

## Memorandum

**Date:** October 18, 2004  
**To:** Carter McClelland, CEO BAS  
**Re:** BAS' Ethics Policy

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While attending the BAS Summer Associate orientation program, I was instructed to read an inch-thick binder entitled "Banc of America Securities Global Compliance Manual", which contained the firm's global compliance policy. Although the compliance policy manual was extremely comprehensive, I found it to be a legal treatise that was to be referenced on the job when having questions about best business practices. User-friendliness notwithstanding, the compliance manual lacked a simple, easy to follow statement regarding the general kind of behavior the firm expected of its employees.

Figuring that such information could easily be found on the firm's website, I went on-line to continue my search. Unfortunately, my search of the BAS website left me completely empty handed. The purpose of this memorandum therefore, is to propose the creation of a comprehensive ethics policy which will convey what the firm believes and expects of itself, of its employees, and the meaning of the firm's existence in society.

### Why an Ethics Policy?

- **Business Risk Mitigation** - Over the course of the past three years, the investment banking industry has been plagued by numerous scandals. As the corresponding lawsuits and settlements reveal, the business risks to investment banks are very real and do affect the bottom line. The idea behind the establishment of an ethics policy is not the creation of a set of rules that will take up more space in BAS' global compliance manual. The intent is to establish a broad set of values that will guide the firm's moral compass and not only to help it avoid scandal and hits to the bottom line, but more importantly, to enhance the value of the firm to its shareholders, to its employees, and to society at large.
- **Separate Entity from Parent Company** – While one can make the argument that as a wholly owned subsidiary of Bank of America Corporation, BAS is covered by the same ethics policy, code of conduct, and corporate social responsibility initiatives of its parent company. This is true in theory but not in substance.

Unlike its parent company, BAS is not in the business of providing credit and lending money to the general public. BAS is engaged in the business of raising capital for large corporations and emerging companies, as well as using its own risk capital to provide liquidity to the capital markets. The institutional nature of BAS' business removes the individual from the human consequences of their actions. In other words, instead of dealing with a community member whose name and face is recognized, BAS employees deal with large institutions and the dollar values (of "other people's money") are measured in the tens of billions.

An ethics policy will help connect the firm and its employees to its various constituents so that firm and employee behavior will be made in the context of all those who are affected.

### What are BAS Competitors Doing?

- **Goldman Sachs** – As the undisputed king and gold plate standard of Wall Street, Goldman does not take its ethics policy lightly. In fact, Goldman takes ethics and its ethics policy extremely seriously. A link to the company's business principals is prominently displayed on the top left of the main body of the company's home page. On a tab entitled "our firm", the first link that comes up is one for the company's culture, its values, and its social responsibility. Facts about Goldman's competitive market position, revenues, and profitability come dead last. For Goldman's lesser rivals, these things come first, and their culture and corresponding values come later. The results speak for themselves in the industry's "league tables" which rank the major Wall Street firms.
- **Lehman Brothers** – Similar to Goldman Sachs, Lehman has a prominent link on the top left hand side on the main body of its homepage entitled "who we are" which directs surfers to its mission statement. The mission statement has three parts, one for each of Lehman's constituents: its clients, its people, and its shareholders. Lehman offers no other information on ethics that does not concern what it considers to be its constituents.
- **Merrill Lynch** – Merrill's web homepage is similarly set up like Goldman's and Lehman's in that the surfer can quickly access information about the company. Like Goldman, Merrill gives a statement of principles. Merrill goes beyond Goldman by providing an environmental report as well as very detailed information on corporate governance. When printed, Merrill's corporate governance statement came out to be over 40 pages long. Another interesting aspect of Merrill's website is that it offers online transcripts of public speeches given by the firm's executives at various industry roundtables, conferences, and university commencements. The point of

offering these speeches, of course, is for the public to be able access the official statements of the company's executive leadership.

- **Union Bank of Switzerland (UBS)** – Although designed for American viewers, the UBS website reflects the company's European origin. Not only can UBS' statement of values, corporate governance, and mission statement be easily found after clicking on the "about us" link on the homepage, but the company also takes reporting on corporate social responsibility to a whole new level. In addition to the company's official statement on corporate social responsibility, the CEO of the company offers his own personal view of the matter. The company website also offers assessments of its corporate responsibility programs by certifying bodies and independent rating agencies. When it comes to articulating a comprehensive statement of ethics, principles, vision, and social responsibilities, the UBS website is in a class of its own.

### **Ethical Challenges for BAS**

- **Mutual Fund Trading** – BAS was the main target of New York Attorney General Elliot Spitzer's investigation into allegations of executing after-hour trades of mutual funds for its more profitable hedge fund customers. Although BAS settled with the Attorney General's office for \$225 million, the firm's reputation was tarnished and real costs were incurred as a result of the settlement.
- **Stock Research** – BAS was party to the \$1 billion-plus Global Settlement with the New York Attorney General's Office to settle allegations that the firm knowingly misled investors with false or misleading equity research. Although BAS was not one of the larger contributors to the settlement, the firm is still reeling from the fallout caused by the industry-wide scandal.
- **Aiding and Abating Corporate Malfeasance** – BAS has been tainted by the fraud related failure of Parmalat, the Italian dairy concern. BAS is not being charged with participating in Parmalat's fraudulent practices in the same way that Arthur Anderson was with Enron. However, BAS is being investigated for not exercising its fiduciary responsibility to creditors and potential investors by providing them with meaningful due diligence. Regardless of the merits or substance of the allegations, the BAS name is still associated with the Parmalat failure.

The ethical challenges that BAS is facing are not limited to headline stories that can be passed off as isolated incidents. As long as the BAS organization lacks a clearly articulated ethics policy that lays out what the company expects of itself and of its employees, the BAS organization will be like a ship without a sail, lost at sea.

Thus, an ethics policy in and of itself is not enough. The policy must be one that comes from the top and that is supported (and practiced!) by senior management so that real, meaningful, and genuine institutional reform can take place. BAS' biggest ethical challenge is not to remain out of the purview of Elliot Spitzer's radar, but to look at itself in the mirror, recognize its institutional shortcomings, recognize the need for the development of an ethics policy, and make sure such a policy becomes a part of BAS' organizational fabric.

### What BAS Can Do Now

- **Take The Bull By The Horns** – Senior Management must acknowledge the lack of an ethics policy and signal its intent to take control of the moral direction of the BAS ship. Without senior management's active involvement, an ethics policy will merely become another un-read policy manual.
- **Learn From Its Parent Company** - In spite of BAS' being in a different line of business than its parent company, BAS can still stand to learn much from and be inspired by Bank of America's efforts.

For example, the CEO of Bank of America Corp., Kenneth D. Lewis, has successfully defined his company's role in society and its relationship to its constituents when he stated, "The reason Bank of America is in business is to help make communities stronger and to help people achieve their dreams. We fulfill this purpose by reaching for higher standards in everything we do -- for our customers, our shareholders, our associates and our communities, upon which the future prosperity of our company rests."

- **Develop a Simple Statement of Values** – A statement of values should be broad, yet simple to read and user friendly. Employees do not want to read inch-thick binders on how to behave. The statement of values should be somewhat philosophical so as to encourage thought and introspection, not fear or heavy handedness. Again, BAS can turn to its parent company's statement of values for inspiration:
  - **Doing the right thing.** Each of us has the freedom, authority, and responsibility to do the right thing for our clients, customers, communities — and each other.
  - **Trusting and teamwork.** We rely on each other and succeed together. We take collective responsibility for the quality of client and customer experiences.

- **Inclusive meritocracy.** We care about each other, focus on results and strive to help all associates develop their full potential. We respect and value each other's differences.
- **Winning.** We have a passion for achieving results and winning — for our clients and customers, for our teammates and communities and for our shareholders.
- **Leadership.** We're decisive leaders at every level, communicating our vision and taking action to help build a better future.
- **Corporate Social Responsibility** – After drafting a statement of values, BAS should lead by example and practice corporate social responsibility and sustainable business practices, and also report on them. The idea behind such practices is not simply to purchase community good will, but to motivate and inspire employees to behave in socially responsible ways that enhance not just the value of the corporation to its shareholders, but the value of the corporation to the community and the value of employees' work to their own lives. For inspiration on how to do this, BAS can turn to UBS' efforts.

## Conclusion

In sum, the purpose of this memorandum has been to propose and justify the development of a code of ethics for Banc of America Securities. The completion of an actual ethics policy is beyond the scope of this memorandum. Moving beyond the proposal and justification of an ethics policy, this memorandum has sought to stimulate thought about the various aspects and implications of corporate and employee ethical behavior.