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7 Attorneys for Plaintiff Richard S. Bondar,
8 As Trustee of the Bondar Family Trust Dated 4/1/91

9
10 **UNITED STATES DISTRICT COURT**
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

12 RICHARD S. BONDAR, as Trustee of the
13 Bondar Family Trust Dated 4/1/91, Individually
14 And On Behalf of All Others Similarly Situated,

15 Plaintiff,

16 v.

17 BANK OF AMERICA CORPORATION,
18 BANC OF AMERICA INVESTMENT
19 SERVICES, INC., and BANC OF AMERICA
20 SECURITIES, LLC,

21 Defendants.

CIVIL ACTION NO. CV 08-2599

**CLASS ACTION COMPLAINT
FOR VIOLATIONS OF
FEDERAL SECURITIES LAWS**

SC

JURY TRIAL DEMANDED

22 **INTRODUCTION**

23 1. This is a federal class action under Sections 10(b) and 20(a) of the Securities Exchange
24 Act of 1934 (the "Exchange Act") on behalf of all persons or entities who purchased and continue to
25 hold auction rate securities (also known as auction rate preferred stock, auction market preferred stock,
26 variable rate preferred securities, money market preferred securities, periodic auction rate securities and
27 auction rate bonds) offered for sale by defendants between May 22, 2003 and February 13, 2008,
28 inclusive (the "Class Period").

1 2. Defendants represented to investors that auction rate securities were equivalent to cash or
2 money market funds; were highly liquid, safe investments for short-term investing; and were suitable for
3 any investor with at least \$25,000 of available cash and as little as one week in which to invest.

4 3. Defendants knew, but failed to disclose to investors, material facts about auction rate
5 securities. In particular, defendants knew, but failed to disclose that these auction rate securities were
6 not cash alternatives, but were instead, complex, long-term financial instruments with 30 year maturity
7 dates, or longer. Defendants knew, but failed to disclose that auction rate securities were only liquid at
8 the time of sale because defendants were artificially supporting and manipulating the auction market to
9 maintain the appearance of liquidity and stability. Defendants knew, but failed to disclose that auction
10 rate securities would become illiquid as soon as defendants stopped maintaining the auction market.

11 4. On February 13, 2008, 87% of all auctions of auction rate securities failed when
12 defendants and all other major broker-dealers refused to continue to support the auctions. As a result of
13 the withdrawal of support by all of the major broker-dealers, the market for auction rate securities
14 collapsed, leaving the holders of more than \$300 billion in auction rate securities with no means of
15 liquidating investments Defendants offered and sold as a suitable alternative to money market funds and
16 other short term cash management vehicles.

17 **JURISDICTION AND VENUE**

18 5. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§
19 1331 and 1337, and Section 27 of the Exchange Act (15 U.S.C. § 78aa). The claims asserted herein
20 arise under Sections 10(b) and 20(a) of the Exchange Act (15 U.S.C. §§ 78j(b) and 78t(a)), and Rule
21 10b-5 promulgated thereunder by the Securities Exchange Commission (“SEC”) (17 C.F.R. 240.10b-5).

22 6. Venue is proper in this District pursuant to Section 27 of the Exchange Act and 28 U.S.C.
23 §1391(b), §1337. Defendants regularly conduct business within this District, and many of the acts
24 giving rise to the violations complained of herein took place in this District.

25 7. In connection with the acts alleged in this Complaint, defendants, directly or indirectly,
26 used the means and instrumentalities of interstate commerce including, but not limited to, the mails,
27 interstate telephone communications and the facilities of the national securities markets.

1 **PARTIES**

2 8. Plaintiff Richard S. Bondar, as Trustee of the Bondar Family Trust Dated 4/1/91
3 (“Bondar Family Trust”), as set forth in the accompanying certification, incorporated by reference
4 herein, purchased auction rate securities underwritten and sold by Defendants during the Class Period
5 and continued to hold such auction securities as of February 13, 2008.

6 9. Defendant Bank of America Corporation is a North Carolina corporation headquartered
7 in Charlotte, North Carolina. Bank of America Corporation is a bank holding company and a financial
8 holding company registered under the Gramm-Leach-Bliley Act. Bank of America Corporation is one
9 of the world’s leading financial firms and one of the largest banks in the United States by assets. Bank
10 of America Corporation conducts substantial business within this District.

11 10. Defendant Banc of America Investment Services, Inc. (“BAIS”), is incorporated in
12 Florida and its principal executive offices are located in Charlotte, North Carolina. BAIS is registered
13 with the SEC as a broker-dealer pursuant to Section 15(b) of the Exchange Act and is a member of the
14 New York Stock Exchange (“NYSE”) and the Financial Industry Regulatory Authority (“FINRA”).
15 BAIS is a wholly owned subsidiary of Bank of America Corporation. BAIS conducts substantial
16 business within this District.

17 11. Defendant Banc of America Securities, LLC (“BAS”) is incorporated in Delaware, and
18 its principal executive offices are located in Charlotte, North Carolina. BAS is registered with the SEC
19 as a broker-dealer pursuant to Section 15(b) of the Exchange Act and is a member of the New York
20 Stock Exchange (“NYSE”) and the Financial Industry Regulatory Authority (“FINRA”). BAS is a
21 wholly owned subsidiary of Bank of America Corporation. BAS conducts substantial business within
22 this District.

23 12. Unless specifically noted, “Bank of America” refers collectively to Defendants Bank of
24 America Corporation, BAIS and BAS.

25 **PLAINTIFF’S CLASS ACTION ALLEGATIONS**

26 13. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure
27 23(a) and (b)(3) on behalf of a Class, consisting of all persons and entities who purchased auction rate
28 securities from Bank of America between May 22, 2003 and February 13, 2008, inclusive, and

1 continued to hold such auction securities as of February 13, 2008 (the "Class"). Excluded from the
2 Class are defendants, the officers and directors of any defendant, members of their immediate families
3 and their legal representatives, heirs, successors or assigns and any entity in which any defendant has or
4 had a controlling interest.

5 14. The members of the Class are so numerous that joinder of all members is impracticable.
6 The market for auction rate securities, while it existed, was estimated to exceed \$300 billion in the
7 United States and Bank of America was a significant underwriter and seller of auction rate securities
8 while the market for such securities existed. While the exact number of Class members is unknown to
9 plaintiff at this time and can only be ascertained through appropriate discovery, plaintiff believes that
10 there are thousands of members in the proposed Class. Record owners and other members of the Class
11 may be identified from records maintained by defendants and may be notified of the pendency of this
12 action by mail, using the form of notice similar to that customarily used in securities class actions.

13 15. Common questions of law and fact exist as to all members of the Class and predominate
14 over any questions solely affecting individual members of the Class. Among the questions of law and
15 fact common to the Class are:

- 16 (a) Whether the federal securities laws were violated by defendants' acts as alleged
17 herein;
- 18 (b) Whether statements made by defendants to the investing public during the Class
19 Period misrepresented or omitted material facts about the liquidity of and risks associated
20 with auction rate securities and the market for such securities; and
- 21 (c) To what extent the members of the Class have sustained damages and the proper
22 measure of damages.

23 16. Plaintiff's claims are typical of the claims of the members of the Class as all members of
24 the Class are similarly affected by defendants' wrongful conduct in violation of federal law that is
25 complained of herein.

26 17. Plaintiff will fairly and adequately protect the interests of the members of the Class and
27 has retained counsel competent and experienced in class and securities litigation.

1 18. A class action is superior to all other available methods for the fair and efficient
2 adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the
3 damages suffered by individual Class members may be relatively small, the expense and burden of
4 individual litigation make it impossible for members of the Class to individually redress the wrongs
5 done to them. There will be no difficulty in the management of this action as a class action.

6 19. In the alternative, the Class may be certified under the provisions of Fed. R. Civ. P.
7 23(b)(1) and/or 23(b)(2) because: (a) the prosecution of separate actions by individual Class
8 members, would create a risk of inconsistent or varying adjudications with respect to individual Class
9 members which would establish incompatible standards of conduct for defendants; (b) the prosecution
10 of separate actions by individual Class members would create a risk of adjudications with respect to
11 them which would, as a practical matter, be dispositive of the interests of other Class members not
12 parties to the adjudications, or substantially impair or impede their ability to protect their interests; and
13 (c) defendants have acted or refused to act on grounds generally applicable to the Class, thereby making
14 appropriate final injunctive relief with respect to the Class as a whole.

15 **GENERAL ALLEGATIONS**
16 **Background**

17 20. The term "auction rate security" typically refers to either municipal or corporate debt
18 securities or preferred stocks which pay interest at rates set at periodic "auctions." Auction rate
19 securities generally have long-term maturities, typically 30 years, and in the case of preferred stocks, no
20 maturity date.

21 21. Since then, the market for auction rate securities grew dramatically and the current
22 estimated value of auction rate securities in existence (prior to the collapse of the auction market) is
23 around \$350 billion.

24 22. Investments in auction rate securities were initially limited to institutional investors, with
25 required minimums of \$250,000. In recent years, however, issuers and sellers of auction rate securities
26 have lowered the minimum amount invested to \$25,000, in an effort to market auction rate securities as
27 widely as possible to the general public.
28

1 23. Auction rate securities were auctioned at par value, so the return on the investment to the
2 investor and the cost of financing to the issuer were determined by the interest rate or dividend yield set
3 through the auction. The method for auctioning the securities was described in the prospectus of the
4 fund through which they were offered, though the formula was substantially similar for all securities
5 offered as auction rate securities.

6 24. The number of days between each auction was set by the prospectus. Generally, the
7 auctions were held every 7, 28, or 35 days, with interest paid at the end of the auction period.

8 25. The auction itself was of the type commonly referred to as a “Dutch” auction, i.e. one
9 where the price was initially set at a presumably economically unattractive level and then made more
10 attractive to purchasers throughout the course of the auction. For auction rate securities, bids with
11 successively higher rates were offered until all of the securities at the auction were sold.

12 26. At the end of the auction, the rate at which all of the securities were sold was set
13 uniformly and was called the “clearing rate.” The clearing rate was determined by finding the lowest
14 rate bid which was sufficient to cover all of the securities for sale in the auction. If several bidders had
15 bids at the clearing rate, and there were more bids than shares, the shares were divided pro-rata between
16 the clearing rate bidders. The auction agent, at the end of the auction, allocated the shares per the
17 formula. If all of the current holders decided to hold their securities, then the auction was an “all-hold”
18 auction and the rate was set at a level defined in the prospectus. This rate was generally lower than the
19 market rate.

20 27. During an auction, an investor could submit one of four different orders: (1) a Hold order
21 to keep the shares out of the auction regardless of the new interest rate; (2) a Hold at Rate order, where if
22 the clearance rate was below the bid to hold rate, then the securities were sold; (3) a Sell order, which
23 was to sell the shares at the auction regardless of the clearing rate; and (4) a Bid order, to submit a bid to
24 buy at a new position at a specified minimum interest rate. Since there was no preference in awarding
25 shares to existing holders and new buyers, there was little practical difference between a Hold at Rate
26 order and a Buy order.

27 28. If there were not enough orders to purchase all the shares being sold at the auction, a
28 failed auction occurred. In this situation, the rate was set to a “maximum rate” described by either a

1 formula or a multiplier of a reference rate, such as the Bond Market Association index. Either way, the
2 maximum rate was set out in the prospectus. If the auction failed then none of the current shareholders
3 could sell their shares, no matter what type of order they issued. The maximum rate for many auction
4 rate securities, particularly those invested in corporate debt securities or preferred stocks, was relatively
5 small, however. As a result, if the auction failed, owners unable to sell their shares would receive
6 limited interest on their illiquid investments.

7 29. The issuer of each auction rate security selected one or more broker-dealers to underwrite
8 the offerings and to manage the auction process. Investors could only submit orders through the
9 selected broker-dealers. The issuer paid an annualized fee to each broker-dealer engaged to manage an
10 auction.

11 30. Investors were required to submit an order to the broker-dealer by a deadline set by the
12 broker-dealer. This deadline was generally set early enough by the broker-dealer so that it had time to
13 process and analyze the orders before having to submit the orders to the auction agent. This gave the
14 broker-dealer enough time to determine what, if any, orders the broker-dealer wished to place for its
15 own account.

16 31. Broker-dealers would often engage in a number of practices to influence the auction
17 process, including, for example, submitting their own orders to purchase or sell shares for their own
18 accounts. In 2004, the SEC began to investigate these manipulative practices affecting the auction
19 market. In 2006, the SEC entered into a consent decree with a number of major broker-dealers,
20 including defendant BAS, which required them to disclose certain practices to investors and to stop
21 engaging in certain other practices. The SEC consent decree noted that in many cases, the broker-
22 dealers intervened in auctions for their own benefit rather than to maintain liquidity, as they claimed.
23 The consent decree did nothing to end the practice of the broker-dealers submitting bids for their own
24 accounts after receiving notice of what orders their customers planned to place, so long as the broker-
25 dealers disclosed this practice to their customers.

1 **During the Class Period, Bank of America Materially Misrepresented**
2 **the Liquidity of and Risks Associated With Auction Rate Securities**
3 **and Omitted Material Facts About Its Role and the Auction Market**

4 32. Auction rate securities were extremely profitable for Bank of America and for the Bank
5 of America financial advisors and brokers who sold the securities. As a large underwriter of auction rate
6 securities, Bank of America was paid significant underwritten fees by issuers of the securities. As a
7 large broker-dealer, Bank of America was paid to make a market in auction rate securities. Bank of
8 America also acted as a principal for its own account, using its access to inside information about the
9 auction process to buy and sell auction rate securities for its own account. Individual Bank of America
10 financial advisors had a significant financial incentive to sell auction rate securities, as they were
11 compensated by Bank of America for each auction rate security sold.

12 33. In order to perpetuate the auction market and sell as many auction rate securities as
13 possible, Bank of America represented to investors in its written materials and uniform sales
14 presentations by financial advisors that auction rate securities were the same as cash and were highly
15 liquid, safe investments for short-term investing. Pursuant to uniform sales materials and top-down
16 management directives, Bank of America financial advisors throughout the United States represented to
17 current and potential Bank of America clients that the auction rate securities sold by Bank of America
18 were equivalent to cash or money market funds and were safe, highly liquid short-term investment
19 vehicles suitable for any investor with at least \$25,000 of available cash and as little as one week in
20 which to invest.

21 34. Bank of America failed to disclose to purchasers of auction rate securities material facts
22 about these securities. Bank of America failed to disclose that these securities were not cash
23 alternatives, like money market funds, and were instead, complex, long-term financial instruments with
24 30 year maturity dates, or longer. Bank of America failed to disclose that the auction rate securities it
25 was selling were only liquid at the time of sale because Bank of America and other broker-dealers in the
26 auction market were artificially supporting and manipulating the market to maintain the appearance of
27 liquidity and stability. In fact, at all relevant times during the Class Period, the ability of holders of
28 auction rate securities to liquidate their positions depended on the maintenance of an artificial auction
market maintained by Bank of America and the other broker-dealers. When Bank of America and the

1 other broker-dealers stopped artificially supporting and manipulating the auction market, the market
2 immediately collapsed and the auction rate securities sold by Bank of America became illiquid. Bank of
3 America also failed to disclose that the auction rate securities it was selling were not short-term
4 investments, but rather long term bonds or preferred stocks with maturities sometimes exceeding 30
5 years. Finally, Bank of America failed to disclose that the short-term nature of the securities and the
6 ability of investors to quickly convert their auction rate securities into cash depended entirely on the
7 perpetuation of the artificial auction market being maintained by Bank of America and the other broker-
8 dealers.

9 35. Bank of America also failed to disclose to purchasers of auction rate securities material
10 facts about its role in the auctions and the auction market in which these securities were traded. Bank of
11 America failed to disclose that in connection with the sale of auction rate securities, Bank of America
12 simultaneously was acting on behalf of the issuer, who had an interest in paying the lowest possible
13 interest rate, on behalf of the investor, who was seeking the highest possible return, and on its own
14 behalf, to maximize the return to Bank of America on its holdings of the auction rate securities. Bank of
15 America failed to disclose that it and other broker-dealers routinely intervened in auctions for their own
16 benefit, to set rates and prevent all-hold auctions and failed auctions. Bank of America failed to disclose
17 that without this manipulation of the auction market, many auctions likely would have failed, as a result
18 of which investors would have had the ability to determine the true risk and liquidity features of auction
19 rate securities. Bank of America continued to aggressively market auction rate securities after it had
20 determined that it and other broker dealers were likely to withdraw their support for the periodic
21 auctions and that a “freeze” of the market for auction rate securities would result.

22 36. During the Class Period, Bank of America failed to disclose that the auctions it was
23 conducting were not governed by arms-length transactions but instead suffered from systemic flaws and
24 manipulative practices, including allowing customers to place open or market orders in auctions,
25 intervening in auctions by bidding for Bank of America’s proprietary account or asking customers to
26 make or change orders, preventing failed auctions and all-hold auctions to set the market rate,
27 submitting or changing orders after auction deadlines, not requiring customers to purchase partially-
28 filled irrevocable orders, providing certain customers with higher returns than the auction clearing rate,

1 and providing inside information about the auction process to certain customers in connection with the
2 auction bidding.

3 **The Market for Auction Rate Securities Collapses**

4 37. In the summer of 2007, some auctions for auction rate securities backed by sub-prime
5 debt began to fail, but these securities represented only 2-6% of the entire auction rate securities market.
6 In the fall-winter of 2007, more auctions began to fail. Even though a number of auctions failed in
7 September 2007 and thereafter, Bank of America continued to encourage investors to purchase auction
8 rate securities and continued to represent to investors that these securities were the same as cash or
9 money markets and were highly liquid, safe investments for short-term investing, without any disclosure
10 of the risks associated with the securities.

11 38. On February 13, 2008, 87% of all auctions of auction rate securities failed when all of the
12 major broker-dealers refused to continue to support the auctions.

13 39. On February 14, 2008, it was disclosed that UBS, the second largest underwriter of
14 auction rate securities, had decided to no longer support the auction market. Virtually every other major
15 broker-dealer, including Goldman Sachs, Lehman Brothers, Citigroup and Merrill Lynch, among others,
16 also decided around the same time to withdraw their support of the auction market. As a result of the
17 withdrawal of support by all of the major broker-dealers, the market for auction rate securities has
18 collapsed, rendering more than \$300 billion of outstanding securities illiquid.

19 40. The market for auction rate securities sold by Bank of America was open, well-developed
20 and efficient at all relevant times until the truth emerged and the auction market collapsed. As a result
21 of the materially false and misleading statements and failures to disclose, auction rate securities sold by
22 Bank of America traded at artificially inflated prices during the Class Period. Plaintiff and other
23 members of the Class purchased and continued to hold auction rate securities sold by Bank of America
24 relying upon the integrity of the auction market and the market price of those securities, and have been
25 damaged thereby.

26 41. During the Class Period, defendants materially misled the investing public, thereby
27 allowing the auction market to continue and inflating the price of auction rate securities sold by Bank of
28 America by publicly issuing false and misleading statements and omitting to disclose material facts

1 necessary to make defendants' statements, as set forth herein, not false and misleading. Said statements
2 and omissions were materially false and misleading in that they failed to disclose material adverse
3 information and misrepresented the truth about the auction market and the auction rate securities sold by
4 Bank of America, as alleged herein.

5 42. At all relevant times, the material misrepresentations and omissions particularized in this
6 Complaint directly or proximately caused or were a substantial contributing cause of the damages
7 sustained by plaintiff and other members of the Class. As described herein, during the Class Period,
8 defendants made or caused to be made a series of materially false or misleading statements about the
9 auction market and the auction rate securities sold by Bank of America. These material misstatements
10 and omissions had the cause and effect of perpetuating the auction market and creating in that market an
11 unrealistically positive assessment of the auction rate securities sold by Bank of America, thus causing
12 those securities to be overvalued and artificially inflated at all relevant times. Defendants' materially
13 false and misleading statements during the Class Period resulted in plaintiff and other members of the
14 Class purchasing and continuing to hold auction rate securities sold by Bank of America at artificially
15 inflated prices, thus causing the damages complained of herein.

16 **NO SAFE HARBOR**

17 43. The statutory safe harbor provided for forward-looking statements under certain
18 circumstances does not apply to any of the allegedly false statements pleaded in this complaint. The
19 statements pleaded herein were not identified as "forward-looking statements" when made. To the
20 extent there were any forward-looking statements, there were no meaningful cautionary statements
21 identifying important factors that could cause actual results to differ materially from those in the
22 purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does
23 apply to any forward-looking statements pleaded herein, defendants are liable for those false forward-
24 looking statements because at the time each of those forward-looking statements was made, the
25 particular speaker knew that the particular forward-looking statement was false, and/or the forward-
26 looking statement was authorized and/or approved by an executive officer of Bank of America who
27 knew that those statements were false when made.

1 LOSS CAUSATION/ECONOMIC LOSS

2 44. During the Class Period, as detailed herein, defendants engaged in a scheme and course
3 of conduct to create a market for and artificially inflate the price of auction rate securities sold by Bank
4 of America that operated as a fraud or deceit on purchasers of auction rate securities sold by Bank of
5 America by misrepresenting the liquidity of and risks associated with such securities. Defendants
6 achieved this by making false and misleading statements about the auction market and the auction rate
7 securities sold by Bank of America. When Bank of America's prior misrepresentations and omissions
8 were disclosed and became apparent to the investing public, the market for auction rate securities
9 collapsed and the auction rate securities sold by Bank of America have become illiquid. As a result of
10 their purchases of auction rate securities from Bank of America during the Class Period, plaintiff and
11 other members of the Class suffered economic loss, i.e., damages under the federal securities laws in
12 that the securities have substantially less value than that represented by defendants.

13 45. The collapse of the auction rate securities market at the end of the Class Period was a
14 direct result of defendants' unilateral decision to no longer artificially support the auction rate securities
15 market and the nature and extent of defendants' fraud finally being revealed to investors.

16 BASIS OF ALLEGATIONS

17 46. Plaintiff makes the allegations in this Complaint based upon the investigation of
18 plaintiff's counsel, which included a review of SEC filings, regulatory filings and reports, securities
19 analysts' reports, interviews with purchasers of auction rate securities, press releases and media reports,
20 and plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth
21 herein after a reasonable opportunity for discovery.

22 COUNT I

23 **Violation Of Section 10(b) Of The Exchange Act**
24 **Against All Defendants**

25 47. Plaintiff repeats and realleges each and every allegation set forth in the paragraphs above
26 as if fully set forth herein. Plaintiff brings this cause of action on behalf of himself, as trustee of the
27 Bondar Family Trust, and the Class.
28

1 48. During the Class Period, defendants carried out a plan, scheme and course of conduct
2 which was intended to and, throughout the Class Period, did: (i) deceive the investing public, including
3 plaintiff and other Class members, as alleged herein; (ii) enable defendants to sell hundreds of millions
4 of dollars of auction rate securities to current and prospective Bank of America clients, and on which
5 Bank of America made substantial commissions; and (iii) cause plaintiff and other members of the Class
6 to purchase auction rate securities from Bank of America at artificially inflated prices. In furtherance of
7 this unlawful scheme, plan and course of conduct, defendants, jointly and individually (and each of
8 them) took the actions set forth herein.

9 49. Defendants (a) employed devices, schemes, and artifices to defraud; (b) made untrue
10 statements of material fact and/or omitted to state material facts necessary to make the statements not
11 misleading; and (c) engaged in acts, practices, and a course of business which operated as a fraud and
12 deceit upon the purchasers of auction rate securities from Bank of America in an effort to maintain
13 artificially high sales and market prices for such securities in violation of Section 10(b) of the Exchange
14 Act and Rule 10b-5. All defendants are sued either as primary participants in the wrongful and illegal
15 conduct charged herein or as controlling persons as alleged below.

16 50. Defendants, individually and in concert, directly and indirectly, by the use, means or
17 instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous
18 course of conduct to conceal adverse material information about the auction rate securities sold by Bank
19 of America, as specified herein.

20 51. These defendants employed devices, schemes and artifices to defraud, while in
21 possession of material adverse non-public information, and engaged in acts, practices, and a course of
22 conduct as alleged herein in an effort to assure investors that the auction rate securities sold by Bank of
23 America were the same as cash and were highly liquid, safe short-term investment vehicles suitable for
24 almost all investors, which included the making of, or the participation in the making of, untrue
25 statements of material facts and omitting to state material facts necessary in order to make the statements
26 made about the auction rate securities in the light of the circumstances under which they were made, not
27 misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of
28

1 business which operated as a fraud and deceit upon the purchasers of auction rate securities from Bank
2 of America during the Class Period.

3 52. The defendants had actual knowledge of the misrepresentations and omissions of material
4 facts set forth herein, or acted with deliberate disregard for the truth in that they failed to ascertain and to
5 disclose such facts. Such defendants' material misrepresentations and/or omissions were done
6 knowingly or deliberately and for the purpose and effect of concealing the truth about the liquidity of
7 and risks associated with auction rate securities from the investing public and supporting the artificially
8 inflated price and market for these securities. If defendants did not have actual knowledge of the
9 misrepresentations and omissions alleged, they were deliberate in failing to obtain such knowledge by
10 deliberately refraining from taking those steps necessary to discover whether those statements were false
11 or misleading.

12 53. As a result of the dissemination of the materially false and misleading information and
13 failure to disclose material facts, as set forth above, the market and market price of the auction rate
14 securities sold by Bank of America was artificially inflated during the Class Period. In ignorance of the
15 fact that the market prices of auction rate securities were artificially inflated, and relying directly or
16 indirectly on the false and misleading statements made by defendants, or upon the integrity of the
17 auction market in which the auction rate securities were traded, and/or on the absence of material
18 adverse information that was known to or deliberately disregarded by defendants but not disclosed in
19 public statements by defendants during the Class Period, plaintiff and the other members of the Class
20 acquired and continued to hold auction rate securities sold by Bank of America during the Class Period
21 at artificially high prices and were damaged thereby.

22 54. At the time of said misrepresentations and omissions, plaintiff and other members of the
23 Class were ignorant of their falsity, and believed them to be true. Had plaintiff and the other members
24 of the Class and the marketplace known the truth regarding the liquidity of and risks associated with the
25 auction rate securities sold by Bank of America, which were not disclosed by defendants, plaintiff and
26 other members of the Class would not have purchased and continued to hold their auction rate securities,
27 or, if they had acquired such securities during the Class Period, they would not have done so at the
28 artificially inflated prices which they paid.

1 55. By virtue of the foregoing, defendants have violated Section 10(b) of the Exchange Act,
2 and Rule 10b-5 promulgated thereunder.

3 56. As a direct and proximate result of defendants' wrongful conduct, plaintiff and the other
4 members of the Class suffered damages in connection with their respective purchases of auction rate
5 securities sold by Bank of America during the Class Period.

6 **COUNT II**

7 **Violation Of Section 20(a) Of The Exchange Act**
8 **Against Defendant Bank of America Corporation**

9 57. Plaintiff repeats and realleges each and every allegation set forth in the paragraphs above
10 as if fully set forth herein. Plaintiff brings this cause of action on behalf of himself, as trustee of the
11 Bondar Family Trust, and the Class.

12 58. Defendant Bank of America Corporation acted as a control person of defendants BAIS
13 and BAS within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of its
14 100% ownership of BAIS and BAS, Bank of America Corporation had the power to influence and
15 control and did influence and control, directly or indirectly, the decision-making by BAIS and BAS,
16 including the content and dissemination of the various statements which plaintiff contends are false and
17 misleading. Bank of America Corporation was provided with or had unlimited access to copies of the
18 reports, press releases, public filings and other statements alleged by plaintiff to be misleading prior to
19 and/or shortly after these statements were issued and had the ability to prevent the issuance of the
20 statements or cause the statements to be corrected.

21 59. As set forth above, BAIS and BAS violated Section 10(b) and Rule 10b-5 by their acts
22 and omissions as alleged in this complaint. By virtue of its position as a controlling person, Bank of
23 America Corporation is liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate
24 result of defendants' wrongful conduct, plaintiff and other members of the Class suffered damages in
25 connection with their purchase and retention of auction rate securities from Bank of America during the
26 Class Period.

1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, plaintiff prays for relief and judgment, as follows:

3 A. Determining that this action is a proper class action, designating plaintiff as Lead Plaintiff
4 and certifying plaintiff as a class representative under Rule 23 of the Federal Rules of Civil Procedure
5 and plaintiff's counsel as Lead Counsel;

6 B. Awarding compensatory damages in favor of plaintiff and the other Class members
7 against all defendants, jointly and severally, for all damages sustained as a result of defendants'
8 wrongdoing, in an amount to be proven at trial, including interest thereon;

9 C. Awarding plaintiff and the Class their reasonable costs and expenses incurred in this
10 action, including counsel fees and expert fees;

11 D. Awarding extraordinary, equitable and/or injunctive relief as permitted by law, equity
12 and the federal statutory provisions sued hereunder; and

13 E. Such other and further relief as the Court may deem just and proper.

14 **JURY TRIAL DEMANDED**

15 Plaintiff hereby demands a trial by jury.

16 Dated: May 22, 2008

17 Respectfully submitted,

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19
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**Counsel for Plaintiff Richard S. Bondar,
As Trustee of the Bondar Family Trust Dated 4/1/91**