affiliates to any disqualifications contained in the federal securities laws, the rules  
19 and regulations thereunder, the rules and regulations of self regulatory organizations, or various  
20 states' or U.S. Territories' securities laws, including, without limitation, any disqualifications  
21 from relying upon the registration exemptions or safe harbor provisions. In addition, this Order  
22 is not intended to form the basis for any such disqualifications.

23 9. For any person or entity not a party to this Order, this Order does not limit or create  
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1 any private rights or remedies against BAS and MLPF&S (as successor to BAI) including, without  
2 limitation, the use of any e-mails or other documents of Banc of America or of others for auction  
3 rate securities sales practices, limit or create liability of BAS and MLPF&S (as successor to BAI),  
4 or limit or create defenses of BAS and MLPF&S (as successor to BAI) to any claims.

5 10. Nothing herein shall preclude the State of Washington, its departments, agencies,  
6 boards, commissions, authorities, political subdivisions and corporations, other than the Securities  
7 Division of the Washington State Department of Financial Institutions and only to the extent set  
8 forth in paragraph 1 above, (collectively, "State Entities") and the officers, agents or employees of  
9 State Entities from asserting any claims, causes of action, or applications for compensatory, nominal  
10 and/or punitive damages, administrative, civil, criminal, or injunctive relief against BAS and  
11 MLPF&S (as successor to BAI) in connection with certain auction rate securities sales practices at  
12 Banc of America.

13 11. This Order and any dispute related thereto shall be construed and enforced in  
14 accordance with, and governed by, the laws of the State of Washington without regard to any  
15 choice of law principles.

16 12. BAS and MLPF&S (as successor to BAI), through their execution of this Order,  
17 voluntarily waive their right to a hearing on this matter and to judicial review of this Order under  
18 RCW 21.20.440 and RCW 34.05.

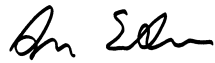
19 13. BAS and MLPF&S (as successor to BAI) enter into this Order voluntarily and  
20 represent that no threats, offers, promises, or inducements of any kind have been made by the  
21 Securities Division of the Washington State Department of Financial Institutions or any member,  
22 officer, employee, agent, or representative of the Securities Division of the Washington State  
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1 Department of Financial Institutions to induce BAS and MLPF&S (as successor to BAI) to enter  
2 into this Order.

3 14. This Order shall be binding upon BAS and MLPF&S (as successor to BAI) and  
4 each of their successors and assigns with respect to all conduct subject to the provisions above  
5 and all future obligations, responsibilities, undertakings, commitments, limitations, restrictions,  
6 events, and conditions.

7  
8 Dated and Entered this 12th day of March, 2010.

9 By:

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11 \_\_\_\_\_  
12 Suzanne Sarason  
13 Chief of Enforcement

14 Presented by:

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16 \_\_\_\_\_  
17 Bridgett Fisher  
18 Enforcement Attorney

1                   **CONSENT TO ENTRY OF ADMINISTRATIVE ORDER BY BANC OF AMERICA**  
2                   **SECURITIES LLC AND MERRILL LYNCH, PIERCE, FENNER & SMITH**  
3                   **INCORPORATED (AS SUCCESSOR BY MERGER OF BANC OF AMERICA**  
4                   **INVESTMENT SERVICES, INC.)**

5                   Banc of America Securities LLC (“BAS”) and Merrill Lynch, Pierce, Fenner & Smith  
6 Incorporated (“MLPF&S”), as successor by merger of Banc of America Investment Services,  
7 Inc. (“BAI”), hereby acknowledge that they have been served with a copy of this Administrative  
8 Order, have read the foregoing Order, are aware of their right to a hearing and appeal in this  
9 matter, and have waived the same.

10                   BAS and MLPF&S (as successor to BAI) admit the jurisdiction of the Securities Division  
11 of the Washington State Department of Financial Institutions, neither admit nor deny the Findings  
12 of Fact and Conclusions of Law contained in this Order, and consent to the entry of this Order by  
13 the Securities Division of the Washington State Department of Financial Institutions as settlement  
14 of the issues contained in this Order.

15                   BAS and MLPF&S (as successor to BAI) agree that they shall not claim, assert, or apply  
16 for a tax deduction or tax credit with regard to any state, federal, or local tax for any  
17 administrative monetary penalty that they shall pay pursuant to this Order.

18                   BAS and MLPF&S (as successor to BAI) state that no promise of any kind or nature  
19 whatsoever was made to them to induce them to enter into this Order and that they have entered  
20 into this Order voluntarily.

21                             Steve Chaiken           represents that he/she is Managing Director of BAS,  
22 and that, as such, has been authorized by BAS to enter into this Order for and on behalf of BAS.  
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1 David Futterman represents that he/she is Associate General Counsel of  
2 MLPF&S and that, as such, has been authorized by MLPF&S to enter into this Order for and on  
3 behalf of MLPF&S.

4 Dated this 6/26 day of January, 2010.

5 BANC OF AMERICA SECURITIES LLC

6 By: /s/ Steve Chaiken

7 Title: Managing Director

8 State of New York )  
9 ) ss.  
10 County of Nassau )

11 SUBSCRIBED AND SWORN TO before me this 6th day of January, 2010.

12 /s/ Elizabeth M. Coppolo

13 Notary Public

14 My commission expires:

15 10/25/13

16 MERRILL LYNCH, PIERCE, FENNER & SMITH  
17 INCORPORATED (AS SUCCESSOR BY  
18 MERGER OF BANC OF AMERICA  
19 INVESTMENT SERVICES, INC.)

20 By: /s/ David Futterman

21 Title: Associate General Counsel

22 State of New York )  
23 ) ss.  
24 County of New York )

25 SUBSCRIBED AND SWORN TO before me this 26 day of January, 2010.



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/s/ Arleen R. Tlumak  
Notary Public

My commission expires:  
11/17/2011