

1 (Attorney list on signature page)

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3 **UNITED STATES DISTRICT COURT**  
4 **NORTHERN DISTRICT OF CALIFORNIA**  
5 **SAN FRANCISCO DIVISION**

6 In re Bank of America Corp. Auction Rate  
7 Securities Marketing Litigation

MDL No. 09-2014

8 **AMENDED STIPULATION AND**  
9 **~~PROPOSED~~ SCHEDULING**  
10 **ORDER**

11 This Document Relates to:  
12 *Bondar v. Bank of America Corp.*  
13 No. C 08-2599 (JSW)

Hon. Jeffrey S. White

14 **WHEREAS** on September 29, 2009, the hearing on Defendants Bank of America  
15 Corporation, Banc of America Securities LLC, and Banc of America Investment Services,  
16 Inc.'s (collectively, "Defendants") motion to dismiss the Second Amended Class Action  
17 Complaint in *Bondar v. Bank of America Corp.*, No. C 08-2599 (JSW) was moved from  
18 November 20, 2009 to December 11, 2009. (Dkt. Nos. 103-104)

19 **WHEREAS** on October 7, 2009, Class Plaintiffs ("Plaintiffs") and Defendants  
20 submitted a stipulation and proposed order to extend the dates for the filing of Plaintiffs'  
21 opposition to Defendants' motion to dismiss from October 9 to October 30, and Defendants'  
22 reply thereto from October 30 to November 25. (Dkt. No. 105)

23 **WHEREAS** on October 7, 2009, the Court denied the stipulation, finding that the  
24 continuance of the hearing on the motion to dismiss did not provide good cause to modify the  
25 briefing schedule. (Dkt. No. 106)

26 **WHEREAS** counsel for the parties have conferred, and Plaintiffs respectfully submit  
27 and Defendants do not oppose the following amended [proposed] scheduling order that  
28 provides for a one week extension of the existing briefing schedule for Plaintiffs and one week  
for Defendants and retains the existing hearing date.

AMENDED STIPULATION AND ~~PROPOSED~~  
ORDER

CASE NO. 08-2599 (JSW)

1           **WHEREAS** under the existing schedule, Plaintiffs' opposition to Defendants' motion  
2 to dismiss is due on October 9, 2009, Defendants' reply is due on October 30, 2009, and the  
3 motion is scheduled to be heard on December 11, 2009, six weeks after briefing will be  
4 completed.

5           **WHEREAS** since Defendants' motion to dismiss was filed on September 9, 2009, there  
6 have been three decisions issued in other auction rate securities matters that are potentially  
7 relevant to the briefing on the pending motion to dismiss. The three decisions are *In re:*  
8 *Citigroup Auction Rate Securities Litigation*, 2009 U.S. Dist. LEXIS 83046 (S.D.N.Y. Sept. 11,  
9 2009); *Defer LP v. Raymond James Financial, Inc., et al.*, 2009 U.S. Dist. LEXIS 84685  
10 (S.D.N.Y. Sept. 17, 2009); and *Zisholtz v. Suntrust Banks, Inc., et al.*, 2009 U.S. Dist. LEXIS  
11 88465 (N.D. Ga. Sept. 24, 2009).

12           **WHEREAS** these three recent decisions have required additional research and analysis  
13 in connection with Plaintiffs' opposition to Defendants' motion to dismiss and are likely to be  
14 included in the arguments advanced in support of and in opposition to the motion. These  
15 decisions have also resulted in changes to briefing schedules in other auction rate securities  
16 matters that Plaintiffs' counsel are involved in. Plaintiffs respectfully submit, and Defendants  
17 do not oppose, that the requested extension sought here is reasonable given the complexity of  
18 the issues raised by Defendants' motion, the growing body of case law in auction rate securities  
19 litigation matters, and the pleading standards applicable to securities claims.

20           **WHEREAS** the extension sought will not result in any prejudice to the parties or delay  
21 the litigation, and the parties do not anticipate requesting any further extension of the briefing  
22 schedule or hearing date. If this stipulation is granted, the Court will have four weeks to review  
23 the parties' briefing on the motion to dismiss before the December 11, 2009 hearing date.

24           In light of the foregoing, Plaintiffs respectfully propose, and Defendants do not oppose,  
25 the following amended schedule, subject to this Court's approval: Plaintiffs shall file their  
26 opposition to Defendants' motion to dismiss on October 16, 2009, and Defendants shall file  
27 their reply in support of the motion to dismiss on November 13, 2009.

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1 Dated: October 8, 2009

2 **GIRARD GIBBS LLP**

**O'MELVENY & MYERS LLP**

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~~PROPOSED~~ ORDER

Having reviewed the above stipulation, **IT IS HEREBY ORDERED** that the parties have shown good cause for an extension of the existing briefing schedule. Plaintiffs shall file their opposition to Defendants' motion to dismiss by October 16, 2009, and Defendants shall file their reply in support of the motion to dismiss by November 13, 2009.

**IT IS SO ORDERED.**

DATED: October 8, 2009

  
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THE HONORABLE JEFFREY S. WHITE  
UNITED STATES DISTRICT JUDGE