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AD\tDIJSTRATIVE PROCEEDING Bt::FORF THE
SEC'LRITlF.S CO\[\llSSIOKER OF SOt:l'H CA ROLINA

ln the matter of)
)
BA!\C OF A~ER CA SE:.CLRITJ£'S LLC)
and BANC OF AMF.RfC A TNVESTY'!E~T)
SERVICES, INC., ~

R~sp ondents. ~

AD:vllNlSTRATIVE CONSENT ORDER
F ile Number 09046

WIIF.REAS, Bane of Amenca Se~urities LLC ("BAS'') and Bane of Am~.:ri ca lm\.'strnent Services, [nc. ("BAT" and, together with BAS, "Respondents") are broker-dealers regtstcred in

Auction Rate

\!Gun ties("' 1\ )during the period of approx1mately August I, 2007. through february II. 2008, have been conducted by a multistate task fotce; and
WHF.R1 AS, Respondents have coopernted with regulators conducting th~ mvc-.LJbJllun.., h) responding to inquiries, pro' iding documentary evidence ancl other macenals, and prm 1d1r.g regulfHors with acc~ss to tacts relating to the invcstigarions; and
Wl1EREI\S, Respondents have! advi,cd regulators of th~ir 3grccment to !t."S(ll\'e the invt.,ttgauons relaring to their practices in connection \\ ith the under..vriting, marketing, and -, .. k ()f R , and
WllERT 1\S, Re"lpondenl.; c1grce to make {or ro have made on their behalf) cen JJn pJ} nl'nh
&!, J>art ofthe re:,olutton of the ime.c;tigl ii•O;,, and
WIIERF.AS. Re')pondems elect to pcnnanently w·ai\ e any right to a hearing and appeal
Jnder S.C. Code :\un. ~§3 5-l -604 ami 35-1 -609 (Supp. 2008) with respect to this AJmau trllt t Con enr Order (the ··Ordd'}:
NOW, THEREFORE, rhe Securities Commisstoner of the State: of South l.trolin.J (lht'

· ·sccu.nllcs ommisstond'), as adminiSlralor of the SliUth Carolina Umfoml ScclJnll\!5 Act r
2 2005 (".\ct ..), S.C. Code Ann. §§35-1-1 0 I to 35-1-703 (Supp. 2008). hereby enters this Order·
3 I.
4 FfNDlNGS OF FACT
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I. Respondents admit the juri-;Jiction of the Secu11ues Commissioner, neither adrmr
nor deny the Findings oi' Fact and Conclusions of Law contained in th1s Order, and consent to the ~ntry of this Order hv the Securities Commi~:-.ioner.
2. Begtnning in March '2008, the task force began its investigation of Respondenh'
<) underwriting, marketing, and sale of ARS.
I() 3. In or about August and September 2007, some ARS aucttons experienced fJtlur\,.. 11 These fai lures were primarily based on credit quality concerns related to the ARS at issue, wht~h 12 often im\lh ~:u undt.'rlymg ..1ssets of collaterali'Let.l debt obligations.
13 4. Dunng the fall of2007 and into rhe beginning months of 2008, as the demult rates
14 on subprime mortg>lg\..'8 soare.d aoJ the mar. .... ct in general begun exp'-'riencing gni!i~ant credit 15 tightemog, monohn'" insurers that insured many issuances of ARS were also becoming distressed 16 and were at ri:,k of ratings downgrades.

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5. The result ofthe ove allm:~rket conditions in the fall of 2007 and into the begmning
of 2008 r\!~ulted in in~,;n::asang con~ems rc ~ar ing market liquidity, as well as a declinim.! dem.~ni.J
for ARS.
6. The task furce concluded that Respondents should have had knowledge Lh.u. dunng
the fJII of2007 and winter of2008, the auction markets were not functioning properly :md auction
ot certain ARS prO\Iucts were at increased risk for failure.
1. During that hme period, stgnificant numbers of buyers had been exiting thl! m..trkct
und the 1. 1ntinued ucccss of the auctions was reliant upon the lead broker-dealers, such as BAS, making n\. r~..lSed support bids. l'hese support bids had th~ erh .. 'Ct of arti ficially pr<,pptng up Lhc.: market and crt:ating the dlusion that the auction rate market was functioning as nom1al.

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8. However, during that time, Re~pondents continued to market and sell ARS without
2 informing ~u~tomers of the heightened risks associated with holding tht'Se secUJities.
3 9. lnstead, Respondents engaged in a concerted effort to market ARS underwrirten by
4 BAS towards its large retail customer accounts without advising the rdJil customers uf any of the 5 potentialtic;ks associated with a failed auction or market illiquidity.
6 10. On or about February 11. 2008, without notifying any of its customers. BAS
7 stopped broadly supporting the auctions fL)r which BAS was lead broker-dealer.
8 I 1. The deci·-:on left thousands of Respondents' customer.; stuck holding illiqUJd ARS.
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12. On or about September 10, 2008, Respondents, Bank of America Corporation
(.. BAC'), and Blue Ridge lnvestments, Ll.C. (''Blue Ridge") :tgrced, in ptinciple, that I3AC would cause Blue Ridge to buy back, at pur plus accrued bur unpaid interest or dividend-,, ARS tor which auctions were in failed mode from "Eligible Jnvestors," which included nil individual investors, all cha1itable organizations with account values up to $25 million, and small and medium sized busin~ssc:s with account values up to $10 mi ll ion who purchased ARS from Respondents.

u.
CONCLUSIONS OF' LAW

I. The Securities Commissioner has jurisdiction over this matter pursuant to ".C.
Code Ann. §r -1-601 and §35-I -604 (Supp. 2008). The Act authorizes the Securities Commissioner to reguJato: 1) the offers, sales, and purchases of securities; 2) those individuals tlild enlitit:s otlt ring and/or selling securities; and 3) those individuals and entities tran~a~t ng hu!) in~'!) as imcstment advisers withtn the State of Solllh C:~rolina.
A.
2.

R'"-spondents Engage<;! in Dishonest and Unethical Practice,-;.
As described in the Findings of Fact section above, Respondents inappropriatdv
m.'lrkctcd and sold ARS without adequately intorming their customers of the increased ri~ s ,,f illiqtaidity associated with the product tor the time petiod August I, 2007, through Fl!bruary 11,

2008.

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As a result, Respondents violat\!d S.C. Code ArUl. §35-l -412(u)(l3) (Supp. 2008).
Respondents Failcji to Supervise Their Agents.
As described in the findings of Fa~t secti.on above, Respondents failed to prop rly
supervise their agents with respect to the marketing and sale of ARS from October l, :!007, to february l I, 2008.
5. As a result, Respondents vsobred S.C. Code Ann. §35-1-4 12(<.1){9) (Supp. 2008).
6. The Securities Cl)mmissioner finds the following relief appropriate and 1n the
public interest.
Ill.
ORDER

On the basis of the Findings of f act, Conclusions of Law, and Respondents' con~ent to lhe
entry of this Order,
lT lS HERLBY ORDERED:
1. This Order concludes the investigation by the Securities Commissioner and any other
action that tlle Securities Commissioner could commence under applicable stale law on behaJfofthe Stat~: of South Cnrolina as it rdatcs to Responuents' underwriting, marketing. and .u~-; ,1t ARS, provided however, that c:xduded lrom and not cm--~red by this paragraph I arc any cla m~ by the ')ccurirics Commissioner arising fl;om or relating to the "Order'' provssions contained herein.
2. This Order ~ ...:ntered into soldy for the purpose of ~sol ing tl1c referenced multistntc
investigati()n, and is not intended to be used for any other purpose.
3. Respondents will \ EASE AND DES1ST from violating the Act and will comply with

the Act

4. Within ten days after the date of this Order, Respondents shall pay lh\! :..um of
£696.916.14 to the Securities Commissioner.
5. In the event another state securities regulator determines not to accept Respondents'
settlement offt:r, the total amount of the State of South C:1rolina payment hall not be cct~..J. and shall remain at 56«::16,936.14.
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Respondents shal l comply wi1h the following requirements:
a. Eligible Investors

1. No later than October 21, 2008, BAC shall have caused Blue Rid g~
to offer to buy back, at par plus accrued and unpaid nten~ t or dividemls, Eligible ARS (as such term is defined below) for which auctions are in fai led mode from Eltgible Investors (as such term is defined below) who purchased such Ehgible AR. from Respondents prior to February l3, 2008 (the "Offer"). For purposes of the Offer, Eligible ARS means ARS purchased from Respondents on or before f.ebJUary 13, 2008, that were subject to an auction failure on or after Ft;bruary 11, 2008. The OtTer shall remain open for a period between October lO, 2008. and D~ccmbcr I, 2009, unless extended by Blue! Ridge.
ii. ·'Eligible Investors" shall me<1n:
(a) Natural persons (including their IRA accounts, le-.t:.mtcntary
trust and estate accounts, custodian IGMA and UTMA accounts, .md guardianship accounts) who purcha:;~d Eligible ARS from Respondents;
(b) :-~ri tic:~. endowments, or foundations with Internal Revenue
Code Section 50l(c)(3) status that purcha 0d Eligible ARS from Respondents and thai had $25 million or less in assets in their accounts ,.,. ith Respondent<; as determined by the customer's aggregate ht1usehold position(s) at Respondents as of September 9, 2008; or
(c) Small Business that purchased Eltg1 blc AKS lnlm
Respondents. For purposes of this provision. "Small Business" shall mean Respondents' Cllstorners not otherwise covered in paragraph III ().a.ii(a) and
ii(b) above that had b 15 million or less in assets in their a\.!counts with Respondents as of September 9, 200R.
111. Respondents will ha\le provided prompt notice to ustomc~ of the :;ett!cmt:nt tcnns and Respondents will have established a dedicated telephone 5

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as.~is~ance line, with appropriate ::>taffing, to respond to questions from c: !>tomer· concerning the terms of the settlement.
b. Relief for Eligibl.e Investors Who Sold Relow Par
\lo !Jter tihan December 31, 2008, Respondent~ shall have promptly provided notice
to any Eligible Investor that Respondents could r~asonably identify who sold ligihk A S below par between February 11, 2008, and September 22, 2008. Such investors will be paid the ditfcrencc by Respondents between par and the price at which the Eligible In "t!.; tor sold the Eligiblt: ARS. Any such Eligible Investors identified after Decem cr 3 I, 2008, shall be promptly paid the difference between par and the price at whi ch lh ~ Ehgible Investors sold the Eligible ARS.
c. Consequential Damages Claims
\lo later than October 10, 2008, Respondents shall make reasonable etft rt · promptly to notify those Eligible Investors who own Eligible ARS that, pursuant t tl1c terms of the settlement, an independent arbitrator, under the auspice of the Finan ia l Industry Regulatory Authority ("FINRA"), will be available for the exclusive purpOSI! t arbitrati ng any Eligible Investor's consequential-damages claim.
Re pondents shall consent to participate in the: North American Securitil.":> Administrators Association (' 1

ASAA") Special Arbitration Procedure (th,. '· .P")
established specifically for arbitrating claims arising out of an Eligible Investor '~ Inabili ty to ·ell Eligible ARS. Respondents shall notify El igible .Investors of the tem1s of the SAP. Nothing in this Order shall serve to limit or expand any party's rights or obligatt ms . provided under the SAP. Arbitration shall be conducted, at the customer's ele ·tiun, by a single non-industry arbitrator and Respondents will pay all forum and filing fees. Arbitrations .1sserting con.-;equential damages of less than $1 million will ~ ·ided tl1rough a single chair-qualified public arbitrator who will be appointed through th · Fl. RA li selection process for mgle arbitrator cases. In arbitrations where the onsequ \;n::~l damages claimed are ,(,rre ter th.m or equal to $1 million, the parti~s can, by 1 utual 6

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agreement, expand the panel to include Lhree public arbitrators who will be appointed through r-'1?\RA's li:-;t procedure.
Any Eligible Investors who choose to pursue such claims through the SAP shall
bear the burden of proving that they suffered conse.qu(;ntial dam;ig~ and that such dama ~-s were caused by their inability to access funds invested in Eligible ARS. In the SAP, Respondents shall be able to defend themselves against such cl aims; provided, however, that Respondenls shall not contest liability for the illiquidity of the underlying A RS position or use as pa11 of their defense any decision by an Eligible Investor not to borrow monl!y from Respondents.
All customers, including but not limited to Eligibk Investors who avail hem \!h c.,
of the relief provided pursuant to this Order, may pursue any remedies against Respondent... available under the law. However, Eligible Investors that elect to utilize the SAP are limited to the remedies available in that process and may not bring or pur!)ue a claim reJatmg Lo Eligible ARS in another fomm.
d. JnstitutionaJ Investors

pondents shall endeavor to work with issuers and other interested panrc , including regulatory :md goverrunental entities, to expeditiously and on a best efforts ba· ts pro' iJe li4uidity solutions for institutional inv~tors that purch:Lc;ed Eligible AR ' I rom Respondents anJ are not entitled to panicipate in the buyback under St\.:tiun I11 ("Institutional fnvestors'').
Begmning on December 3 1, 20tl8, and then quarterly thereafter, Re::;pondenl'i hall submit a written report to a repr~entative specitied by NASAA outlining the e1f'lu1s in whtch Respondents have engaged and ~he results of s~ efforts with respect to Tnsututional fnvestors' holdings m Eligtble ARS. The written refx>rts will be submitteJ 20 days following thl.<' \:Od of the quarter. Respondents shall confer with the represenlati·vc no less frequently than quarterly to discuss Respondents' progress to date. Such written reports and quarterly meetings shall continue until no later than December 31, 2009.

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Following every quarterly meeting, the representative shall advise Respondents of any concerns and, in response, Respond~nts shall detail the steps that Respondents plan fL) implement to address such concerns.
e. Relief for Municipal Issuers
R~spondents shal l refund refinancing fees to municipal auction rate issuers that
issued such securities through Respondents in the initial primary market between August 1, 2007, and February 11, 2008, and refinanced those securities through Resil mdents aftt:r February 11, 2008. Refinancing fees are those f~'"~ paid to Respondents in connection with a refinancing and are exclusive of legal fees and any orher fees or costs not paid to Respondents in connection with the transaction.
f. Repayment of Interest on Loans Provided To Eligible Investors
To the extent that Respondents loaned money to Eligible In v~..s tors secur..:d by Eligible ARS, after February 11, 2008, at an interest rate that was higher than that p:.ud on such Eligible ARS, Respondents shall refund the difference to such Eligible Investors.
g. Penalties
1. Respondent$ shall pay a total civil penalty of fifty million
(S50,000,000) dollars, ·which shall be allocat~d among and paid to the Commonwealth of Massachusetts, the State of New York, and such other states anJ territori~s that enter administrative or civil consent orders approving the tern:~ of the
N ASAA settlement (together with the Commonwealth of Massa~husctts and the State ofNcw York, the "Appro\ing States"). Any such all ocation shall be made at the discretion of the Approving States;
II. The Securities Commissioner's portion of the civil penalty shall be
$696,936.14 and shall be paid to the Securities Commissioner no later than Len
busin~ss days after the date of the Order.
h. In Consideration of the Settlement
The Securities (\>mmissi,.ncr will:
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1. Tcm1inatc the investigation of Respondents' underwriting,
marketing, and sale of A RS to Eligible Inv<.-st<)rs as defined herein;
ii. Refrain from taki ug legal action, if necessary, against Respondents
with respect to their institt:tional invt::stors until December 31, 2008; rhe Securities Commissioner shall issue continuances or that period as he deems appropriate; and
111. Not seek additional monetary penalties from Respondl:'nts in
connection with all underlying conduct relating to Respondents' undtrwriting.
marketing, and sale of ARS to investors.
If after this Order is executed, Respondents fail to comply with any of rhe terms ,.:-t
t~Jrth herein, the Securities Commissioner may take appropriate remedial action. If payment is not made by Respondents, or if Respondents default in any of their obligations set forth in tbi::, Order, the Securities Commi!\sioncr may vacate :his Order, at his sole discretion, upon I 0 days notice to Respondents and without opportunity for administrative hearing.
8. This Order as entered into by the Securities Commissioner "..ti\t..'s any disqualification contained in the laws of the State of South Carolina, or rules or reguh.ttinn!> thereunder, including any dtsqualifications from relying upon the rebl:\tration exemptions or s.tfc harbor provistons that BAf, BAS, or any of their affiliates may be subject to as a n: ult of the findin ~ contained in this Order. This Order also is not intended to ub." ~ct BAI or BAS or any of their affiliates to any disqualifications contained in the federal securitit!s laws, the ruks and regulations thereunder, the mles and regulations of self-regu latory organizations, or various sutes' or C Tenitories' <>ecunties Jaws, including, without limitation, any disqualiticattons from rdyjng upon the registration exemptions or safe harbor provisions. In :1udition, this Order is not intended to rorm the basis for any such disqualifications.
9. For any person or entity not a party to this Order, this Order does not limit or create
any private rights or remedies against Respondents includmg, without limttation, the use of any e-ma.tb or other documents of Respondents or of others for ARS sales practices, limtt or create liability uf ~.o.. pondents, or limit or c.reatc defenses of l{c.:spondcnts to any claims.
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I 0. Nothing ~crein shall prcclud;: the Stat~:: of South Carolina, its departments, agencies.
boards, commissions, authorities, political subdivtstons ami corporations, other than the Securities Commissioner and only to the extent set forth in paragraph IJJ (I) above, (collectively, ·'State Entities") and the officers, agents or employees of State Entities trom asserting any claims, causes of action, or applications for compensatory, nominal ancL'or punitive damages, administrative. ci'v tl, criminal, or injunctive relief against Respondents in connection with certain auction rate set:urities sales practices at Respondents.
11. This Order and any dispute related thereto shall be construed and enthrccd in
accordance with, and governed by, the laws of the State of South Carolina without regard to any choi ~ ofluw principles.
12. Respondents, through their execution of this Order, voluntarily waive thc.:ir right to a
hearing on this matter :md to judicial review of this Order under S.C. Code Ann. §35-J-609 (Supp. 2008).
13. Respondents enter into this Order voluntarily and represents that no threats. otfcrs
promises, or inducements of any kind have been made by the Securities Commissioner or any member, officer, employee, agem, or representative of the Securities Commissioner t<> tnduce Respondents to enter into this Order.
14. This Order shall be binding upon Respondents and each of thetr sul;ces~ rs and
assigns with ect to all conduct subjl'ct to the provisions above and all future obligJlivns, responsibihlh.-'S, undettakings, commitments, limitations, restrictions, events, and tions. Dated this 2.B.:t~ay of JULY , 2009.
BY ORDER OF THE SECURITIES COMMJSSJONER

L/~&~* ~'VtASTER SECURlTIES COMMJSSlONER
STATE OF SOCTH CAROLI)IA

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CONSENT TO ENTRY OF AOMINISTRA TIVE ORDER BY BANC OF AMERICA SECCRITIF.S LLC AND RANC OF AMERICA INVEST~lENT SERVICES, INC.
Bane of Arm:rica Securities LLC ("8,\S") and Bane of :\merica Investment Scrvic~:s, lnc. CBAl"
and, together with BAS, "Respondents"), hereby acknO\vledge that they have heen served with J ~opy t~f
this Administrative Order, have read the foregoing Order, are aware of their right to a hearing and appeal in

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1 this matter. and have waived the same.
Respondents admit thl:! jurisdiction of the Securities Corrunissioner of the State of SllUth C1rolina, neither admit nor deny the Findings uf Fact and Conclusions of Law contained in this Order, and consent to entry of this Order by the Securities Commissioner as settlement of the ISSues contained in this Order. Respondents agree that they shall not claim, asse11, or apply for a tax deduction or tax credit with
regard to any state, federal, or local tax for any administrative monetary penalty that Respondent~ ,h:tll pay pursuant to this Or<it:r.
Respondents state that no promi~e of any kind or nature whatsoever was made to them to induce
them to errtcr into this C)rJcr and that they ltavc entered into this Order voluntarily.

&IL{_(j1A.if<At reprcst:nts that he/she is tf/4~ 1'~ P~?~,[BAS, :md thar, as

such, has heen authorized by BAS to enter into this Order tor and on behalf of BAS.
_ _ __ _ _ _ __ _ _ _ _ represents that he/she is ___ _ _uf BAT and that, .iS
17 such, has hct:n authOTILt:d by BAt to enter into this Order for a~u on bdl<JI r or BAl.

18 Dated this ~ay of S(/1 r . 2009.
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State of A.) -c,J ~Oii'()

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) SS.

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ELIZABETH M. COPPOLO
Notary Puolic. S ate of New Yori(
No. 30-50 8872
Qualified In s au Coun!'f

Certificate Filed ln N w York County Commiasion Expires Oct. 25, 204..!f

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CONSENT TO ENTRY OF ADMINISTRATIVE ORDER BY BA C OF A:\rlERICA SECL'RIT IY.:S LLC AND BANC OF AM ERICA INVF:ST:\JENT SERVICES, INC.
Bane .1f Am~rica Securities LLC ("0.\S") and Bane of America lnv:.:stmcnt Servic~.:~. lnc. l"BAI"'
and. togc!her '' ith HAS, ''Respondents''), hereby acknowledge that they have bec:n served with a ~.:opy ,\f
this .'\dministrntivt: Order, have read h~ foregoing Order, are aware or therr right to a hearing and appeal in
Lhi:. matter. and have waived the:: same::.

Respondents admit the jurisdiction of the: Securities Conunisstonc:r o~· the State of Suuth Ctrolina, neither :-~dmtt nor deny the Findings pffact and Conclusions of Law contained in this Order, and consent tn entry of this Order by the Securities Commissioner as seulement of the issues conrained in thi!' Order. Rcsp11ndents agree rhat they $hall not claim, assert, or apply for a tax deduction or tax cn.:Jit with regard to any srntc, t\.'derat, or local tax for any administrative monetary penalty that ~spondents :;h.rll pay pursuant 10 th i!> Ord..:r.
R~"pondents stntc: that no promrsc: of any kind or nature whatsoever was made to them to induce
them to enter into thss Order and that they have entered into this Order voluntarily.
_ __ _ _ _ reprcs~nts that he~shc is _ ___ _____ ,lf!:l.\S, and rhat. as
such. l1as been authori zed by BAS ro c:nter into this Order tor and on bch3lf M BAS.

& 111..a l ~ J. N_, ~ _t~represenrs that he/she is {.Q_oJSJLE_ of BA! and that, .1 {

such, hus bet:n authori:£~d by BAllo entl!r into this Order for and on behalf of HAL
Dated this __ day of·---- ·· 2009.
BANC OF A..\1ERfC,\ SH..:L:RITIES LLC

By: __ ___________ _

Title: - ----------- -- Stute uf) --- --) ss.

Cuunty of.)
Sl'8SCRlLH:O AJ'\D SWOR~ TO ;,c:fun: me this __ dar of _ ---. 2009.

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Srate of/J~ a.~) ss.
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SUllSCRIBP.D AND SWORN TO bdo<e me th;s /~a day ~f~009.

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~ MARY ANN CARAOU.

® Notary Public

Commonweallll of Massac~~urat~s
My Commission Expires
Juty4,2014

Notary Pu'(t

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